STATE OF MINNESOTA

IN SUPREME COURT

C1-01-927

ORDER FOR HEARING TO CONSIDER PROPOSED AMENDMENTS TO MINNESOTA RULES OF JUVENILE PROCEDURE JUVENILE PROTECTION RULES

IT IS HEREBY ORDERED that a hearing be held before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on June 24, 2003 at 2:00 p.m., to consider the recommendations of the Minnesota Supreme Court Juvenile Protection Rules Committee to amend the Minnesota Rules of Procedure Juvenile Protection Rules. A copy of the committee's final report, which contains the proposed amendments, is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 14 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King, Jr. Boulevard, St. Paul, Minnesota 55155, on or before June 9, 2003, and

2. All persons desiring to make an oral presentation at the hearing shall file 14 copies of the material to be so presented with the Clerk of the Appellate Courts together with 14 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before June 9, 2003.

Dated: April 15, 2003

BY THE COURT:

Kathleen A. Blatz
Chief Justice

STATE OF MINNESOTA
IN SUPREME COURT
C1-01-927

MINNESOTA SUPREME COURT
JUVENILE PROTECTION RULES COMMITTEE

FINAL REPORT AND PROPOSED AMENDMENTS TO THE MINNESOTA RULES OF JUVENILE PROCEDURE JUVENILE PROTECTION RULES

April 7, 2003

MINNESOTA SUPREME COURT
STATE COURT ADMINISTRATION
105 MINNESOTA JUDICIAL CENTER
25 REV. DR. MARTIN LUTHER KING JR. BLVD.
ST. PAUL, MN 55155
651-297-7587

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A. COMMITTEE MEMBERSHIP

Chair
Hon. Timothy Bloomquist, District Court Judge, 10th Judicial District

Supreme Court Liaison
Hon. Helen Meyer, Associate Justice, Minnesota Supreme Court

Members
Ann Ahlstrom, Staff Attorney, Minnesota Supreme Court
Richard Coleman, Manager, Ramsey County Social Services Child Protection Unit
Gary Debele, Attorney, Walling & Berg
James Dorsey, Attorney, Fredrikson & Byron
Heidi Drobnick, Director, Indian Child Welfare Law Center
Jane Glander, Manager, 3rd Judicial District Guardian Ad Litem Program
Peter Gorman, Assistant Public Defender, 4th District Public Defender's Office
Jane Gustafson, Assistant County Attorney, Todd County Attorney's Office
Dianne Heins, Attorney, Faegre & Benson
Elaine Hutton, Child Protection Worker, Washington County Social Services
Hon. Thomas Kalitowski, Associate Judge, Minnesota Court of Appeals
Anna Lamb, Manager, Hennepin County Juvenile Court Administration
Shireen Lee, Coordinator, St. Louis County (Range) Guardian Ad Litem Program
Joyce Miyamoto, Sr. Attorney, Hennepin County Attorney's Office, Child Protection Division
Irene Opsahl, Attorney, Legal Aid Society of Minneapolis
Hon. Denise Reilly, District Court Judge, 4th Judicial District
Marian Saksena, Attorney, Children's Law Center of Minnesota
Amy Silberberg, Attorney, Silberberg Law Office
Hon. Richard Taylor, District Court Judge, 9th Judicial District
Rockwell Wells, Assistant Public Defender, 9th District Public Defender's Office
Jerry Winter, District Administrator, 1st Judicial District
Hon. Renee Worke, District Court Judge, 3rd Judicial District

Ad Hoc Members (Adoption Subcommittee)
Robert Denardo, Minnesota Dept. of Human Services, Adoption and Guardianship Division
Joanne Vavrosky, Assistant County Attorney, St. Louis County Attorney's Office

Staff Attorney
Judith Nord, Staff Attorney, Minnesota Supreme Court

B. COMMITTEE PURPOSE

The Rules of Juvenile Protection Procedure ("the Rules") were promulgated by the Minnesota Supreme Court on December 29, 1999, and became effective March 1, 2000. Due to substantive changes in federal and state statutes, and innovations in case management best practice procedures, on May 31, 2001, the Court established the Juvenile Protection Rules Committee and directed it to:

1. Review case law relating to the Juvenile Protection Rules;
2. Review federal and state statutes relating to the Juvenile Protection Rules;
3. Review implementation of, and consider requests for revisions to, the Juvenile Protection Rules; and
4. Submit to the Supreme Court recommendations for necessary revision of the Juvenile Protection Rules.

The Committee was given a clear directive that the Court would be unlikely to adopt rules or recommendations that were inconsistent with existing statutes.

C. COMMITTEE PROCEDURES – PUBLIC COMMENT PROCESS

The Committee met regularly from September 2001 through April 2003. Following its first meeting, the Committee distributed a "Notice of Opportunity to Comment Regarding the Existing Juvenile Protection Rules" to over 1,000 public and private child protection system stakeholders, including all trial court, tribal court, and appellate court judges; county attorneys; social services directors; tribal court services directors; district administrators and assistant district administrators; court administrators; guardians ad litem and program managers and coordinators; public and private attorneys; and other interested persons. Over the course of several months the Committee discussed in detail the nearly 40 pages of written comments received from the public. The Committee's deliberations resulted in numerous proposed technical and substantive amendments.

In December 2002, the Committee distributed the proposed amendments to the public for comment. The public was also notified of the opportunity to provide oral comment at a public hearing scheduled for January 7, 2003. Over 50 pages of written comments were received. Six people offered comments at the public hearing, including the State Public Defender, a supervisor of the Hennepin County public defender's office, the Director of the Children's Law Center of Minnesota, a representative of the Minnesota Association of Guardians Ad Litem, a representative of the Minnesota County Attorneys' Association, and a representative of attorneys serving as guardians ad litem.

The Committee carefully considered the written and oral comments received from the public regarding the proposed amendments. Through this process the Committee refined and finalized its proposed amendments to the Juvenile Protection Rules and its other recommendations contained in this report.

D. CONSENSUS REACHED REGARDING ALL PROPOSED AMENDMENTS

At its first meeting, the Committee discussed its decision-making process and agreed that, to the greatest extent possible, decisions would be made based upon a "consensus" process. "Consensus" was defined to mean that all members agreed to the proposed amendment "for the overall good of the Rules" and to avoid minority reports, even though some members disagreed with the proposed amendment. The Committee achieved consensus regarding all proposed amendments. *Section III, Summary of Proposed Substantive Amendments*, summarizes the issues relating to the proposed amendments that generated the most debate by this Committee and/or significant comment from the public.

E. OVERVIEW OF REPORT

This report sets forth the proposed technical and substantive amendments resulting from the Committee's deliberations. In addition to this *Section I, Introduction*, the report also contains the following sections:

***Section II, Summary of Proposed Technical Amendments*:** A summary of proposed amendments made to update and make uniform the format, citation form, and word choice used in the Rules;

***Section III, Summary of Proposed Substantive Amendments*:** A summary of proposed amendments made to effect changes in the meaning, application, or organization of the Rules;

Section IV, Summary of Other Recommendations: A summary of recommendations relating to amendment of other rules of procedure or statutes; and

Section V, Proposed Amendments to the Juvenile Protection Rules: The text of all proposed amendments showing deleted text via use of ~~strikeout~~ and showing added text via use of underline.

II. SUMMARY OF PROPOSED TECHNICAL AMENDMENTS

Following is a summary of proposed technical amendments made to update and make uniform the format, citation form, and word choice used in the Rules:

1. All case, statute, and rule citations were checked for accuracy, and updated where appropriate.

2. Citations to rules of procedure were made uniform. Internal cites to the Juvenile Protection Rules appear in the form "Rule X." Citations to other rules of procedure are spelled out (e.g., "Civil Appellate Procedure Rule X").

3. Citations to Minnesota Statutes were made uniform (e.g., Minnesota Statutes § 260C.212, subd. 1(a)(8)).

4. Citations to Advisory Committee Comments have been revised to reflect the year the Comment was made.

5. Numbers have been made uniform so that they appear in both text and numeral format (e.g., "three (3)").

6. Punctuation has been added or deleted as appropriate.

7. "Fax" has been replaced with "facsimile" or "facsimile transmission."

8. References to "local social services agency" have been changed to "responsible social services agency."

III. SUMMARY OF PROPOSED SUBSTANTIVE AMENDMENTS

Following is a summary of proposed substantive amendments made to effect changes in the meaning, application, or organization of the Rules.

RENUMBERING

The Committee proposes renumbering the Rules to begin with Rule 1, rather than Rule 37, to reflect the philosophical and procedural differences between the Juvenile Protection Rules and the Juvenile Delinquency Rules. This distinction between case types is also reflected in the words used throughout both sets of rules. For example, the Juvenile Delinquency Rules refer to a child as being "in custody," while the Juvenile Protection Rules refer to the child as under "emergency protection care"; the Juvenile Delinquency Rules use the title "arraignment hearing," while the Juvenile Protection Rules use the title "emergency protection care hearing" to reflect the first hearing; and so on.

RULE 2. DEFINITIONS

The Committee proposes four amendments to Rule 2. First, the Committee proposes amending Rule 2.01 to add definitions relating to the child's father. The bedrock principle of child protection cases is the goal of providing safe, stable, permanent homes for abused and neglected children to ensure their healthy development. To achieve this goal, it is critical that all parents involved in the child's life be made part of the court proceeding as soon as possible. Non-custodial parents and involved putative fathers should be present because, if the child cannot be returned to the custodial parent immediately, it might be possible to place the child with the other parent rather than in foster care. Recognizing the need to notify all of the child's involved parents, Rule 2.01 was amended to include definitions of "alleged father," "adjudicated father," and "presumed father."

Second, the Committee proposes amending the phrase "legal custodian" to incorporate the definition of "legal guardian." Currently the Rules use the two terms interchangeably and this has caused some confusion. As a result, throughout the rules the phrase "legal guardian" has been deleted and replaced with "legal custodian."

Third, a definition of the phrase "Independent Living Plan" has been added to comply with the statutory definition of such a plan.

Finally, the term "relative" has been amended to comply with statutory provisions, including the Indian Child Welfare Act.

RULE 3. APPLICABILITY OF OTHER RULES AND STATUTES

The Committee proposes two amendments to Rule 3. First, the Committee proposes amending Rule 3.02 relating to "judicial notice" to specify the types of documents and information of which the court may take judicial notice. The Rule currently provides that the court "may take judicial notice of any finding of fact or court order in any other proceeding in any other court involving the child or the child's parent or legal custodian." Contrary to the Committee's intent, some have interpreted this provision to mean that the court may not take judicial notice of information in the juvenile court file. In addition, some have interpreted this Rule to mean that the court may take judicial notice of any documents or information in other court files, not just findings of fact or orders. To resolve this confusion, the Committee

recommends amending the Rules to provide that, in addition to judicial notice permitted under the Rules of Evidence, the court may only take judicial notice of findings of fact and court orders in the juvenile protection court file or other court file.

Second, Rule 3.05 regarding court interpreters was amended to acknowledge the applicability not only of statutes and rules relating to court interpreters, but also the existence of court policies regarding court interpreters. Such court policies relate to compensation for interpreters and, for that reason, the provisions of Rule 3.05 relating to payment of court interpreter fees was deleted.

RULE 4. TIME; TIMELINE

The Committee proposes amending Rule 4.03, subds. 1 and 3, regarding the timing of adjudication to be consistent with Rule 40, which is the substantive rule relating to the timing of adjudication. Rule 4 is intended merely as a summary of all of the substantive timing provisions in the Juvenile Protection Rules and it should be consistent with the substantive rules.

RULE 7. REFEREES AND JUDGES

The Committee proposes three amendments to Rule 7. First, Rule 7.07 relating to "removal of a judge" currently mirrors the text of Rules of Civil Procedure 63.01, 63.02, and 63.03. The Committee recommends two amendments to Rule 7.02. With respect to a recusal due to interest or bias, Rule 7.07 currently provides that "If there is no other judge of the district who is qualified, or if there is only one (1) judge of the district, such judge shall immediately notify the chief justice of the supreme court of that judge's disqualification." Given that there are no judicial districts where only one judge is chambered, the Committee proposes deletion of this language.

Second, to clarify the procedure for appointing a new judge, the Committee also proposes amending Rule 7.07 to provide that the chief judge of the judicial district shall immediately notify the chief justice of the Minnesota Supreme Court if there is no other judge of the district who is qualified to preside following a decision that the judge is unable to perform due to a disability, a recusal, or the granting of a motion to remove.

Third, the Committee discussed the "one-judge one-family concept." Some Committee members strongly believe that one judge should preside over each case from the initial CHIPS hearing through achievement of a permanent placement plan for the child, whether that be termination of parental rights or permanent transfer of legal and physical custody of the child. They argue that decisions made in child protection cases are not merely litigation management decisions but, rather, decisions governing the lives of children and families. All decisions from one hearing to another are interrelated, and the judge is not merely the arbiter of a dispute placed before the court but, rather, the judge sets and repeatedly adjusts the direction of state intervention on behalf of the child. To ensure continuity in decision-making, and stability for the child, these Committee members argue that one judge should preside over the case from beginning to end.

Other Committee members, however, strongly believe that one judge should preside over the CHIPS portion of the proceeding and a separate judge should preside over any hearings

relating to the child's permanent placement. These Committee members argue that during the CHIPS portion of the proceeding the role of the judge is to work with the parents to encourage them to timely resolve the problems causing risk of harm to their child. During the permanency phase of a proceeding, however, the role of the judge shifts from that of working with parents to resolve their problems to that of an adversarial nature including severe consequences if the parent fails to comply with the court's orders. It is argued that it is inappropriate, and not often not possible, for a judge to shift roles in the middle of a case.

The one-judge one-family issue is one of a very few issues where the Committee chose to vote to make their decision. Following a vote of 14 in favor and 3 opposed, the Committee ultimately reached consensus that the one-judge one-family concept should be an aspirational goal of all juvenile courts. However, there also was consensus that a rule mandating implementation of the one-judge one-family concept may not be practical or enforceable in all situations. Instead, the Committee proposes an Advisory Committee Comment recommending that juvenile courts implement the one-judge one-family concept to the greatest extent possible.

RULE 8. ACCESSIBILITY OF JUVENILE PROTECTION CASE RECORDS

Effective July 1, 2002, the Supreme Court revised the Juvenile Protection Rules to mandate that child protection hearings (absent exigent circumstances) and court records (with some exceptions) are accessible to the public. Given that the open hearings/records rules were promulgated during the middle of the Committee's deliberations process, the Court also revised the Committee's charge to include monitoring of implementation of the open hearings/records provisions.

The Committee proposes two amendments to Rule 8. First, as revised under the open records provisions, Rule 8.01 now authorizes public access to all records in the court file, with the limited exceptions noted in Rule 8.04. Unlike the prior Rule 8, which provided guidance to court administrators about what records in the court file were and were not accessible to parties, the current Rule 8 is silent about party access to such records. During the public comment period, questions arose about the scope of party access to court records – for example, should one parent have access to the results of the other parent's chemical dependency assessment or psychological evaluation? The Committee decided that it is appropriate for the parties to have access to most records in the court file, including the records of the other parent, especially in cases where a party may not be represented by counsel. As a result, the Committee proposes amending Rule 8.04 to clarify that, not only may the public have access to records in the court file, but the parties also have access to all documents in the court file except those specified as exceptions in Rule 8.04.

Second, as part of the proposed amendments submitted to the public in January 2003, the Committee proposed amending the "case caption rule" (Rule 8.08) to provide that case captions should once again be in the name of the child rather than the names of the parents. This proposed amendment received the most comments during the public comment period, and was among the most hotly debated by Committee members.

During the Open Hearings Pilot Project that existed from June 22, 1998, through June 30, 2002, the Court implemented a rule that case captions would be in the name of the parents or

legal custodians rather than the name of the child. The Open Hearings Advisory Committee recommended that the Court caption cases in the name of the parents on the grounds that such captioning was "designed to minimize the stigma to children involved in juvenile protection matters that are accessible to the public." The Open Hearings Advisory Committee also recommended captioning in the name of "the parent because the parent is often the perpetrator of the abuse or neglect."

During the deliberations process, the Juvenile Protection Rules Committee discussed the practical and administrative problems associated with captioning cases in the parents' names. For example, many county attorneys choose to file one petition on which all children within the family are named. Other county attorneys choose to file one petition per child, so if five children are alleged to be abused then five petitions are filed. In either case, when the parents' names are cited in the caption it is difficult for judges and court administrators to know which child's file they are handling without thumbing through the file. Also, in those counties where multiple children are named on one petition and each has a different father, the length of the case caption can become unduly burdensome.

While the Committee acknowledged the administrative burdens caused by captioning cases in the names of the parents, the Committee also acknowledged the philosophical reasons underlying the Court's initial decision to no longer caption cases in the name of the child. The Committee discussed the goal of protecting the child's privacy to the greatest extent possible and, in doing so, tried to reconcile that goal with the Court's decision to allow the child's name to be accessible to the public (except in cases where the child is the victim of sexual abuse). The Committee also acknowledged that while court records currently are not available to the public in electronic format, such a possibility exists and will likely become more prevalent in the future. Some Committee members strongly believe that captioning a child protection case in the name of the child is similar to captioning a criminal case in the name of the innocent victim rather than the name of the perpetrator.

During their deliberations, the Committee also discussed the traditional appellate court procedure of using the child's and parents' initials in case captions and the text of decisions because those case names and decisions are searchable in electronic format (such as on Westlaw).

The Committee ultimately reached consensus that the need to protect the child's privacy outweighs the need to establish administrative ease for judges and court administrators. As a result, the Committee recommends no revision to the case caption provision of Rule 8.08. This means that at the trial court level cases will continue to be captioned in the names of the parents. However, to establish uniformity, the Committee recommends that at the appellate court level cases will be captioned in the parents' initials. Also, to clarify the procedure at the appellate court level, the Committee recommends amending Rule 8.08 to provide that throughout the text of appellate court decisions the child's and parents' initials should be used.

RULE 10. ORDERS

The Committee proposes two amendments to Rule 10. First, the Committee proposes amending Rule 10.01 to clarify the timing for filing an order following a trial. Some have

interpreted the current version of Rule 10.01 to mean that even following a trial a judge has only 10 days in which to file the order. While the Committee recognizes the need to expedite child protection cases, the Committee also recognizes that judges sometimes request written briefs following a trial and that judges need sufficient time to write detailed findings of fact, conclusions of law, and orders following a trial. Rule 39.05 regarding the timing of decisions following trial was amended to reflect the need for additional time to file orders and, as a result, Rule 10.01 also must be amended.

Second, the Committee proposes amending Rule 10.03 to clarify the process for service of orders on absent parents. Rue 10.03 currently provides that all court orders must be delivered at the end of the hearing or mailed to each party within 10 days of the filing of the order. Some court administrators interpret this Rule to mean that they must publish all court orders (an expensive process) when the parent was initially served by publication and has not appeared. The Committee proposes amending Rule 10.03 to provide that court administrators need not attempt service of orders upon a parent who was served by publication but who has not appeared either personally or through counsel.

RULE 11. RECORDING AND TRANSCRIPTS

The Committee proposes two amendments to Rule 11. First, Rule 11.02 currently provides that transcripts are available only to county attorneys, parties, and participants. Read literally, this means transcripts are not available to the media or other members of the public even though hearings are accessible to the public. The Committee proposes amending Rule 11.02 to provide that county attorneys, parties, and participants may request transcripts without a court order, and requests for transcripts may be made by others either in writing or on the record and may be granted by the court upon a showing of good cause.

Second, Rule 11 currently provides no guidance about who pays for the cost of transcript preparation. As a result, the Committee recommends adding Rule 11.03 to provide that "If a party requesting a transcript is unable to pay the preparation cost, the party may apply to the court for an order directing the preparation and delivery of the transcript to the party requesting it, at public expense. The request for a transcript shall be accompanied by an *In Forma Pauperis* (IFP) application. Upon a finding of the party's ability to do so, the court may order partial reimbursement for the cost of the transcript." The Committee does not intend for anyone other than parties to receive transcripts at public expense (if they qualify).

RULE 15. MOTIONS

The Committee proposes one amendment to Rule 15.05 to revise the procedure if a motion to strike a document or a portion of a document is granted. The current version of Rule 15.05 provides that if the court grants a motion to strike a pleading in its entirety, that pleading should be removed from the court file. The Rule also provides that if the court grants a motion to strike a portion of a pleading, under the current Rule that portion of the pleading is to be redacted from the court file. Two problems exist regarding the current language. First, the rule relates only to the striking of pleadings (i.e., petitions, responses, etc.) and not to other documents (e.g., reports, motions, etc.) that may need to be stricken. Second, removal of the stricken document from the court file causes administrative problems if the issue is raised on appeal – the document would not be in the court file for the appellate court to determine whether

the trial court erred. To resolve these concerns, the Committee proposes amending Rule 15.05 to provide "Any party or the county attorney may bring a motion to strike a document or any portion of a document. If a motion to strike a document or any portion of a document is granted, the document or portion of document shall be marked by the judge as stricken and the document shall physically remain in the court file."

RULE 16. SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS, SERVICE AND FILING OF MOTIONS; SANCTIONS

The Committee proposes one amendment to Rule 16. The current version of Rule 16 is silent about who is responsible for serving motion papers. In some counties, court administrators are serving motions once they are filed. In other counties, the party filing the motion paper is also responsible for serving the motion. To create statewide uniformity, and consistent with other procedural rules, the Committee proposes adding Rule 16.02 which provides that the party filing the motion paper is also responsible for serving the motion. The only exception would be that the court administrator would serve the motion paper upon any person whose address was confidential.

RULE 18. DEFAULT

The Committee proposes a complete revision of Rule 18. While few comments were received from the public about the proposed revisions to the default rule, this rule was one of the most controversial among Committee members and was discussed, revised, and refined at numerous meetings. The proposed amendment to Rule 18 is the result of compromise and consensus among Committee members.

The Juvenile Protection Rules in effect from 1983 through February 2000 did not contain a default provision. The current Rules, in effect since March 2000, do include a default rule which provides that if a party fails to appear after being properly served, such failure to appear may result in a finding that the statutory grounds set forth in the petition are proved and an order granting the relief requested in the petition (e.g., a CHIPS adjudication or an order terminating parental rights). The current language applies equally to defaults on CHIPS petitions and permanency petitions, including termination of parental rights and transfer of legal and physical custody matters.

The text of the current Rule has raised significant due process issues. For example, in some counties, the current Rule is being interpreted to mean that the parent must appear in person (not just through counsel) or risk default. In other counties, parents are being defaulted even though they show up late to a hearing and even though they offer a plausible excuse for being late.

In discussing the default concept in general, all Committee members agreed that a default procedure should continue to be available to the court. Five issues, however, caused much debate:

(1) the type of proceeding at which a default order could be granted by the court (i.e., a CHIPS proceeding and/or a permanency proceeding);

(2) the stage of the proceeding at which a default procedure would be available to the court (e.g., initial appearance, pre-trial, or trial);

(3) the triggering mechanism (e.g., failure of a parent to appear either personally or through counsel; appearance by the parent, but not at the specified hour – 10 minutes late or 2 hours late);

(4) the procedure if a parent fails to appear (e.g., would the court need to take testimony in support of the petition or would the petition simply be deemed proved); and

(5) the timing of the default (e.g., would a default be effective immediately, or would the court be required to stay the default for a period of time).

The procedural protections offered in the proposed amendment to Rule 18 achieve the Committee's consensus to propose a rule that alleviates an unduly harsh application of the default rule, while at the same time not delaying permanency for children.

RULE 21. PARTIES

The Committee proposes four amendments to Rule 21, one of which is controversial in nature. First, the Committee proposes amending Rule 21.01, subdivision 1, to include as parties children age 10 and older – for the reasons noted below, this proposal is somewhat controversial. The 1998-1999 Juvenile Protection Rules Committee recommended that all children be parties; the Supreme Court, however, chose to make children participants with an automatic right to intervene. In some districts and counties, judges have issued standing orders making all (or some) children parties in all cases.

As participants, children do not have the rights of parties to receive a copy of the petition, conduct discovery, bring motions, participate in settlement agreements, present evidence, cross-examine witnesses, request review of the court's decision, bring post-trial motions, or appeal. As participants, children only have the right to attend hearings and offer information to the court at the court's discretion. While children currently have an automatic right to intervene, in essence this means that the child whose interests are at the very heart of the proceedings must file a request to intervene so the child can participate meaningfully in the decisions that affect the most basic aspects of the child's life.

In the proposed amendments submitted for public comment in January 2003, the Committee recommended that all children (regardless of age) be made parties. That recommendation was based upon the philosophy that children are the subjects of these proceedings and, as such, should have a stronger role than mere participants. However, in recognition of a number of public comments that children under age 10 may not be developmentally able to provide information to the court or assist counsel, in the proposed amendments submitted with this Report the Committee chose to revise its recommendation to draw a bright line and only make children age 10 and older parties. Children under age 10 continue to be participants with an automatic right to intervene.

While most members of the public who commented agree that children should be parties, the Committee's proposed amendment is somewhat controversial because of the mistaken belief that making children parties entitles them to appointment of counsel (a potentially significant fiscal impact). In fact, however, Minnesota Statutes § 260C.163, subd. 3, entitles children age 10 and older to court appointed counsel regardless of whether they are parties or participants (the statute makes no distinction between parties and participants). Under the statute (which is

mirrored in Rule 25.02), the court shall appoint counsel for a child age 10 and older if the child desires counsel, is financially unable to employ counsel, and the court determines that appointment is appropriate. Appointment of counsel for a child under age 10 continues to be discretionary.

Second, in the case of an Indian child, the Committee proposes amending Rule 21.01, subdivision 1, to include as parties the child's Indian custodian and Indian tribe. Under the current rule, Indian custodians and tribal representatives are considered participants with an automatic right to intervene. Many tribal representatives oppose the current rule, arguing that it is inconsistent with the Indian Child Welfare Act. As a result, a number of districts and counties have issued standing orders making Indian custodians and tribal representatives parties in all cases. Given the importance of the Indian custodian's and Indian tribe's participation in child protection cases, the Committee reached consensus that these individuals should be parties rather than participants.

Third, the Committee proposes amending Rule 21.01, subdivision 2, to be consistent with the amendments to subdivision 1 so that only children age 10 and older who are habitual truants, runaways, or engaged in prostitution are parties.

Fourth, the Committee proposes amending Rule 21.03 to allow a party's address to be confidential if the party is endangered.

RULE 22. PARTICIPANTS

The Committee proposes three amendments to Rule 22. First, consistent with the proposed amendments to Rule 21.01, the Committee proposes amending Rule 22.01 to provide that only children under age 10 are participants (children age 10 and older are parties), and to delete the reference to the child's Indian custodian and Indian tribe (who are now parties).

Second, the Committee proposes amending Rule 22.02 to provide that participants receive a copy of the petition. Under the current rule, participants (including non-custodial parents, foster parents, the child, and grandparents) do not receive a copy of the petition (unless they intervene as parties). While not required to do so under the current Rule, some court administrators nevertheless routinely provide a copy of the petition to all participants. The Committee is of the belief that for a participant (especially a parent) to have any meaningful participation in the proceedings that person should be made aware of the allegations in the petition and the child's circumstances. Some concern was expressed about the fiscal impact in those counties that do not already provide a copy of the petition to participants.

Third, the Committee proposes amending Rule 22.03 to allow a participant's address to be confidential if the participant is endangered.

RULE 23. INTERVENTION

The Committee proposes amending Rule 23 to be consistent with the proposed amendments to Rules 21 and 22 regarding parties and participants.

RULE 24. JOINDER

The Committee proposes adding an Advisory Committee Comment reflecting recent appellate decisions relating to joinder.

RULE 25. RIGHT TO REPRESENTATION; APPOINTMENT OF COUNSEL

The Committee proposes four amendments to Rule 25. First, the Committee proposes amending Rule 25.01 to extend through appeal, if any, the basic principle that each person appearing in court has the right to be represented by counsel. That basic concept of the right be represented by counsel is distinguished from the right to court appointed counsel available under the rules and statutes to some, but not all, litigants.

Second, the Committee proposes amending Rule 25.02 to be consistent with statutory revisions enacted in 2002. Consistent with statutes in effect prior to 2002, Rule 25.02 currently provides that the court shall appoint counsel to the child (regardless of age) in any proceeding where the child requests counsel, is financially eligible, and in which the court deems such appointment appropriate. In 2002, Minnesota Statutes § 260C.163, subd. 3(b), was amended to limit such mandatory appointment of counsel to children age 10 and older. In addition, subdivision 3(c), was amended to provide that if the sole basis for the petition is that the child is an habitual truant, court appointed counsel is no longer available to the child unless out-of-home placement is being considered. The statutory revision also provides that court appointed counsel is no longer available to the parent of an habitual truant. The proposed amendments reflect the statutory revisions.

Third, the Committee also proposes adding language providing that appointment of counsel for the child and parent occur as soon as practicable after a request for appointment is made. The objective is to have counsel appointed in time to appear for the initial hearing.

Fourth , consistent with Minnesota Statutes § 260C.331, subd. 5, the Committee proposes adding Rule 25.03 to specify the procedure for ordering a parent or legal custodian to pay attorney's fees.

Finally, in the proposed amendments submitted for public comment in January 2003, the Committee included in Rule 25.06 language requiring court appointed counsel to continue representation through appeal, if any. That proposal was among the most controversial submitted by the Committee and received a significant number of comments, especially from public defenders. While public defenders didn't necessarily disagree with the basic premise that legal counsel should be available to parties through appeal, they did oppose the proposal for two reasons. First, public defenders were opposed to this provision on the grounds that there simply are not sufficient numbers of public defenders available to handle cases at the trial court level, let alone at the appellate court level. Given the current economic climate, it is unlikely that the public defender system will receive funding to hire additional attorneys to represent litigants on appeal. As a result, requiring public defenders to represent parents and children through appeal would, in essence, be an unfunded mandate. Second, even if there were sufficient personnel available to represent parents and children on appeal, public defenders took issue with court rules requiring the same attorney to represent the parent or child in both the trial court and appellate court proceeding. They argued that often there are strategic reasons for having a different

attorney represent the person on appeal – for example, when arguing ineffective assistance of counsel. They also argued against the provision on the grounds that trial court attorneys are not necessarily experienced appellate court attorneys.

Given the concerns raised by public defenders, the Committee chose to delete the proposed amendment to Rule 25.06 requiring counsel to serve through appeal. However, the Committee decided to keep in Rule 25.01 the basic premise that individuals have the right to counsel through appeal (just not court appointed counsel).

RULE 26. GUARDIAN AD LITEM

The Committee proposes five amendments to Rule 26. First, during the Committee's deliberations process amendments to Minnesota Statutes § 260C.163, subd. 5, were pending regarding whether guardian ad litem appointments in all child protection cases should continue to be mandatory or whether some appointments (such as for truancy and runaways cases) will be changed to be discretionary. As a result, the Committee proposes amending Rule 26.01 to delete the current language mandating appointment of a guardian ad litem in all child protection cases (the current statutory language) and replace it with a reference to the statute authorizing such appointments in the event the statute is revised.

Second, the Committee proposes amending Rule 26.01 to provide that appointment of a guardian ad litem for the child should be made as soon as practicable after it is determined that a guardian ad litem is required. The objective is to have the guardian ad litem appointed in time to attend the initial hearing.

Third, the Committee proposes amending Rule 26.03 to clarify the guardian ad litem's term of service when the permanency plan for the child is termination of parental rights. Specifically, the Committee proposes that the guardian ad litem should continue serving as a party until the adoption decree is entered. In the *Section IV, Summary of Other Recommendations*, the Committee also proposes that the Rules of Guardian Ad Litem Procedure be amended to specify the role and responsibilities of guardians ad litem at each stage of a proceeding from the initial hearing through post-permanency hearings.

Fourth, the Committee proposes adding Rule 26.04 to provide that among the responsibilities of the guardian ad litem is to request appointment of counsel for the child to protect the child's legal rights and/or legal interests. In deciding whether to request appointment of counsel for the child, among other factors that may be considered the guardian ad litem is to assess the following factors: the child's ability to work with counsel, whether the guardian ad litem's recommendation is contrary to the child's expressed preference, whether the child's siblings are represented, and the complexity of the issues involved.

Fifth, consistent with Minnesota Statutes § 260C.331, subd. 6, the Committee proposes adding Rule 26.05 to specify the procedure for ordering a parent or legal custodian to pay the guardian ad litem's fees.

RULE 28. EMERGENCY PROTECTIVE CARE ORDER AND NOTICE

The Committee proposes amending Rule 28.02, subdivision 2, to add a reference that the court may issue an order for emergency protective care for children who are found by the court to be delinquents under age 10 or to have committed domestic abuse. These amendments are consistent with revisions to Minnesota Statutes § 260C.007, enacted in 2002.

RULE 29. PROCEDURES DURING PERIOD OF EMERGENCY PROTECTIVE CARE

The Committee proposes adding an Advisory Committee Comment to Rule 29.01 to clarify the procedure for calculating the 72-hour period within which an Emergency Protective Care hearing must be held.

RULE 30. EMERGENCY PROTECTIVE CARE HEARING

The Committee proposes four amendments to Rule 30. First, the Committee proposes amending Rule 30.02 to clarify who has responsibility for informing parties, participants, and attorneys of the date, time, and location of the Emergency Protective Care (EPC) hearing. Under the current rule, the court administrator is required to inform everyone of the hearing, including parents, even though court administrators sometimes are unable to do so because contact information is not provided or some parents don't have telephones. As a result, agreements currently exist between many court administrators and their local social services agencies such that the agencies often notify parents of the proceeding and the court administrator notifies others, such as attorneys and guardians ad litem. The proposed revision allows the court administrator, or designee (such as the agency), to notify litigants about the EPC hearing.

Second, the Committee proposes amending Rule 30.04 to provide that the court must determine whether all required persons have been informed about the EPC hearing and what further efforts, if any, must be taken to notify absent persons about the date of the next hearing. In addition, in order to assist the court in determining who was and was not informed about the EPC hearing, the Committee proposes amending Rule 30.04 to provide that the court administrator or designee must file a written statement describing the efforts to inform the required persons and whether contact was or was not made. This statement will be placed in the court file so that the court may make the required finding about who was and was not notified of the hearing.

Third, consistent with the proposed amendments to Rule 21 (parties), Rule 22 (participants), and Rule 25 (right to representation), the Committee proposes amending Rule 30.05 to revise the list of persons to whom notice must be provided about the right to legal representation and the availability of court appointed counsel.

Fourth, the Committee proposes adding Rule 30.12 to require the responsible social services agency to file with the court and serve upon the parties a written notice of the date the child is returned home. Currently, the social services agency often returns the child home without an additional hearing if the parent complies with the conditions of the court's order. However, when the child is returned home many agencies do not inform the court or the other parties of the reunification and, as a result, the out-of-home placement permanency clock continues to tick – even though it should be stopped as of the reunification date. Notification of

reunification under protective supervision is also necessary so guardians ad litem may continue contact with the child in the parent's home.

RULE 31. METHODS OF FILING AND SERVICE

The Committee proposes amending Rule 31.01 to specify the methods by which documents may be filed with the court, including either personally, by U.S. Mail, or by facsimile transmission.

RULE 32. SUMMONS AND NOTICE

The Committee proposes six amendments to Rule 32. First, the Committee proposes amending rule 32.02, subdivision 2, to delete the requirement that each child be served a summons on the grounds that it is not necessary for the child to attend all hearings and, in some cases, it is not in the child's best interest to do so. The child will receive a notice of hearing through his/her attorney or physical custodian pursuant to Rule 32.03, but the child's presence will not be compelled by a summons. The Committee also proposes deleting the requirement of service of a summons upon "the person with physical custody of the child" because it is the person with legal custody, not physical custody, who should be required to attend hearings.

Second, the Committee proposes amending Rule 32.02 to specify who is responsible for paying for the cost of service of the summons. The intent is for the court to pay such costs if the petition is filed by the local social services agency. However, if the petition is filed by someone other than the local social services agency, the intent is for the service costs to be paid by the petitioner.

Third, the Committee proposes amending Rule 32.02, subdivision 3, regarding the method of service of the summons. The current Rule provides that the summons must be personally served upon each party unless the court orders service by publication. Given the number of persons to be served in each case, personal service can be costly and overly burdensome. As a result, the Committee proposes amending the Rule to provide that the summons must be personally served only upon the child's parent or legal custodian, and it may be served either personally or by U.S. mail upon all other parties and attorneys (unless the court orders service by publication). In voluntary placement matters, the Committee proposes amending the Rule to provide that the summons be served by U.S. mail upon the child's parent or legal custodian.

Fourth, the Committee proposes amending Rule 32.02, subdivision 4, to clarify the content of the advisory statement that is required to be served with the summons. Consistent with the proposed amendments to Rule 18 (the default rule), the Committee proposes adding to the advisory a statement about the potential consequences in the event a parent or legal custodian fails to appear, including that the child may be removed from home pursuant to a child in need of protection or services petition; the parent's parental rights may be permanently severed pursuant to a termination of parental rights petition; the child's legal and physical custody may be permanently transferred to a relative; the court may find that the statutory grounds set forth in the petition have been proved; or the court may issue an order granting the relief requested.

Fifth, consistent with Minnesota Statutes § 260C.307, subdivision 3, the Committee proposes amending Rule 32.02, subdivision 5, to clarify the length of time that the summons must be published in child protection and termination of parental right cases.

Sixth, the Committee proposes amending Rule 32.03 regarding service of the notice of hearing. The current rule does not distinguish between service of a notice of hearing for the initial hearing (i.e., the Emergency Protective Care or Admit/Deny Hearing) versus subsequent hearings (e.g., disposition hearing, review hearing, etc.). As a result, the Committee proposes amending subdivision 2 to specify who must be notified of the initial hearing, along with details about the timing and method of service of such notice. Subdivision 3 is amended to specify the content of the notice of the initial hearing. In addition, the Committee proposes adding Rule 32.04 to specify who should receive notice of subsequent hearings, and the timing and manner of service of such notice.

RULE 33. PETITION

The Committee proposes four amendments to Rule 33. First, the Committee proposes amending Rule 33.01, subdivision 3, to clarify that a termination of parental rights petition may be drafted and filed by the county attorney or any responsible person. Rule 33.02, subdivision 3, specifies the content of a petition drafted by someone other than the county attorney and includes a process for review by the court administrator to determine whether the petition is complete The court administrator may reject the petition if it is not complete. The State Court Administrators Office will prepare a model petition and make it available to court administrators so they can provide it to interested persons.

Second, the Committee proposes amending Rule 32.02 to clarify that it is the responsibility of the petitioner to include in the petition the names and addresses of all parties and participants. It is also the responsibility of the petitioner to include a "party" or "participant" designation for each person so that the court administrator knows whether to serve the person with a summons or notice of hearing.

Third, the Committee proposes amending Rule 33.02 to clarify the method by which petitions may be amended. Sometimes it is not possible for the county attorney to include in the CHIPS petition all information required under the Rules because CHIPS petitions must be served and filed on or before the Emergency Protection Care hearing which takes place within 72 hours of the child's removal from home. The proposed amendment provides that as soon as the missing information becomes known to the petitioner, the petitioner shall provide the information to the court and parties either orally on the record, by sworn affidavit, or by amended petition.

Fourth, the Committee proposes amending Rule 33.02, subdivision 6, to provide that not only may a person's address be considered confidential, but also a person's name may be considered confidential. In many cases it is not appropriate for a parent or legal custodian to know the name or address of the child's foster parent. This proposed amendment allows that information to be confidential if there is reason to believe the person may be endangered by disclosure of the name or address.

III. SUMMARY OF PROPOSED SUBSTANTIVE AMENDMENTS

RULE 37. CASE PLANS

The Committee proposes adding Rule 37 specifying details about the timing and content of out-of-home placement plans and child protective services plans. Nearly all comments received from the public were in favor of this rule. The only controversy surrounding this Rule appears to be the level of specificity with which the Rule is written and the fact that it is directed to social services personnel not court personnel. However, a number of Committee members and members of the public (including judges) commented that they welcome such specificity given the complex nature of these cases. They believe that such specificity will lead to greater statewide uniformity and a greater degree of understanding about the findings that judges must make regarding the efforts of by social workers to prevent removal and reunify the child and family.

RULE 38. COURT REPORTS

The Committee proposes adding Rule 38 specifying details about the timing and content of social worker and guardian ad litem reports. Nearly all comments received from the public were in favor of this rule. The only controversy surrounding this Rule appears to be the level of specificity with which the Rule is written. However, a number of Committee members and members of the public (including judges) commented that they welcome such specificity given the complex nature of these cases. They believe that such specificity will lead to greater statewide uniformity and a greater degree of understanding about the findings that judges must make regarding the efforts of by social workers to prevent removal and reunify the child and family.

RULE 39. TRIAL

The Committee proposes amending Rule 39.05 to allow the court to extend for up to 15 days the time for filing an order following a trial. Some have interpreted the current version of the Rule to mean that even following a trial a judge has only 10 days in which to draft and file the findings of fact, conclusions of law, and order. While the Committee recognizes the need to expedite child protection cases, the Committee also recognizes that judges sometimes must request written briefs following a trial and also that judges need sufficient time to write detailed and often complex findings of fact, conclusions of law, and orders following a trial. The proposed amendment allowing a brief extension of time balances the desire to expedite child protection cases with the realities of judicial workloads and the complexities of child protection cases.

RULE 41. DISPOSITION

The Committee proposes three amendments to Rule 41 consistent with Minnesota Statutes § 260C.201. First, the Committee proposes amending Rule 41.05 to specify additional information that must be included in a disposition order. A disposition order must include a statement of all alternative dispositions or services considered by the court under the case plan and why such dispositions or services are not appropriate in the case. A disposition order must also include a brief description of the efforts made to prevent or eliminate the need for removal of the child from home and to reunify the family after removal, and why further efforts could not have prevented or eliminated the necessity of removal or that reasonable efforts were not required under Minnesota Statutes § 260.012 or § 260C.178, subd. 1. A disposition order must

also specifically approve or modify the visitation plan for the child and the child's parents, legal custodian, relatives, and siblings if they are not placed together.

Second, the Committee proposes adding Rule 41.06, subdivision 2, which specifies the procedure for reviewing disposition orders and the issues the court must consider. The Rules currently are silent about this procedure and, as a result, a lack of statewide uniformity exists.

Third, the Committee proposes amending rule 41.06, subdivision 4, regarding the process for objecting to modification of the disposition or case plan. The Rules currently are silent about this procedure and, as a result, a lack of statewide uniformity exists.

RULE 42. PERMANENT PLACEMENT MATTERS

The Committee proposes three amendments to Rule 42. First, the Committee proposes amending Rule 42.05, subdivision 2, to provide that if the court decides to transfer permanent legal and physical custody of the child to a relative, the court may continue jurisdiction over the parties for a period of time to ensure that conditions ordered by the court related to the care and custody of the child are met.

Second, consistent with a 2002 statutory amendment, the Committee proposes adding subdivision 2(d) permitting orders awarding guardianship and legal custody of the child to the Commissioner of Human Services.

Third, the Committee proposes adding subdivision 2(g) regarding review of orders for long term foster care and foster care for a specified period of time. These in-court reviews must take place at least annually.

RULE 43. TERMINATION OF PARENTAL RIGHTS MATTERS

The Committee proposes two amendments to Rule 43. First, the Committee proposes amending Rule 43.02 to add subdivision 2 requiring the court administrator to forward to the Commissioner of Human Services one certified copy of the order for guardianship and the order terminating parental rights.

Second, the Committee proposes amending Rule 43.03 to provide details about the timing and purpose of in-court review hearings when the permanency plan for the child is adoption and when it is long term foster care. The current rules are silent about these procedures.

RULE 44. REVIEW OF VOLUNTARY PLACEMENT MATTERS

The Committee proposes amending Rule 44 to reflect statutory revisions enacted in 2002 relating to procedures for reviewing voluntary placement matters. The proposed amendments are consistent with revisions to Minnesota Statutes § 260C.212, subd. 8; § 260C.141, subd. 2(a); and § 260C.212, subd. 9.

RULE 46. RELIEF FROM ORDER

The Committee proposes adding Rule 46.03 to be consistent with the provisions of the Indian Child Welfare Act regarding procedures for invalidating state court proceedings.

RULE 47. APPEAL

The Committee proposes three amendments to Rule 47. First, the committee proposes amending Rule 47.02, subdivision 2, to clarify that the Rules of Civil Appellate Procedure apply, to juvenile protection matters "except that the time for appeal runs for all parties from the time of filing of the order."

Second, the Committee proposes amending Rule 47.02 to provide that although the appellant must notify the court administrator of the filing of the appeal, failure to do so does not deprive the court of appeals of jurisdiction.

Third, the Committee proposes amending Rule 47.02 to provide that upon the filing of an appeal the appellant must provide notice of the revised case caption to the appellate court, the parties, and the court administrator. The rule is consistent with Rule 8.08 regarding case captions.

IV. SUMMARY OF OTHER RECOMMENDATIONS

Following is a summary of recommendations relating to amendment of other rules of procedure or statutes:

A. Recommendations Regarding Rules of Guardian Ad Litem Procedure:

1. The Juvenile Protection Rules specify the timing of appointment for a guardian ad litem (GAL) (Rule 26.01) and term of service of a GAL (Rule 26.03). However, the Rules do not specify the GAL's responsibilities, except to provide that they are as stated in the Rules of Guardian Ad Litem Procedure. The Rules of Guardian Ad Litem Procedure should be amended to specifically define the role and responsibilities of the GAL at each stage of a juvenile court proceeding, including Child In Need of Protection or Services (CHIPS) proceedings, permanency proceedings (i.e, Termination of Parental Rights (TPR), Long Term Foster Care (LTFC), Transfer of Legal Custody (TLC)), post-permanency proceedings (e.g., 90-day post-TPR reviews, annual post-LTFC reviews), and adoption proceedings.

2. To be consistent with Juvenile Protection Rule 26.04, the Rules of Guardian Ad Litem Procedure should be amended to provide that "The guardian ad litem shall request appointment of counsel for a child if the guardian ad litem determines that the appointment is necessary to protect the legal rights or legal interests of the child." Consistent with the comment to Rule 26.04, the language should be included as a comment: "In deciding whether to request appointment of counsel for the child, among other factors that may be considered the guardian ad litem is to assess the following factors: the child's ability to work with counsel, whether the guardian ad litem's recommendation is contrary to the child's expressed preference, whether the child's siblings are represented, and the complexity of the issues involved."

B. Recommendations Regarding Statutory Revisions

1. Minnesota Statutes § 260C.163, subd. 5, should be amended to specify whether appointment of a GAL is required or discretionary in voluntary placement matters that are being reviewed by the court but which have not evolved into a Child In Need of Protection or Services proceeding.

V. PROPOSED AMENDMENTS TO JUVENILE PROTECTION RULES

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A. SCOPE and PURPOSE

RULE 1 ~~37~~. SCOPE and PURPOSE

Rule 1.01 ~~37.01~~. Scope

These rules govern the procedure for juvenile protection matters in the juvenile courts in Minnesota. Juvenile protection matters include all matters defined in Rule 2.01(k) ~~38.01(h)~~.

Rule 1.02 ~~37.02~~. Purpose

These rules establish uniform practice and procedure for juvenile protection matters in the juvenile courts of Minnesota. The purpose of these rules is to:

(a) secure for each child under the jurisdiction of the court a home that is safe and permanent;

(b) secure for each child under the jurisdiction of the court the care and guidance, preferably in the child's own home, that will best serve the physical, emotional, spiritual, and mental welfare of the child;

(c) provide judicial procedures which protect and promote the safety and welfare of the child;

(d) whenever possible and in the best interests of the child, preserve and strengthen the child's family ties, removing the child from the custody of the child's parent or legal custodian only when the child's safety and welfare cannot otherwise be adequately safeguarded;

(e) secure for the child such custody, care, and discipline, as nearly as possible equivalent to that which should have been given by the child's parent or legal custodian, when removal from the child's parent or legal custodian is necessary and in the child's best interests;

(f) provide a just, thorough, speedy, and efficient determination of each juvenile protection matter before the court and ensure due process for all persons involved in the proceedings;

(g) establish a uniform system for judicial oversight of case planning and reasonable efforts, or active efforts in the case of an Indian child, aimed at preventing or eliminating the need for removal of the child from the care of the child's parent or legal custodian;

(h) ensure a coordinated decision-making process;

(i) reduce unnecessary delays in court proceedings; and

(j) encourage the involvement of parents and children in the proceedings.

1999 Advisory Committee Comment

The purpose statement is not intended to be a rule of construction. Rather, it is intended as a guide for judges, attorneys, social services personnel, families, and other judicial system stakeholders to articulate that the overall objective of juvenile court is to move expeditiously toward a resolution of the matter in such a way as to secure that which is in the best interests of the child while ensuring due process for all of the parties.

The purpose statement reflects the policy set forth in the federal Adoption and Safe Families Act of 1997, P.L. 105-89 (Nov. 19, 1997), which emphasizes that the overriding objective in any juvenile protection matter is to timely provide a safe, permanent home for the child. The purpose statement also reflects the

policy set forth in Minnesota Statutes § 260C.001, subd. 2, which provides, in pertinent part, as follows:

> The paramount consideration in all proceedings concerning a child alleged or found to be in need of protection or services is the health, safety, and best interests of the child. . . . The purpose of the laws relating to juvenile courts is to secure for each child alleged or adjudicated in need of protection or services and under the jurisdiction of the court, the care and guidance, preferably in the child's own home, as will best serve the spiritual, emotional, mental, and physical welfare of the child; to provide judicial procedures which protect the welfare of the child; to preserve and strengthen the child's family ties whenever possible and in the child's best interests, removing the child from the custody of parents only when the child's welfare or safety cannot be adequately safeguarded without removal; and, when removal from the child's own family is necessary and in the child's best interests, to secure for the child custody, care and discipline as nearly as possible equivalent to that which should have been given by the parents.

Rule 1.02(h) ~~37.02(h)~~ calls for coordinated decision-making in those cases where one family is involved in simultaneous juvenile, criminal, and family court matters. The parties and the court should coordinate the separate proceedings to assure a consistent outcome that is in the best interests of the child.

RULE 2 ~~38~~. DEFINITIONS

Rule 2.01 ~~38.01~~. Definitions

The terms used in these rules shall have the following meanings:

(a) **"Alleged Father"** means an individual claimed by a party or participant to be the biological father of a child.

(b) **"Adjudicated Father"** means an individual determined by a court, or pursuant to a Recognition of Parentage under Minnesota Statutes § 257.75, subd. 3, to be the biological father of the child.

(c ~~a~~) "**Child placing agency**" means any agency licensed pursuant to Minnesota Statutes § 245A.02 to § 245A.16 or § 252.28, subd. 2.

(d ~~b~~) **"Emergency protective care"** means the placement status of a child when:

(1) taken into custody by a peace officer pursuant to Minnesota Statutes § 260C.151, subd. 6; § 260C.154; or § 260C.175;

(2) ordered into placement by the court pursuant to Minnesota Statutes § 260C.178 or § 260B.198 before a disposition; or

(3) returned home before a disposition with court ordered conditions of release.

(e ~~c~~) **"Foster care"** as defined in Minnesota Statutes § 260C.007, subd. 9, means the 24-hour-a-day care of a child in any facility which for gain or otherwise regularly provides one or more children, when unaccompanied by their parents, with a substitute for the care, food,

lodging, training, education, supervision, or treatment they need but which for any reason cannot be furnished by their parent or legal custodian in their homes.

(f) **"Independent Living Plan"** is a plan for a child age 16 or older who is in placement as a result of a permanency disposition which includes the objectives set forth in Minnesota Statutes § 260C.212, subd. 1(c)(8).

(g ~~d~~) **"Indian child"** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(1)(4), and Minnesota Statutes § 260.755, subd. 8, means any unmarried person who is under age eighteen (18) and is either (1) a member of an Indian tribe or (2) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(h ~~e~~) **"Indian custodian"** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(1)(6), and Minnesota Statutes § 260.755, subd. 10, means any Indian person who has legal custody of an Indian child pursuant to tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

(i ~~f~~) **"Indian tribe"** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(1)(8), and Minnesota Statutes § 260.755, subd. 12, means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. § 1602(c), and exercising tribal governmental powers.

(j ~~g~~) **"Juvenile protection case records"** means all records of the juvenile court regarding a particular case or controversy, including all records filed with the court, all records maintained by the court, and all reporter's notes and tapes, electronic recordings, and transcripts of hearings and trials. See also "records" defined in subdivision (s ~~p~~).

(k ~~h~~) **"Juvenile protection matter"** means any of the following types of matters:

(1) child in need of protection or services matters as defined in Minnesota Statutes § 260C.007, subd. 4, including habitual truant and runaway matters;

(2) neglected and in foster care matters as defined in Minnesota Statutes § 260C.007, subd. 18;

(3) review of foster care matters and review of out-of-home placement matters as defined in Minnesota Statutes § ~~257.071 and~~ 260C.141, subd. 2, and § 260C.212;

(4) termination of parental rights matters as defined in Minnesota Statutes § 260C.301 to § 260C.328; and

(5) permanent placement matters as defined in Minnesota Statutes § 260C.201, subd. 11, including transfer of permanent legal and physical custody to a relative matters and long-term foster care matters.

(l ~~i~~) **"Legal custodian"** means a person, including a legal guardian, who by court order or statute has sole or joint legal or physical custody of the child.

~~(j) **"Legal guardian"** means a person who is the court-appointed legal guardian of the child pursuant to Minnesota Statutes § 260C.325 or Minnesota Statutes Chapter 525 or an equivalent law in another jurisdiction.~~

(m ~~k~~) **"Parent"** as adapted from Minnesota Statutes § 260C.007, subd. 12, means the birth, legally adjudicated, or adoptive parent of a minor child. For an Indian child, parent also includes any Indian person who has legally adopted an Indian child including a person who has adopted a child by tribal law or custom as provided in Minnesota Statutes § 260.755, subd. 14, but it does not include an unmarried father whose paternity has not been acknowledged or established.

(n ~~l~~) **"Person"** as defined in Minnesota Statutes § 260C.007, subd. 13, means any individual, association, corporation, partnership, and the state or any of its political subdivisions, departments, or agencies.

(o) **"Presumed Father"** means an individual who is presumed to be the biological father of a child under Minnesota Statutes § 257.55, subd. 1.

(p ~~m~~) **"Protective care"** means the right of the responsible ~~local~~ social services agency or child-placing agency to temporary physical custody and control of a child for purposes of foster care placement, and the right and duty of the responsible ~~local~~ social services agency or child-placing agency to provide the care, food, lodging, training, education, supervision, and treatment the child needs.

(q ~~n~~) **"Protective supervision"** as referenced in Minnesota Statutes § 260C.201, subd. 1(a)(1), means the right and duty of the responsible ~~local~~ social services agency or child-placing agency to monitor the conditions imposed by the court directed to the correction of the child's need for protection or services while in the care of the child's parent or legal custodian.

(r ~~o~~) **"Reasonable efforts"** as defined in Minnesota Statutes § 260.012(b) means the exercise of due diligence by the responsible social services agency to use appropriate and available services to meet the needs of the child and the child's family to prevent removal of the child from the child's parent or legal custodian or, upon removal, services to eliminate the need for removal and reunite the family. "Reasonable efforts" includes efforts by the responsible ~~local~~ social services agency to secure for the child a legally permanent home in a timely fashion when reunification efforts are no longer applicable.

(s ~~p~~) **"Records"** means any recorded information that is collected, created, received, maintained, or disseminated by a court or court administrator, regardless of its physical form or method of storage, and specifically excludes judicial work product and drafts as defined in the Rules of Public Access to the Records of the Judicial Branch. See also "juvenile protection case records" defined in subdivision (j ~~g~~).

(t ~~q~~) **"Relative"** ~~as adapted from Minnesota Statutes § 260C.007, subd. 14, and § 260C.193, subd. 3(c),~~ means a person related to the child by blood, marriage, or adoption, or an individual who is an important friend with whom the child has resided or had significant contact ~~a parent, stepparent, grandparent, brother, sister, uncle or aunt of the minor, or an important friend with whom the child has resided or had significant contact. This relationship may be by blood, marriage, or adoption~~. For an Indian child, relative includes members of the extended family as defined by the law or custom of the Indian child's tribe or, in the absence of laws or custom, nieces, nephews, or first or second cousins, ~~a person who has reached the age of 18 and who is the child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, or stepparent,~~ as provided in the Indian Child Welfare Act of 1978, 25 U.S.C. § 1903~~(2)~~.

(u ~~r~~) **"Removed from Home"** means the child has been taken out of the care of the parent or legal custodian, including a substitute caregiver, and placed in foster care or in a shelter care facility.

(v ~~s~~) **"Shelter care facility"** as adapted from Minnesota Statutes § 260C.007, subd. 17, means a physically unrestricting facility, including but not limited to, a hospital, a group home, or a facility licensed for foster care pursuant to Minnesota Statutes Chapter 245A, used for the temporary care of a child during the pendency of a juvenile protection matter.

RULE 3 ~~39~~. APPLICABILITY OF OTHER RULES AND STATUTES

Rule 3.01 ~~39.01~~. Rules of Civil Procedure

Except as otherwise provided by statute or these rules, the Minnesota Rules of Civil Procedure do not apply to juvenile protection matters.

~~**1999 Advisory Committee Comment**~~

~~With respect to transfer of permanent legal and physical custody, Minnesota Statutes § 260C.201, subd. 11(e)(1), provides in pertinent part that "the juvenile court shall follow the standards and procedures applicable under [chapter 257, chapter 260], or chapter 518." The statute also provides that an order transferring permanent legal and physical custody to a relative must also be filed in the family court. Pursuant to Rule 301 of the Rules of General Practice for the District Court, the Rules of Civil Procedure apply in transfer of permanent legal and physical custody matters and in adoption matters.~~

Rule 3.02 ~~39.02~~. Rules of Evidence

Subd. 1. Generally. Except as otherwise provided by statute or these rules, in a juvenile protection matter the court shall only admit evidence that would be admissible in a civil trial pursuant to the Minnesota Rules of Evidence.

Subd. 2. Certain Out-of-Court Statements Admissible. An out-of-court statement not otherwise admissible by statute or rule of evidence is admissible as evidence in a juvenile protection matter if:

(a) the statement was made by a child under ten (10) years of age or by a child ten (10) years of age or older who is mentally impaired as defined in Minnesota Statutes § 609.341, subd. 6;

(b) the statement alleges, explains, denies, or describes:

(1) any act of sexual penetration or contact performed with or on the child;

(2) any act of sexual penetration or contact with or on another child observed by the child making the statement;

(3) any act of physical abuse or neglect of the child by another; or

(4) any act of physical abuse or neglect of another child observed by the child making the statement;

(c) the court finds that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability; and

(d) the proponent of the statement notifies all other parties of the particulars of the statement and the intent to offer the statement sufficiently in advance of the proceeding at which the proponent intends to offer the statement into evidence to provide the parties with a fair opportunity to respond to the statement.

For purposes of this subdivision, an out-of-court statement includes a video, audio, or other recorded statement.

Subd. 3. Judicial Notice. In addition to the judicial notice permitted under the Rules of Evidence, the ~~The~~ court, upon its own motion or the motion of any party or the county attorney,

may take judicial notice only of ~~any~~ finding of fact and ~~or~~ court order in the juvenile protection court file and in any other proceeding in any other court file involving the child or the child's parent or legal custodian.

Rule 3.03 ~~39.03~~. Indian Child Welfare Act

Juvenile protection matters concerning an Indian child shall be governed by the Indian Child Welfare Act, 25 U.S.C. § 1901 to § 1963; the Minnesota Indian Family Preservation Act, Minnesota Statutes § 260.751 to § 260.835; and by these rules when these rules are not inconsistent with the Indian Child Welfare Act or the Minnesota Indian Family Preservation Act.

Rule 3.04 ~~39.04~~. Rules of Guardian Ad Litem Procedure

The Rules of Guardian Ad Litem Procedure apply to juvenile protection matters.

Rule 3.05 ~~39.05~~. Court Interpreter Statutes, ~~and~~ Rules, and Court Policies

The statutes, ~~and~~ court rules, and court policies regarding appointment of court interpreters apply to juvenile protection matters. The court may appoint an interpreter of its own selection and may fix reasonable compensation pursuant to such statues, court rules and court policies. ~~The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and in the discretion of the court may be taxed ultimately as a cost.~~

B. GENERAL OPERATING RULES

RULE 4 ~~40~~. TIME; TIMELINE

Rule 4.01 ~~40.01~~. Computation of Time

Unless otherwise provided by statute, the day of the act or event from which the designated period of time begins to run shall not be included in the computation of time. The last day of the period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. When a period of time prescribed or allowed is three (3) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in these rules, "legal holiday" includes New Year's Day, Martin Luther King's Birthday, Washington's Birthday (Presidents' Day), Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Day, and any other day designated as a holiday by the President, Congress of the United States, or by the State.

Rule 4.02 ~~40.02~~. Additional Time After Service by Mail

Whenever a person has the right or is required to do an act within a prescribed period after the service of a notice or other paper and the notice or other paper is served by mail, three (3) days shall be added to the prescribed period. If service is made by any means other than mail and accomplished after 5:00 p.m. local time on the day of service, one (1) additional day shall be added to the prescribed period.

Rule 4.03 ~~40.03~~. Timeline

Subd. 1. Child in Need of Protection or Services Matters.

(a) **Emergency Protective Care Hearing.** If a child has been removed from the home of the parent or legal custodian, the court shall hold an emergency protective care hearing within seventy-two (72) hours of the child's removal.

(b) **Admit/Deny Hearing.** When the child is removed from home by court order, an admit/deny hearing shall be held within ten (10) days of the date of the emergency protective care hearing. When the child is not removed from home by court order, an admit/deny hearing shall be held no sooner than five (5) days, and no later than twenty (20) days after the parties have been served with the petition. In the case of an Indian child, no foster care placement proceeding or termination of parental rights proceeding shall be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior, provided, however, that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty (20) additional days to prepare for such proceeding.

(c) **Pretrial Conference.** A pretrial conference may be held any time after the admit/deny hearing, but not later than ten (10) days before the date the trial is scheduled to commence.

(d) **Trial.** When the statutory grounds set forth in the petition are denied, a trial shall be commenced within sixty (60) days of the emergency protective care hearing or the admit/deny hearing, whichever is earlier.

(e) **Findings/Adjudication.** The court shall issue its findings and order concerning adjudication within fifteen (15) days of the date that the trial is completed. If written argument is to be submitted, such argument shall ~~must~~ be submitted within fifteen (15) days of the conclusion of testimony. For good cause, the court may extend this period for an additional fifteen (15) days. The trial is not considered completed until the time for written arguments, if any, has expired ~~are submitted~~.

(f) **Disposition.** Whenever practicable, the court may order disposition at the same time as the adjudication. In the event disposition is not ordered at the same time as the adjudication, the court shall include in the adjudication order a date for a disposition hearing which shall take place no later than ten (10) days from the date the court issues its adjudication order.

(g) **Review of Legal Custody.** When the disposition is an award of legal custody to the responsible ~~local~~ social services agency, the court shall review the disposition in court at least every ninety (90) days. Any party or the county attorney may request a review hearing before ninety (90) days.

(h) **Review of Protective Supervision.** When the disposition is protective supervision, the court shall review the disposition in court at least every six (6) months from the date of the disposition.

Subd. 2. Permanent Placement Matters. When the child is in protective care, or legal or physical custody is transferred to the responsible ~~local~~ social services agency, the court shall conduct a hearing ~~to determine the permanent placement status of the child~~:

(a) within six (6) months of the date the child is removed from the home of the parent or legal custodian if the child is under eight (8) years of age at the time the petition is filed to review the progress of the case, the parent's progress on the out-of-home placement plan, and the provision of services; or

(b) within twelve (12) months of the date the child is removed from the home of the parent or legal custodian ~~if the child is eight (8) years of age or older at the time the petition is filed~~ to determine the permanent status of the child.

Subd. 3. Termination of Parental Rights Matters.

(a) **Admit/Deny Hearing.** An admit/deny hearing shall be held not less than ten (10) days after service of the petition.

(b) **Pretrial Conference.** A pretrial conference may be held any time after the date of the admit/deny hearing, but not later than ten (10) days before the date the trial is scheduled to commence.

(c) **Trial.** A trial shall be commenced within ninety (90) days of entry of the denial of the statutory grounds set forth in the petition.

(d) **Findings/Adjudication.** The court shall issue its findings and order concerning adjudication within fifteen (15) days of the date that the trial is completed. If written argument is to be submitted, such argument shall ~~must~~ be submitted within fifteen (15) days of the conclusion of testimony. For good cause, the court may extend this period for an additional fifteen (15) days. The trial is not considered completed until the time for written arguments, if any, has expired ~~are submitted~~.

(e) **Review.** When the court orders termination of parental rights and adoption as the permanency plan, the court shall conduct a hearing to review progress toward adoptive placement at least every ninety (90) days.

1999 Advisory Committee Comment

The timeline set forth in Rule 4.03 ~~40.03~~ is intended as an overall guide for juvenile protection matters and is based upon the requirements of Minnesota Statutes § 260C.176; § 260C.211, subds. 10 and 11; § 260C.178, subd. 6; the Indian Child Welfare Act, 25 U.S.C. § 1901 to § 1963; and the Adoption and Safe Families Act of 1997, P.L. 105-89. Specific time requirements are set forth in each individual rule.

Rule 4.03 ~~40.03~~, subd. 1, sets forth the timeline for child in need of protection or services matters. The following timeline is an example of how a case would proceed if it related to a non-Indian child over eight years of age who has been removed from the child's home:

Day	Event
1	Child removed from home
3	Emergency Protective Care Hearing
3-13	Admit/Deny Hearing
14-53	Pretrial Conference
63	Trial
79	Findings/Adjudication
79-88	Disposition Hearing
168-178	Review Hearing
258-268	Review Hearing
348-358	Review Hearing
365	Permanent Placement Determination Hearing

Rule 4.03 ~~40.03~~, subd. 2, complies with Minnesota Statutes § 260C.201, subd. 11, and provides that a permanent placement determination hearing must be held within six (6) months of a child's removal from the home if the child is under eight (8) years of age at the time the petition is filed.

Rule 4.04 ~~40.04~~. Sanctions for Violation

The court may impose sanctions upon any county attorney, party, or counsel for a party who willfully fails to follow the timelines set forth in these rules.

Rule 4.05 ~~40.05~~. Application of Timing Provisions

The timing provisions set forth in this rule are subject to the continuance provisions of Rule 41 and any other timing provisions set forth in each specific rule.

RULE 5 ~~41~~. CONTINUANCES

Rule 5.01 ~~41.01~~. Findings

Subd. 1. Generally. Upon its own motion or motion of a party or the county attorney the court may continue a scheduled hearing or trial to a later date so long as the timelines for achieving permanency as set forth in these rules are not delayed. To grant a continuance, the court must make written findings or oral findings on the record that the continuance is necessary for the protection of the child, for accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown.

Subd. 2. Trials. Trials may not be continued or adjourned for more than one (1) week unless the court makes specific findings that the continuance or adjournment is in the best interests of the child.

1999 Advisory Committee Comment

Although the court may grant a continuance in appropriate circumstances, the court should not grant a continuance that would defeat the federal and state statutory time requirements for permanency determinations.

Rule 5.02 ~~41.02~~. Notice of Continuance

The court shall, either in writing or orally on the record, provide notice to the parties and the county attorney of the date and time of the continued hearing or trial.

Rule 5.03 ~~41.03~~. Existing Orders; Interim Orders

Unless otherwise ordered, existing orders shall remain in full force and effect during a continuance. When a continuance is ordered, the court may make any interim orders it deems to be in the best interests of the child in accordance with the provisions of Minnesota Statutes § 260C.001 to § 260C.451.

RULE 6 ~~42~~. SCHEDULING ORDER

Rule 6.01 ~~42.01~~. Purpose

The purpose of this rule is to provide a uniform system for scheduling matters for trial and disposition and for achieving permanency within the timelines set forth in these rules.

Rule 6.02 ~~42.02~~. Order

Subd. 1. When Issued. The court shall issue a scheduling order at the admit/deny hearing held pursuant to Rule 34~~71~~ or within five (5) days of the admit/deny hearing.

Subd. 2. Contents of Order. The scheduling order shall establish a deadline or specific date for:

(a) completion of discovery and other pretrial preparation;
(b) serving, filing, or hearing motions;
(c) submission of the proposed case plan;
(d) the pretrial conference;
(e) the trial;
(f) the disposition hearing;
(g) the permanency placement determination hearing; and
(h) any other events deemed necessary or appropriate.

1999 Advisory Committee Comment

Rule 6.02 ~~42.02~~ does not require the court to actually calendar time for any of the events described in the order. Rather, the court may simply set deadlines without establishing a date certain. For example, without setting a specific date the court may order that discovery must be completed at least ten days prior to trial.

Rule 6.03 ~~42.03~~. Amendment

The court may amend a scheduling order as necessary, so long as the permanency timelines set forth in these rules are not delayed.

RULE 7 ~~43~~. REFEREES AND JUDGES

Rule 7.01 ~~43.01~~. Referee Authorization to Hear Matter

A referee may, as authorized by the chief judge of the judicial district, hear any juvenile protection matter under the jurisdiction of the juvenile court.

Rule 7.02 ~~43.02~~. Objection to Referee Presiding Over Matter

A party or the county attorney may object to having a referee preside over a matter. The right to object shall be deemed waived unless the objection is in writing, filed with the court, and served upon all other parties and the county attorney within three (3) days after being informed that the matter is to be heard by a referee. Upon the filing of an objection, a judge shall hear any motion and shall preside at all further motions and proceedings involving the matter.

Rule 7.03 ~~43.03~~. Removal of Particular Referee

Subd. 1. Notice to Remove. A party or the county attorney may file with the court and serve upon all other parties a notice to remove a particular referee. The notice shall be served and filed within ten (10) days of the date the party or county attorney receives notice of the name of the referee who will preside at the hearing or trial, but not later than the commencement of the hearing or trial. A notice to remove may not be filed by a party or the county attorney against a referee who has presided at a motion or at any other proceeding in the matter of which the party or the county attorney had notice. A referee who has presided at a motion or other proceeding

may not be removed except upon an affirmative showing of prejudice on the part of the referee. A judge shall rule on a motion to remove a referee who has already presided over the proceeding.

Subd. 2. Prejudice. If a party or the county attorney has once disqualified a referee as a matter of right, that party or the county attorney may disqualify the substitute referee, but only upon an affirmative showing of prejudice. A showing that the referee might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice. A judge shall rule on a motion to remove a substitute referee.

Subd. 3. Assignment of Another Referee. Upon the filing of a notice to remove a particular referee, or if a party or the county attorney makes an affirmative showing of prejudice against a substitute referee, the chief judge of the judicial district shall assign another juvenile court referee or a judge to hear the matter.

Subd. 4. Termination of Parental Rights Matters and Permanent Placement Matters. When a termination of parental rights matter or a permanent placement matter is filed in connection with a child who is the subject of a pending child in need of protection or services matter, the termination or permanency matter shall be considered a continuation of the protection matter. If the referee assigned to the protection matter is assigned to hear the termination or permanency matter, the parties and the county attorney shall not have the right to disqualify the assigned referee as a matter of right.

1999 Advisory Committee Comment

A party may not remove a particular referee and then object to having the case heard by any referee. If a judge is assigned to hear a matter after a party has objected to a particular referee hearing the matter, the party may not seek removal of the judge as a matter of right but may only seek removal of a subsequent judge for cause.

Rule 7.04 ~~43.04~~. Transmittal of Referee's Findings and Recommended Order

Subd. 1. Transmittal. Upon the conclusion of a hearing, the referee shall transmit to a judge the written findings and recommended order. Notice of the findings and recommended order, along with notice of the right to review by a judge, shall be given either orally on the record or in writing to all parties, the county attorney, and to any other person as directed by the court.

Subd. 2. Effective Date. The recommended order is effective upon signing by the referee, unless stayed, reversed, or modified by a judge upon review.

Rule 7.05 ~~43.05~~. Review of Referee's Findings and Recommended Order

Subd. 1. Right to Review. A matter that has been decided by a referee may be reviewed in whole or in part by a judge. Review, if any is requested, shall be from the referee's written findings and recommended order. Upon request for review, the recommended order shall remain in effect unless stayed by a judge.

Subd. 2. Motion for Review. Any motion for review of the referee's findings and recommended order, together with a memorandum of law, shall be filed with the court and served on all parties and the county attorney within five (5) days of the filing of the referee's findings and recommended order. Upon the filing of a motion for review, the court administrator shall notify each party and the county attorney of the name of the judge to whom the review has been assigned.

Subd. 3. Response to Motion for Review. The parties and the county attorney shall file and serve any responsive motion and memorandum within three (3) days from the date of service of the motion for review.

Subd. 4. Timing. Failure to timely file and serve a submission may result in dismissal of the motion for review or disallowance of the submissions.

Subd. 5. Basis of Review. The review shall be based on the record before the referee and no additional evidence may be filed or considered. No personal appearances will be permitted, except upon order of the court for good cause shown.

Subd. 6. Transcripts. Any party or county attorney desiring to submit a transcript of the hearing held before the referee shall make arrangements with the court reporter at the earliest possible time. The court reporter shall advise the parties and the court of the day by which the transcript will be filed.

1999 Advisory Committee Comment

If a party or the county attorney cannot obtain the transcript in time to file it with the motion for review, the motion should set forth the date the transcript will be submitted. The motion, recommended order, and memorandum of law must still be filed within the five day time period prescribed by the rule, but the decision of the court may be delayed until the court has the opportunity to review the transcript.

Rule 7.06 ~~43.06~~. Order of the Court

When no review is requested, or when the right to review is waived, the findings and recommended order of the referee become the order of the court when confirmed by the judge as written or when modified by the judge sua sponte. The order shall be confirmed or modified by the court within ten (10) days of the transmittal of the findings and proposed order.

Rule 7.07 ~~43.07~~. Removal of Judge

Subd. 1. Disability of Judge. If by reason of death, sickness, or other disability a judge before whom a proceeding in the matter has been tried is unable to perform judicial duties after a decision is made or findings of fact and conclusions of law are filed, any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties; but if such other judge is satisfied that the duties cannot be performed because that judge did not preside at the trial, or for any other reason, that judge may exercise discretion to grant a new trial. If there is no other judge of the district who is qualified, the chief judge shall immediately notify the Chief Justice of the Minnesota Supreme Court.

Subd. 2. Interest or Bias. No judge shall preside over any case if that judge is interested in its determination or if that judge might be excluded for bias from acting as a juror in the matter. ~~If there is no other judge of the district who is qualified, or if there is only one (1) judge of the district, such judge shall immediately notify the chief justice of the supreme court of that judge's disqualification.~~ . If there is no other judge of the district who is qualified, the chief judge shall immediately notify the Chief Justice of the Minnesota Supreme Court.

Subd. 3. Motion to Remove.

(a) **Procedure.** A party or the county attorney may file with the court and serve upon all other parties a motion to remove. The motion shall be served and filed within ten (10) days of the date the party receives notice of the name of the judge who is to preside over the proceeding ~~at the hearing or trial~~, but not later than the commencement of the proceeding ~~hearing or trial~~.

(b) **Presiding Judge.** A motion to remove shall not be filed against a judge who has presided at a motion or any other proceeding in the matter of which the party or the county attorney had notice. A judge who has presided at a motion or other proceeding may not be removed except upon an affirmative showing of prejudice on the part of the judge.

(c) **Showing of Prejudice.** After a party or the county attorney has once disqualified a presiding judge as a matter of right ~~pursuant to Minnesota Statutes § 542.16~~, that party may disqualify the substitute judge, but only by making an affirmative showing of prejudice. A showing that the judge might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice. Upon the filing of a motion to remove, or if a litigant makes an affirmative showing of prejudice against a substitute judge, the chief judge of the judicial district shall assign any other judge of any court within the district to hear the matter. If there is no other judge of the district who is qualified, the chief judge shall immediately notify the Chief Justice of the Minnesota Supreme Court.

Subd. 4. Termination of Parental Rights Matters and Permanent Placement Matters. When a termination of parental rights matter or a permanent placement matter is filed in connection with a child who is the subject of a pending child in need of protection or services matter, the termination or permanency matter shall be considered a continuation of the protection matter. If the judge assigned to the protection matter is assigned to hear the termination or permanency matter, the parties and the county attorney shall not have the right to disqualify the assigned judge as a matter of right.

2003 Advisory Committee Comment

While there was consensus that the one-judge one-family concept should be an aspirational goal of all juvenile courts, there was also consensus that a rule mandating implementation of the one-judge one-family concept may not be practical or enforceable in all situations. Instead, the Committee recommends that courts implement the one-judge one-family concept to the greatest extent possible.

RULE 8 ~~44~~. ACCESSIBILITY OF JUVENILE PROTECTION CASE RECORDS

Rule 8.01 ~~44.01~~. Presumption of ~~Public~~ Access to Records

Except as otherwise provided in this Rule ~~44~~, all juvenile protection case records relating to juvenile protection matters, as those terms are defined in Rule 2.01~~38.01~~, are presumed to be

accessible to any party and any member of the public for inspection, copying, or release. 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. An order prohibiting access to a record in the court file shall be accessible to the public.

2001 Advisory Committee Comment

Rule 8.01 ~~44.01~~ establishes a presumption of public access to juvenile protection case records, and exceptions to this presumption are set forth in the remaining provisions of Rule 8 ~~44~~. Rule 8.01 ~~44.01~~ does not apply to any case records relating to adoption proceedings, which remain inaccessible to the public.

Rule 8.02 ~~44.02~~. 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 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.

2001 Advisory Committee Comment

Rule 8.02 ~~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).

Rule 8.03 ~~44.03~~. 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 juvenile protection matters. 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.

2001 Advisory Committee Comment

Rule 8.03 ~~44.03~~ 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 may have greater access rights than the general public. See, e.g., Minn. R. Juv. P. 17 ~~53~~ (2001).

Rule 8.03 ~~44.03~~ preserves the confidentiality of domestic abuse restraining orders issued pursuant to Minn. Stat. § 518B.01 (Supp.2001). 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). 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, subd. 1(a) (Supp. 2001).

Rule 8.03 ~~44.03~~ 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 - .25 (Supp. 2001). Access Rule 4, subd. 1(c) (2001).

The "Court Services Records" provision of Access Rule 4, subd. 1(b), 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 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 8.04 ~~44.04~~. Records Not Accessible to the Public or Parties

The following records (a) – (m) in the court file are not accessible to the public. Unless otherwise ordered by the court, parties shall have access for inspection and copying to all records in

the court file, except records (b), (d), and (e) listed below. ~~Except fro access to exhibits as provided in Rule 44.05, the following juvenile protection case records relating to juvenile protection matters 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 of a child alleging or describing physical abuse, sexual abuse, or neglect of any child;

(c) victims' statements;

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

(e) HIV test results;

(f) medical records, 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 the responsible ~~a local~~ social services agency pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1912;

(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 name, address, home, or location of any shelter care or foster care facility in which a child is placed pursuant to an emergency protective care placement, foster care placement, pre-adoptive placement, adoptive placement, or any other type of court ordered placement.

2001 Advisory Committee Comment

Rule 8.04(a) ~~44.04(a)~~ prohibits public access to testimony of anyone taken during portions of a proceeding that are closed to the public by the presiding judge. Hearings or portions of hearings may be closed by the presiding judge only in exceptional circumstances.

Rule 8.04(b) ~~44.04(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), during the course of a child abuse assessment, criminal investigation, or prosecution. This is consistent with Minn. Stat. § 13.391 (Supp. 2001), 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 8.04(c)~~44.04(c)~~ 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). This is consistent with Minn. Stat. § 609.115, subds. 1, 5; § 609.2244; and § 611A.037 (Supp. 2001) (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 8.04(b) and (c) ~~44.04(b) and (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, Rule 8.04(d) ~~44.04(d)~~ prohibits public access to "portions of juvenile protection case records that identify reporters of abuse or neglect." By precluding public access to "portions of records that identify 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. Similarly, Rule 8.04(e) ~~44.04(e)~~ requires that courts and court administrators redact from any publicly accessible juvenile court record any reference to HIV test results, and Rule 8.04(h) ~~44.04(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 8.04(d) ~~44.04(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). Rule 8.04(d) ~~44.04(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 8.04(d) ~~44.04(d)~~ does not, however, apply to testimony of a witness taken during a proceeding that is open to the public.

Rule 8.04(e) ~~44.04(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) (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 8.04(f) and (g) ~~44.04(f) and (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 Rule 8.05 ~~44.05~~. 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) (pre-sentence 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) (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 8.04(h) ~~44.04(h)~~ prohibits public access to portions of photographs that identify a child, and 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 8.07 ~~44.07~~).

Rule 8.04(i) ~~44.04(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 legal 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) (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~~ or legal 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 8.04(i) ~~44.04(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 8.04(j) ~~44.04(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 8.04(j) ~~44.04(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). 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) ("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 8.04(j) ~~44.04(j)~~ does not require a finding that sexual assault occurred. An allegation of sexual assault is sufficient.

Rule 8.04(k) ~~44.04(k)~~ precludes public access to the notice of pending proceedings given by the responsible ~~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 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 8.04(k)

~~44.04(k)~~ does not preclude public access to intervention motions or transfer petitions.

Rule 8.04(l) ~~44.04(l)~~ recognizes that courts may, in exceptional circumstances, issue protective orders precluding public access to certain records or portions of records. Records of closed proceedings are inaccessible to the public under Rule 8.04(a) ~~44.04(a)~~. Procedures for issuing protective orders are set forth in Rule 8.07 ~~44.07~~.

Rule 8.04(m) ~~44.04(m)~~ prohibits public access to the names, addresses, home, location, or other identifying information about the foster parents, foster care institutions, 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. If deemed appropriate, the name, address, home, location, or other identifying information about a child's foster placement may be protected from a party through issuance of a protective order pursuant to Rule 8.07

Notwithstanding the list of inaccessible case records in Rule 8.04(a) ~~44.04(a)~~ through (m), many juvenile protection case records 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 social workers and guardians ad litem. With the exception of information that must be redacted under Rule 8.04(d) ~~44.04(d)~~, (e), and (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 report might discuss the results of a chemical dependency evaluation. Although the chemical dependency evaluation itself is not accessible to the public under Rule 8.04(f) ~~44.04(f)~~, discussion of the details of that evaluation in the social services or guardian ad litem 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 (see Rule 8.02 ~~44.02~~) or to reports of a social worker or guardian ad litem that have not been made a part of the court file (see Rule 8.03 ~~44.03~~).

Rule 8.05 ~~44.05~~. 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 8.07 ~~44.07~~.

2001 Advisory Committee Comment

Rule 8.05 ~~44.05~~ 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

8.07 ~~44.07~~). Thus, any of the records identified in Rule 8.04(b) ~~44.04 (b)~~ through (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 8.05 ~~44.05~~. 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 8.05 ~~44.05~~.

Rule 8.06 ~~44.06~~. Access to Court Information Systems

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

2001 Advisory Committee Comment

Rule 8.06 ~~44.06~~ prohibits direct public access to case records maintained in electronic format in court information systems unless authorized by the court. Rule 44.06 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 name~~s~~ of the parent or ~~other~~ legal custodian ~~or legal guardian~~, and exclude the names or initials of the children (see Rule 8.08 ~~44.08~~). Rule 8.06 ~~44.06~~ 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 8.06 ~~44.06~~ allows the district court to make those accessible to the public.

Rule 8.07 ~~44.07~~. Protective Order

Subd. 1. Orders Regarding the Public. The court may sua sponte, or upon ~~Upon~~ motion and hearing, ~~a court may~~ issue an order prohibiting public access to juvenile protection case records that are otherwise accessible to the public only if the court finds that an exceptional circumstance~~s~~ exists. The protective order shall state the reason for issuance of the order. If the court issues ~~The court may also issue~~ a protective order on its own motion and without a hearing, ~~pursuant to Rule 44.04(l), but~~ the court shall schedule a hearing on the order as soon as possible at the request of any person. A protective order issued pursuant to this subdivision is accessible to the public.

Subd. 2. Orders Regarding Parties. The court may sua sponte, or upon motion and hearing, issue a protective order prohibiting a party's access to juvenile protection case records that are otherwise accessible to the party. The protective order shall state the reason for issuance of the order. If the court issues a protective order on its own motion and without a hearing the court shall schedule a hearing on the order as soon as possible at the request of any person. A protective order issued pursuant to this subdivision is accessible to the public.

2001 Advisory Committee Comment

Rule 8.07 ~~44.07~~ 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. The Advisory Committee felt that these procedures would provide adequate protection and flexibility.

Rule 8.08 ~~44.08~~. Case Captions and Text of Decisions and Other Records

Subd. 1. District Court ~~Open Hearings Pilot Project Counties~~.

(a) **Child In Need of Protection or Services.** All juvenile protection court files opened~~,~~ and any petitions, pleadings, reports, orders, or other documents or records filed in any~~,~~

(i) of the twelve open hearings pilot project counties on or after June 22, 1998, or ~~shall be captioned in the name of the child 's parent(s), legal custodian(s), or legal guardian as follows: "In the Matter of the Child(ren) of _____, Parent(s)/Legal Guardian(s)/Legal Custodian(s)."~~

(ii) non-open hearings pilot project county on or after July 1, 2002,

shall be captioned in the name of the child's parent(s) or legal custodian(s), as follows: " In the Matter of the Child(ren) of _____, Parent(s)/ Legal Custodian(s)." The caption shall not include the child's name or initials. The body of any petitions, pleadings, reports, orders, or other documents or records filed with the court shall include the child's and parent's or legal custodian's full name, not their initials.

(b) **Termination of Parental Rights**. Any order terminating parental rights shall include a provision that the case caption on future pleadings, reports, orders, or other documents filed shall be captioned as follows: "In Re the Child in the Custody of the Commissioner of Human Services."

~~**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)."~~

Subd. 2. Appellate Court. All juvenile protection court files opened in any Minnesota appellate court shall be captioned in the initials of the parent(s) or legal custodian(s) as follows: "In the Matter of the Child(ren) of _____, Parent(s)/Legal Custodian(s)." The caption shall not include the child's name or initials. The body of any decision filed in any Minnesota appellate court shall use the parent's and child's initials, not their names. Upon the filing of an appeal pursuant to Rule 47.02, the appellant shall provide to the court administrator, the appellate court, and the parties and participants notice of the correct appellate case caption required under this Rule.

2001 Advisory Committee Comment

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 is designed to minimize the stigma to children involved in juvenile protection matters that are accessible to the public. 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 9 ~~45~~. EX PARTE COMMUNICATION

Rule 9.01 ~~45.01~~. Ex Parte Communication Prohibited

Ex parte communication is prohibited, except as to procedural matters not affecting the merits of the case. All communications between the court and a party or participant shall be in the presence of all other parties or in writing with copies to the parties or, if represented, the party's attorney, except as otherwise permitted by statute or these rules. The court shall not consider any ex parte communication from anyone concerning a proceeding, including conditions of release, evidence, adjudication, disposition, or any other matter.

1999 Advisory Committee Comment

Rule 9.01 ~~45.01~~ reflects the prohibition against ex parte communication set forth in Rule 3.5(g) of the Rules of Professional Conduct and Cannon 3A(7) of the Code of Judicial Conduct.

Rule 9.02 ~~45.02~~. Disclosure

The court shall fully disclose to all parties any attempted prohibited ex parte communication.

RULE 10 ~~46~~. ORDERS

Rule 10.01 ~~46.01~~. Written or Oral Orders; Timing

Court orders may be written or stated on the record. An order stated on the record shall also be reduced to writing by the court. Except for orders issued following a trial pursuant to Rule 39.05, all orders shall be filed with the court administrator within ten (10) days of the conclusion of the hearing. An order shall remain in full force and effect until the first occurrence of one of the following:

(a) issuance of an inconsistent order;
(b) the order ends pursuant to the terms of the order; or
(c) jurisdiction of the juvenile court is terminated.

Rule 10.02 ~~46.02~~. Immediate Effect of Oral Order

Unless otherwise ordered by the court, an order stated on the record shall be effective immediately.

Rule 10.03 ~~46.03~~. Delivery; Mailing

Court orders shall be delivered at the hearing or mailed by the court administrator to each party, the county attorney, and such other persons as the court may direct. If a party is represented by counsel, delivery or service shall be upon counsel. If service of the summons was

by publication and the person has not appeared either personally or through counsel, service of court orders upon the person is not required. Filing and mailing of the order by the court administrator must be accomplished within ten (10) days of the date the judicial officer delivers the order to the court administrator.

Rule 10.04 ~~46.04~~. Notice of Filing of Order

Each order delivered or mailed to the parties and the county attorney shall be accompanied by a notice of filing which shall include notice of the right to appeal a final order pursuant to Rule 47 ~~82~~. The State Court Administrator shall develop a "notice of filing" form which shall be used by court administrators.

RULE 11 ~~47~~. RECORDING AND TRANSCRIPTS

Rule 11.01 ~~47.01~~. Procedure

A verbatim recording of all hearings shall be made by a stenographic reporter or by an electronic sound recording device. If the recording is made by an electronic sound recording device, qualified personnel shall be assigned by the court to operate the device. Any required transcripts shall be prepared by personnel assigned by the court.

Rule 11.02 ~~47.02~~. Availability of Transcripts

Transcripts may be requested by ~~shall be available only to~~ the county attorney, parties, and participants ~~for further use in the hearing or subsequent hearings, appeal, habeas corpus actions, or for other use as the court deems proper.~~ The court upon a showing of good cause may grant any other person's written or on the record request for a transcript. ~~Any request for a transcript shall be made to the court in writing or on the record.~~

Rule 11.03. Expense

If a party requesting a transcript is unable to pay the preparation cost, the party may apply to the court for an order directing the preparation and delivery of the transcript to the party requesting it, at public expense. A party's request for a transcript shall be accompanied by an *In Forma Pauperis* (IFP) application. Upon a finding of the party's ability to do so, the court may order partial reimbursement for the cost of the transcript.

RULE 12 ~~48~~. USE OF TELEPHONE AND INTERACTIVE VIDEO

Rule 12.01 ~~48.01~~. Motions and Conferences

The court may hear motions and conduct conferences with counsel by telephone or interactive video.

1999 Advisory Committee Comment

Rule 12.01 ~~48.01~~ authorizes the court to use telephone and interactive video to hear motions where testimony is not required and to resolve procedural matters with counsel for the parties.

Rule 12.02 ~~48.02~~. Hearings and Taking Testimony

By agreement of the parties, or in exceptional circumstances upon motion of a party or the county attorney, the court may hold hearings and take testimony by telephone or interactive video.

1999 Advisory Committee Comment

Rule 12.02 ~~48.02~~ authorizes the court to hold hearings and take testimony by telephone or interactive video only upon agreement of the parties or in exceptional circumstances upon motion. The intent of this rule is to ensure that parties are permitted to fully participate in hearings and to be present when testimony is offered. The rule provides that the court has the opportunity, in all but the most exceptional cases, to personally observe witnesses in order to effectively weigh credibility. However, it also gives the court some flexibility in those exceptional cases.

Rule 12.03 ~~48.03~~. In Court Appearance Not Precluded

This rule shall not preclude a party or the county attorney from being present in person before the court at a hearing.

RULE 13 ~~49~~. SUBPOENAS

Rule 13.01 ~~49.01~~. Subpoena for a Hearing or Trial

At the request of any party or the county attorney, the court administrator shall issue a subpoena for a witness in a matter pending before the court.

Rule 13.02 ~~49.02~~. Form; Issuance; Notice

Subd. 1. Form. Every subpoena shall be issued by the court administrator under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a specified time and place or to produce books, papers, documents, or other tangible things designated in the subpoena. The court administrator shall issue a subpoena, or a subpoena for the production of documentary evidence or tangible things, signed and sealed, but otherwise in blank, to a party or county attorney requesting it, who shall fill it in before service.

Subd. 2. Issuance. A subpoena shall be issued only for appearance at a hearing, a deposition pursuant to Rule 17 ~~53~~, a trial pursuant to Rule 39 ~~74~~, or to produce books, papers, documents, or other tangible things designated in the subpoena.

Subd. 3. Notice. Every subpoena shall contain a notice to the person to whom it is directed advising the person of the right to reimbursement for certain expenses pursuant to Rule 13.08 ~~49.08~~.

Rule 13.03 ~~49.03~~. Service

A subpoena may be served by the sheriff, a deputy sheriff, or any other person over the age of 18 who is not a party to the proceeding. Service of a subpoena upon a person named in the subpoena shall be made by delivering a copy of the subpoena to the named person or by leaving a copy at the person's usual place of abode with some person of suitable age and discretion residing at such abode.

Rule 13.04 ~~49.04~~. Motion to Quash a Subpoena

Upon motion pursuant to Rule 15 ~~51~~, a person served with a subpoena may move to quash or modify the subpoena. Upon hearing a motion to quash a subpoena, the court may:

(a) direct compliance with the subpoena;

(b) modify the subpoena if it is unreasonable or oppressive;

(c) deny the motion to quash the subpoena on the condition that the person requesting the subpoena prepay the reasonable cost of producing the books, papers, documents, or tangible things; or

(d) quash the subpoena.

Rule 13.05 ~~49.05~~. Objection

The person to whom the subpoena is directed may, within five (5) days after service of the subpoena or on or before the time specified in the subpoena for compliance if such time is less than five (5) days after service, serve upon the party serving the subpoena a written objection to the taking of the deposition or the production, inspection, or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect or copy the materials, except pursuant to an order of the court from which the subpoena was issued. If objection is made, the party serving the subpoena may, at any time before or during the taking of the deposition, and upon notice and motion to the deponent, request an order requiring compliance with the subpoena.

Rule 13.06 ~~49.06~~. Production of Documentary Evidence

A subpoena may also command the person to whom it is directed to produce books, papers, documents, or tangible things designated in the subpoena.

Rule 13.07 ~~49.07~~. Subpoena for Taking Depositions; Place of Examination

Subd. 1. Proof of Service. Proof of service of notice to take a deposition, as provided in Rule 17 ~~53~~, constitutes a sufficient authorization for the issuance of a subpoena for the person named or described in the subpoena.

Subd. 2. Location. A resident of the state may be required to attend an examination only in the county in which the resident resides or is employed or transacts business in person, or at such other convenient place as is fixed by order of the court. A nonresident of the state may be required to attend in any county of the state.

Rule 13.08 ~~49.08~~. Expenses

Subdivision 1. Witnesses. If the subpoena is issued at the request of the State of Minnesota, a political subdivision of the State, or an officer or agency of the State, witness fees and mileage shall be paid by public funds. If the subpoena is issued at the request of a party who is unable to pay witness fees and mileage, these costs shall upon order of the court be paid in whole or in part at public expense, depending upon the ability of the party to pay. All other fees and mileage shall be paid by the requesting party, unless otherwise ordered by the court upon motion.

Subd. 2. Expenses of Experts. Subject to the provisions of Rule 17 ~~53~~, a witness who is not a party to the action or an employee of a party and who is required to give testimony or produce documents relating to a profession, business, or trade, or relating to knowledge, information, or facts obtained as a result of activities in such profession, business, or trade, is entitled to reasonable compensation for the time and expense involved in preparing for and

giving such testimony or producing such documents. The party serving the subpoena shall make arrangements for such reasonable compensation prior to the time of the taking of the testimony. If such arrangements are not made, the person subpoenaed may proceed pursuant to Rule 13.04 ~~49.04~~ or Rule 13.05 ~~49.05~~. If the deponent has moved to quash or otherwise objected to the subpoena, the party serving the subpoena may, upon notice and motion to the deponent and all parties and the county attorney, move for an order directing the amount of such compensation at any time before the taking of the deposition.

Rule 13.09 ~~49.09~~. Failure to Appear

If any person personally served with a subpoena fails, without reasonable cause, to appear or bring the child if ordered to do so, or if the court has reason to believe the person is avoiding personal service, the court may sua sponte or upon the motion of a party or the county attorney pursuant to Rule 15 ~~51~~ proceed against the person for civil contempt of court pursuant to Rule 14 ~~50~~ or the court may issue a warrant for the person's arrest, or both. When it appears to the court that service will be ineffectual, or that the welfare of the child requires that the child be immediately brought into the custody of the court, the court may issue a warrant for immediate custody of the child.

RULE 14 ~~50~~. CONTEMPT

Rule 14.01 ~~50.01~~. Initiation

Contempt proceedings shall be initiated by personal service upon the alleged contemnor of an order to show cause together with a motion for contempt and an affidavit supporting the motion. The order to show cause shall direct the alleged contemnor to appear and show cause why he or she should not be held in contempt of court and why the moving party should not be granted the relief requested in the motion. The order to show cause shall contain at least the following:

(a) a reference to the specific order of the court alleged to have been violated and date of filing of the order;

(b) a quotation of the specific applicable provisions ordered;

(c) a statement identifying the alleged contemnor's ability to comply with the order; and

(d) a statement identifying the alleged contemnor's failure to comply with the order.

Rule 14.02 ~~50.02~~. Supporting and Responsive Affidavits

The supporting affidavit of the moving party shall set forth with particularity the facts constituting each alleged violation of the order. Any responsive affidavit shall set forth with particularity any defenses the alleged contemnor will present to the court. The supporting affidavit and the responsive affidavit shall contain paragraphs which shall be numbered to correspond to the paragraphs of the motion where possible.

Rule 14.03 ~~50.03~~. Hearing

The alleged contemnor must appear in person before the court to be afforded the opportunity to oppose the motion for contempt by sworn testimony. The court shall not act upon affidavit alone, absent express waiver by the alleged contemnor of the right to offer sworn testimony.

Rule 14.04 ~~50.04~~. Sentencing

Subd. 1. Default of Conditions for Stay. Where the court has entered an order for contempt with a stay of sentence and there has been a default in the performance of the condition(s) for the stay, before a writ of attachment or bench warrant may be issued, an affidavit of non-compliance and request for writ of attachment must be served upon the defaulting party, unless the person is shown to be avoiding service.

Subd. 2. Writ of Attachment. The writ of attachment shall direct law enforcement officers to bring the defaulting party before the court for a hearing to show cause why the stay of sentence should not be revoked. The moving party shall submit a proposed order for writ of attachment to the court.

Subd. 3. Sanctions. Upon evidence taken, the court shall determine the guilt or innocence of the alleged contemnor. If the court determines that the alleged contemnor is guilty, the court shall order punishment by fine or imprisonment for not more than six (6) months, or both.

Subd. 4. Authority of Court. Nothing in these rules shall be interpreted to limit the inherent authority of the court to enforce its own orders.

RULE 15 ~~51~~. MOTIONS

Rule 15.01 ~~51.01~~. Form

Subd. 1. Generally. An application to the court for an order shall be by motion.

Subd. 2. Motions to Be in Writing. Except as permitted by subdivision 3, a motion shall be in writing and shall:

(a) set forth the relief or order sought;

(b) state with particularity the grounds for the relief or order sought;

(c) be signed by the person making the motion;

(d) be filed with the court, unless it is made orally in court on the record; and

(e) be accompanied by a supporting affidavit or other supporting documentation or a memorandum of law, unless it is made orally in court on the record.

The requirement of writing is fulfilled if the motion is stated in a written notice of motion. The parties may agree to written submission to the court for decision without oral argument unless the court directs otherwise.

Subd. 3. Exception. Unless another party or the county attorney objects, a party or the county attorney may make an oral motion during a hearing. All oral motions and objections to oral motions shall be made on the record. When an objection is made, the court shall determine whether there is good cause to permit the oral motion and, before issuing an order, shall allow the objecting party reasonable time to respond.

Rule 15.02 ~~51.02~~. Service and Notice of Motions

Subd. 1. Upon Whom. The moving party shall serve the notice of motion and motion, along with any supporting affidavit or other supporting documentation or a memorandum of law,

upon all parties, the county attorney, and any other persons designated by the court. The moving party shall serve notice of the hearing upon all participants~~, except a child under age 12 who is not represented by counsel~~.

Subd. 2. How Made. Service of a motion may be made by personal service, by mail, or by transmitting a copy by facsimile transmission pursuant to Rule 31 ~~68~~.

Subd. 3. Time. Any written motion, along with any supporting affidavit or other supporting documentation or memorandum of law, shall be served at least five (5) days before it is to be heard, unless the court for good cause shown permits a motion to be made and served less than five (5) days before it is to be heard. The filing and service of a motion shall not extend the permanency timelines set forth in these rules.

Rule 15.03 ~~51.03~~. Ex Parte Motion and Hearing

Subd. 1. Motion. A motion may be made ex parte when permitted by statute or these rules. Every ex parte motion shall be accompanied by an explanation of the efforts made to notify all parties and the county attorney of the motion or an explanation of why such notice would place the child in danger of imminent harm or could result in the child being hidden or removed from the court's jurisdiction.

Subd. 2. Hearing. When the court issues an ex parte order removing a child from the care of a parent, the court shall schedule a hearing to review the order within seventy-two (72) hours of the child's removal. Upon issuance of an ex parte order in cases of domestic child abuse, the court shall schedule a hearing pursuant to the requirements of Minnesota Statutes § 260C.148. Upon issuance of any other ex parte order, a hearing shall be scheduled on the request of a party or the county attorney at the earliest possible date.

Rule 15.04 ~~51.04~~. Motion to Dismiss Petition

Any party or the county attorney may bring a motion to dismiss the petition upon any of the following grounds:

(a) lack of jurisdiction over the subject matter;

(b) lack of jurisdiction over the child; or

(c) at or prior to the admit/deny hearing, failure of the petition to state facts which, if proven, establish a prima facie case to support the statutory grounds set forth in the petition.

Rule 15.05 ~~51.05~~. Motion to Strike Document ~~Pleadings~~

Any party or the county attorney may bring a motion to strike a document ~~pleadings~~ or any portion~~s~~ of a document ~~pleadings~~. If a motion to strike a document or any portion of a document ~~pleading~~ is granted, the document or portion of document ~~pleading~~ shall be marked by the judge as stricken, but the document shall remain in ~~physically removed from~~ the court file. ~~If a motion to strike a portion of a pleading is granted, that portion of the pleading shall be redacted from the court file.~~

~~**1999 Advisory Committee Comment**~~

~~When the court grants a motion to strike pleadings or portions of pleadings, the objectionable matter should be physically removed from the court~~

~~file and should not be considered by any fact finder with jurisdiction over the case.~~

RULE 16 ~~52~~. SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS; SERVICE AND FILING OF MOTIONS; SANCTIONS

Rule 16.01 ~~52.01~~. Signing of Pleadings, Motions and Other Papers

Subd. 1. Party Represented by an Attorney. When a party is represented by an attorney, every pleading, motion, and other paper filed with the court shall be personally signed by at least one attorney of record in the attorney's individual name and shall state the attorney's address, telephone number, and attorney registration number.

Subd. 2. Party Not Represented by an Attorney. A party who is not represented by an attorney shall personally sign the pleading, motion, or other paper filed with the court and shall state the party's address and telephone number. If providing the address and telephone number would endanger the party, the address and telephone number may be provided to the court in a separate information statement and shall not be accessible to the public or to the parties. Upon notice and motion, the court may disclose the address and telephone number as it deems appropriate.

Subd. 3. Signing Constitutes Certification. Except when otherwise specifically provided by rule or statute, pleadings need not be verified by affidavit or accompanied by affidavit. The signature of an attorney or party constitutes a certification that:

(a) the pleading, motion, or other paper has been read;

(b) to the best of the signer's knowledge, information, and belief formed after reasonable inquiry that the pleading, motion or other paper is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(c) it is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

Rule 16.02. Service and Filing of Motions and Other Documents

Except as noted in this Rule, the party filing a motion or other document, except a pleading, shall be responsible for serving the motion or other document upon the parties and participants or, if represented, upon the attorneys for such individuals. The court administrator shall serve the motion or other document if the address of the person being served is confidential.

Rule 16.03 ~~52.02~~. Sanctions

If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including reasonable attorney fees.

RULE 17 ~~53~~. DISCOVERY

Rule 17.01 ~~53.01~~. Disclosure by Petitioner Without Court Order

Upon the request of any party, the petitioner shall without court order make the following disclosures:

(a) **Documents and Tangible Items.** The petitioner shall allow access at any reasonable time to all information, material, and items within the petitioner's possession or control which relate to the case. The petitioner shall permit inspection and copying of any relevant documents, recorded statements, or other tangible items which relate to the case within the possession or control of the petitioner and shall provide any party with the substance of any oral statements which relate to the case. The copying of a videotaped statement of a child abuse victim or alleged victim shall be governed by Minnesota Statutes § 611A.90. The petitioner shall not disclose the name of or any identifying information regarding a reporter of maltreatment except as provided in Minnesota Statutes § 626.556, subd. 11.

(b) **Witnesses.** The petitioner shall disclose to all other parties and the county attorney the names and addresses of the persons intended to be called as witnesses at trial. The county attorney or petitioner shall permit all other parties to inspect and copy such witnesses' written or recorded statements that relate to the case within the petitioner's knowledge.

(c) **Expert Witnesses.** Petitioner shall disclose to all other parties and the county attorney:

(1) the names and addresses of all persons intended to be called as expert witnesses at trial;

(2) the subject matter about which each expert witness is expected to testify; and

(3) a summary of the grounds for each opinion to be offered.

Rule 17.02 ~~53.02~~. Disclosure by Other Parties Without Court Order

Upon the request of a party or the county attorney, any party who is not the petitioner shall without court order make the following disclosures:

(a) **Documents and Tangible Objects.** The party shall disclose and permit the county attorney, attorney for petitioner, or any other party to inspect and copy any book, paper, report, exam, scientific test, comparison, document, photograph, or tangible object which the party intends to introduce in evidence at the trial or concerning which the party intends to offer evidence at the trial.

(b) **Witnesses.** Each party shall disclose to every other party and the county attorney the names and addresses of the persons the party intends to call as witnesses at trial. Each party shall permit every other party and the county attorney to inspect and copy such witnesses' written or recorded statements within the party's knowledge as relates to the case.

(c) **Expert Witnesses.** Each party shall disclose to all other parties and the county attorney:

(1) the names and addresses of all persons intended to be called as expert witnesses at trial;

(2) the subject matter about which each expert witness is expected to testify; and

(3) a summary of the grounds for each opinion to be offered.

Rule 17.03 ~~53.03~~. Information Not Discoverable

The following information shall not be discoverable by any party or the county attorney with or without a court order:

(a) documents containing privileged information between an attorney and client, legal research, records, correspondence, reports, or memoranda to the extent they contain the opinions, theories, or conclusions of the attorney for a party or other staff of an attorney for a party; and

(b) except as otherwise required by this rule, reports, memoranda, or internal documents made by an attorney for a party or staff of an attorney for a party.

Rule 17.04 ~~53.04~~. Discovery Upon Court Order

Upon written motion of any party or the county attorney, the court may authorize other discovery methods, including, but not limited to, the following:

(a) ~~**Subd. 1.**~~ **Physical and Mental Examinations.**

(1 ~~a~~) **Examination by Licensed Professional**. If the physical or mental condition of a party is in controversy, the court may order the party to submit to a physical or mental examination by a licensed professional of the moving party's choice. The examination shall be at the moving party's expense. The order shall specify the time, place, manner, conditions, and the scope of the examination.

(2 ~~b~~) **Copy of Report.** The examiner shall prepare a detailed report of the findings and conclusions of the examination and shall provide the report to the moving party who shall forward it to all other parties and the county attorney unless otherwise ordered by the court.

(b) ~~**Subd. 2.**~~ **Depositions.**

(1 ~~a~~) **Agreement of Parties.** A deposition may be taken upon agreement of the parties.

(2 ~~b~~) **Order of Court.** Following the initial appearance, any party or the county attorney may move the court to order the testimony of any other person or party be taken by deposition upon oral examination, if:

(i ~~1~~) there is a reasonable probability that the witness will be unable to be present or to testify at the hearing or trial because of the witness' existing physical or mental illness, infirmity, or death;

(ii ~~2~~) the party taking the deposition cannot procure the attendance of the witness at a hearing or trial by a subpoena, order of the court, or other reasonable means: or

(iii ~~3~~) upon a showing that the information sought cannot be obtained by other means.

(3 ~~c~~) **Subpoena.** Attendance of witnesses at oral deposition may be compelled by subpoena as provided by Rule 13 ~~49~~. Attendance of parties at oral deposition shall be ordered by the court when the court grants a motion pursuant to subdivision 2(b) and shall be procured through service of the order and a notice of the time and place of the taking of the deposition on the party.

(4 ~~d~~) **Notice.** A party or the county attorney taking a deposition shall give reasonable notice of the deposition. The deposition shall be taken before an officer authorized to administer oaths by the laws of the United States, or before a person appointed by the court in which the matter is pending. The parties shall agree on or the court shall order the manner of recording of the deposition. A stenographic transcription may be made at a party's request. Examination and cross-examination of witnesses shall be as permitted at trial. However, the

deponent shall answer any otherwise objectionable question, except that which would reveal privileged material unless the privilege does not apply pursuant to Minnesota Statutes § 626.556, subd. 8, so long as it leads to or is reasonably calculated to lead to the discovery of any relevant data.

(c) ~~**Subd. 3.**~~ **Reports or Examinations and Tests.** Upon motion and order of the court, any party shall disclose and permit the county attorney, attorney for petitioner, and other parties to inspect and copy any results or reports of physical or mental examinations, chemical dependency assessments and treatment records, scientific tests, experiments, and comparisons relating to the particular case. It is not grounds for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Privileged communications are discoverable in accordance with Minnesota Statutes § 626.556, subd. 8.

(d) ~~**Subd. 4.**~~ **Experts.** Discovery of facts known and opinions held by experts, otherwise discoverable pursuant to these rules and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(1 ~~a~~) Upon motion, the court may order further discovery by means other than as provided in Rules 17.01 ~~53.01~~ and 17.02 ~~53.02~~, subject to such restrictions as to scope and such provisions concerning fees and expenses as the court may deem appropriate.

(2 ~~b~~) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(3 ~~c~~) Unless manifest injustice would result,

(i ~~1~~) the court shall require the party seeking discovery to pay the expert a reasonable fee for time spent in responding to discovery pursuant to this rule, and

(ii ~~2~~) with respect to discovery obtained pursuant to this rule, the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

Rule 17.05 ~~53.05~~. Time, Place, and Manner of Discovery

An order of the court granting discovery shall specify the time, place, and manner of discovery and inspection permitted and may prescribe such terms and conditions as are just.

Rule 17.06 ~~53.06~~. Regulation of Discovery

Subd. 1. Continuing Duty to Disclose. Whenever a party or the county attorney discovers additional material, information, or witnesses subject to disclosure, that party or the county attorney shall promptly notify the other parties and the county attorney of the existence of the additional material or information and the identify of the witnesses.

Subd. 2. Protective Orders. The trial court may order that specified disclosures be restricted or deferred, or make such other order as is appropriate to protect the child.

Subd. 3. Timely Discovery. Unless a court order otherwise provides, all material and information to which a party or the county attorney is entitled must be disclosed within fourteen (14) days of a request for disclosure.

Subd. 4. Sanctions. If, at any time, it is brought to the attention of the court that a party or the county attorney has failed to comply with an applicable discovery rule or order, or has failed to appear pursuant to a notice of taking of deposition, be sworn, or answer questions, the court may, upon motion, order such party or the county attorney to permit the discovery or inspection, grant a continuance, or enter such order as it deems just under the circumstances including:

(a) an order that the matters regarding which the order was made, or the other designated facts, shall be taken to be established for purposes of the proceedings, in accordance with the claim of the party who obtained the order;

(b) an order refusing to allow the disobedient party to support or oppose designated claims, or prohibiting the disobedient party from introducing designated matters in evidence;

(c) an order striking the petition or parts of the petition, answer, or parts of an answer, dismissing the proceeding, or entering a finding that the petition is proved or that certain facts alleged in the petition are proved;

(d) in lieu of any of the foregoing, an order treating as a contempt of court the failure to obey any order; or

(e) the court shall require the party or county attorney failing to act or the party's counsel, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds the failure was substantially justified or that other circumstances make an award of expenses unjust.

Subd. 5. Failure to Act. Failure to act as described in this rule may not be excused on the ground that the discovery sought is objectionable unless the party or county attorney failing to act has applied for a protective order as provided in subdivision 2.

RULE 18~~54~~. DEFAULT

Rule 18.01~~54.01~~. Failure to Appear ~~Procedure~~

~~If a party fails to appear after being properly served with a summons and notice that failure to appear may result in (a) a finding that the statutory grounds set forth in the petition have been proved and (b) an order granting the relief requested, the court shall take testimony in support of the petition. If the petition is proved by the applicable burden of proof, the court shall enter an order granting the relief sought in the petition. The court shall not grant a default if a party was not served with a summons within the time period set forth in Rule 69.02, subd. 5.~~

Subd. 1. Generally. Except as otherwise provided in Rule 35.02, subd. 1, if a parent, legal custodian, or Indian custodian fails to appear for an admit-deny hearing, a pretrial hearing, or a trial after being properly served with a summons pursuant to Rule 32.02 or a notice pursuant to Rule 32.03, the court may receive evidence in support of the petition.

Subd. 2. Consequence. If the petition is proved by the applicable burden of proof, the court may enter an order granting the relief sought in the petition as to that parent, legal custodian, or Indian custodian.

Rule 18.02. Exceptions for Termination of Parental Rights or Other Permanency Proceeding

If a parent, legal custodian, or Indian custodian fails to appear at an admit-deny hearing or a pretrial hearing in a termination of parental rights or other permanency proceeding after being properly served with a summons pursuant to Rule 32.02 or a notice pursuant to Rule 32.03, and it is the person's first failure to appear on the permanency petition, the court shall stay any default order entered pursuant to Rule 18.01 for ten (10) days before it shall be entered. The court shall vacate any default order entered under this Rule if within ten (10) days following the missed hearing the defaulted party appears personally before the court or the court administrator and files a written request to reopen the proceeding. Upon receipt of such written request, the court shall issue an order vacating the default ordre and shall schedule the next hearing or trial in the proceeding.

Rule 18.03. Inapplicable to Certain Proceedings

The provisions of Rule 18.02 shall not apply to:

(a) proceedings relating to child in need of protection or services petitions;

(b) a parent, legal custodian, or Indian custodian who has been properly served with a permanency petition and who has never appeared in the underlying child in need of protection or services proceeding, or

(c) a termination of parental rights proceeding filed by someone other than the county attorney.

RULE 19 ~~55~~. SETTLEMENT

Rule 19.01 ~~55.01~~. Generally

Settlement discussions may be utilized to achieve one or more of the purposes set forth in Rule 1.02 ~~37.02~~.

Rule 19.02 ~~55.02~~. Content of Settlement Agreement

Any settlement agreement shall include a statement of:

(a) the statutory grounds to be admitted;

(b) the statutory grounds to be dismissed, if any;

(c) the factual allegations to be admitted;

(d) the factual allegations asserted by the petitioner but not admitted;

(e) whether the court will enter or withhold adjudication; and

(f) the issues to be addressed at the disposition hearing or the agreed upon disposition and case plan.

Rule 19.03 ~~55.03~~. Procedure

Every settlement agreement shall be filed with the court or stated and agreed to on the record by the settling parties. Before approving a settlement agreement, the court shall determine that the agreement is in the best interests of the child and that each party to the agreement understands the content and consequences of the admission or settlement agreement and voluntarily consents to the agreement. When a party makes an admission, the court may accept or reject the admission based upon the terms of the settlement agreement or may conditionally accept or reject the admission pending receipt of a predisposition report prepared for the disposition hearing. The court may accept a settlement agreement that resolves the issues

with respect to the petitioner and one or more but not all parties, and proceed with the matter with respect to the non-settling parties. If the court approves the settlement agreement, it shall proceed pursuant to Rule 41 ~~75~~. If the court rejects the settlement agreement, it shall advise the parties and the county attorney of this decision in writing or on the record and shall call upon the parties to either affirm or withdraw the admission. If the admission is withdrawn, the court shall make a finding that the admission is not accepted and proceed pursuant to Rule 39 ~~74~~.

Rule 19.04 ~~55.04~~. Objection to Settlement Agreement – Termination of Parental Rights Matters and Permanent Placement Matters

If a party objects to a settlement agreement in a termination of parental rights matter or a permanent placement matter, that party shall, within five (5) days of service of notice of the proposed settlement agreement, adopt the existing pleadings and assume the burden of proof or file pleadings in support of an alternative. The matter shall be set for trial within the timelines set forth in Rule 39 ~~74~~.

RULE 20 ~~56~~. ALTERNATIVE DISPUTE RESOLUTION

[Reserved for future use.]

1999 Advisory Committee Comment

The Committee recommends the appointment of a separate advisory committee to research, draft, and recommend rules for alternative dispute resolution in juvenile protection matters. In the meantime, the absence of a rule is not intended to imply that parties may not use mediation or other alternative dispute resolution to achieve results in the best interests of the child.

C. PARTIES AND PARTICIPANTS

RULE 21 ~~57~~. PARTIES

Rule 21.01 ~~57.01~~. Party Status

Subd. 1. Parties Generally. Parties to a juvenile protection matter shall include:

(a) the child, if age 10 or older;

(b~~a~~) the child's guardian ad litem;

(c~~b~~) the child's legal custodian;

(d) in the case of an Indian child, the child's Indian custodian and Indian tribe through the tribal representative;

(e~~c~~) the petitioner;

(f~~d~~) any person who intervenes as a party pursuant to Rule 23 ~~59~~;

(g~~e~~) any person who is joined as a party pursuant to Rule 24 ~~60~~; and

(i~~f~~) any other person~~, including a child,~~ who is deemed by the court to be important to a resolution that is in the best interests of the child.

Subd. 2. Habitual Truant~~, Runaway, and Prostitution~~ Matters. ~~In addition to the parties identified in subdivision 1, in any matter alleging a child to be a habitual truant, a runaway, or engaged in prostitution, the child, regardless of age, shall also be a party.~~ In any matter alleging a child to be a habitual truant, the child's school district may be joined as a party pursuant to Rule 24 ~~60~~.

Subd. 3. Termination of Parental Rights Matters and Permanent Placement Matters. In addition to the parties identified in subdivision 1, in any termination of parental rights matter or permanent placement matter the parties shall also include:

(a) the child's parents, including any noncustodial parent and any adjudicated or presumed father;

(b) any person entitled to notice of any adoption proceeding involving the child; and

(c) any other person who is deemed by the court to be important to a resolution that is in the best interests of the child.

Rule 21.02 ~~57.02~~. Rights of Parties

A party shall have the right to:

(a) ~~receive~~ notice pursuant to Rule 32 ~~69~~;

(b) legal representation pursuant to Rule 25 ~~61~~;

(c) be present at all hearings unless excluded pursuant to Rule 27 ~~63~~;

(d) conduct discovery pursuant to Rule 17 ~~53~~;

(e) bring motions before the court pursuant to Rule 15 ~~51~~;

(f) participate in settlement agreements pursuant to Rule 19 ~~55~~;

(g) subpoena witnesses pursuant to Rule 13 ~~49~~;

(h) make argument in support of or against the petition;

(i) present evidence;

(j) cross-examine witnesses;

(k) request review of the referee's findings and recommended order pursuant to Rule 7 ~~43~~;

(l) request review of the court's disposition upon a showing of a substantial change of circumstances or that the previous disposition was inappropriate;

(m) bring post-trial motions pursuant to Rule 45 ~~80~~;

(n) appeal from orders of the court pursuant to Rule 47 ~~82~~; and

(o) any other rights as set forth in statute or these rules.

1999 Advisory Committee Comment

The former rules did not distinguish between parties and participants. Rule 21 ~~57~~ delineates the status and rights of parties, and Rule 22 ~~58~~ delineates the status and rights of participants. There may be many individuals concerned about the best interests of a child who do not have the immediate connection to the child that justifies treating them as parties. The intent of this rule is to ensure ~~assure~~ that such individuals are aware of the proceedings and are available to provide information useful to the court in making decisions concerning that child. A person with participant status may intervene as a party pursuant to Rule 23 ~~59~~ or may be joined as a party pursuant to Rule 24 ~~60~~.

Rule 21.03 ~~57.03~~. Parties' Addresses

It shall be the responsibility of the petitioner to set forth in the petition the names and addresses of all parties if known to the petitioner after reasonable inquiry, and to specify that each such person has party status. It shall be the responsibility of each party to inform the court administrator of any change of address. If a party is endangered, the party may ask the court to keep the party's address confidential.

RULE 22 ~~58~~. PARTICIPANTS

Rule 22.01 ~~58.01~~. Participant Status

Unless already a party pursuant to Rule 21 ~~57~~, or unless otherwise specified, participants to a juvenile protection matter shall include:

(a) the child, if under age 10;

(b) any parent who is not a legal custodian ~~the child's parent, as well as any non-legal custodial parent~~ and any alleged, adjudicated, or presumed father;

(c) the responsible ~~local~~ social services agency, when the responsible ~~local~~ social services agency is not the petitioner;

(d) any guardian ad litem for the child's legal custodian;

~~(e) in the case of an Indian child, the child's Indian custodian and Indian tribe through the tribal representative;~~

(e~~f~~) grandparents with whom the child has lived within the two (2) years preceding the filing of the petition;

(f~~g~~) relatives or other persons providing care for the child and other relatives who request notice;

(g~~h~~) current foster parents and persons proposed as long-term foster care parents;

(h~~i~~) the spouse of the child, if any; and

(i~~j~~) any other person who is deemed by the court to be important to a resolution that is in the best interests of the child.

1999 Advisory Committee Comment

The former rules did not distinguish between parties and participants. Rule 21 ~~57~~ delineates the status and rights of parties, and Rule 22 ~~58~~ delineates the status and rights of participants. There may be many individuals concerned about the best interests of a child who do not have the immediate connection to the child that justifies treating them as parties. The intent of this rule is to ensure ~~assure~~ that such individuals are aware of the proceedings and are available to provide information useful to the court in making decisions concerning that child. A person with participant status may intervene as a party pursuant to Rule 23 ~~59~~ or may be joined as a party pursuant to Rule 24 ~~60~~.

Rule 22.02 ~~58.02~~. Rights of Participants

Subd. 1. Generally. Unless a participant intervenes as a party pursuant to Rule 23 ~~59~~, or is joined as a party pursuant to Rule 24 ~~60~~, the rights of a participant shall be limited to:

(a) ~~receiving~~ notice and a copy of the petition pursuant to Rule 32 ~~69~~;

(b) attending hearings pursuant to Rule 26 ~~63~~; and

(c) offering information at the discretion of the court.

Subd. 2. Foster Parents and Relatives. Notwithstanding subdivision 1, any foster parent, pre-adoptive parent, relative providing care for the child, or relative to whom the responsible ~~local~~ social services agency recommends transfer of permanent legal and physical custody of the child, shall be provided an opportunity to be heard in any hearing regarding the child. Any other relative may request an opportunity to be heard. This subdivision does not require that a foster parent, pre-adoptive parent, or relative providing care for the child be made a

party to the matter. Each party and the county attorney shall be provided an opportunity to respond to any presentation by a foster parent or relative.

Rule 22.03 ~~58.03~~. Participants' Addresses

It shall be the responsibility of the petitioner to set forth in the petition the names and addresses of all participants if known to the petitioner after reasonable inquiry, and to specify that each such person has participant status. It shall be the responsibility of each participant to inform the court administrator of any change of address. If a participant is endangered, the participant may ask the court to keep the participant's address confidential.

RULE 23 ~~59~~. INTERVENTION

Rule 23.01 ~~59.01~~. Intervention of Right

Subd. 1. Child. A ~~The~~ child under age 10 who is the subject of the juvenile protection matter shall have the right to intervene as a party.

~~**Subd. 2. Indian Custodian and Indian Tribe.** In any proceeding for the foster care placement of, or the termination of parental rights to, an Indian child, the child's Indian custodian and the child's tribe shall have a right to intervene as a party at any point in the proceeding. An Indian tribe and an Indian custodian shall file with the court and serve on all parties and the county attorney a notice of intervention in order to exercise party status in proceedings involving an Indian child.~~

Subd. 2 ~~3~~. Grandparents. Any grandparent of the child shall have the right to intervene as a party if the child has lived with the grandparent within the two (2) years preceding the filing of the petition.

Subd. 3 ~~4~~. Parent. Any parent who is not a legal custodian of the child shall have the right to intervene as a party.

Subd. 4 ~~5~~. Social Services Agency. The responsible ~~local~~ social services agency shall have the right to intervene as a party in a case where the responsible ~~local~~ social services agency is not the petitioner.

Rule 23.02 ~~59.02~~. Permissive Intervention

Any person~~, including the county attorney,~~ may be permitted to intervene as a party if the court finds that such intervention is in the best interests of the child.

Rule 23.03 ~~59.03~~. Procedure

Subd. 1. Intervention of Right. A person with a right to intervene pursuant to Rule 23.01 ~~59.01~~ shall file with the court and serve upon all parties and the county attorney a notice of intervention, which shall include the basis for a claim to intervene. The notice of intervention as a matter of right form shall be available from the court administrator. The intervention shall be deemed accomplished upon service of the notice of intervention, unless a party or the county attorney files and serves a written objection within ten (10) days of the date of service. If a written objection is timely filed and served, the court shall schedule a hearing for the next available date.

Subd. 2. Permissive Intervention. A person, including the county attorney in a case where the responsible ~~local~~ social services agency is not the petitioner, seeking permissive intervention pursuant to Rule 23.02 ~~59.02~~ shall file with the court and serve upon all parties and the county attorney a notice of motion and motion to intervene pursuant to Rule 15 ~~51~~. The notice shall state the nature and extent of the person's interest in the child and the reason(s) that the person's intervention would be in the best interests of the child. A hearing on a motion to intervene shall be held within ten (10) days of the filing of the motion to intervene.

Rule 23.04 ~~59.04~~. Effect of Intervention

The court may conduct hearings, make findings, and issue orders at any time prior to intervention being accomplished or denied. The intervention shall be effective as of the date granted and prior proceedings and decisions of the court shall not be affected.

RULE 24 ~~60~~. JOINDER

Rule 24.01 ~~60.01~~. Procedure

The court, upon its own motion or motion of a party or the county attorney pursuant to Rule 15 ~~51~~, may join a person or entity as a party if the court finds that joinder is:

(a) necessary for a just and complete resolution of the matter; and

(b) in the best interests of the child.

The moving party shall serve the motion upon all parties, the county attorney, and the person proposed to be joined.

2003 Advisory Committee Comment

In *In Re the Welfare of Q.T.B.*, Nos. C7-97-2093 and C9-97-2094, (Minn. Ct. App. May 26, 1998), *rev. denied* (Minn. July 16, 1998), an unpublished decision of the Court of Appeals, the court considered the appellant's claim that she should have been joined as a party to a child in need of protection or services proceeding because she was at risk of losing her visitation rights with the infant who was the subject of the petition. The court cited Minn. R. Civ. P. 19.01 and determined that the rights of the appellant did not rise to the level of requiring joinder under Rule 19.01. While *In Re the Welfare of Q.T.B.* denies joinder under the specific facts of that case, it implies that joinder is permissible thus authorizing joinder in juvenile protection matters.

RULE 25 ~~61~~. RIGHT TO REPRESENTATION; APPOINTMENT OF COUNSEL

Rule 25.01 ~~61.01~~. Right to Representation

Every party and participant has the right to be represented by counsel in every juvenile protection matter, including through appeal, if any. This right attaches no later than when the party or participant first appears in court.

1999 Advisory Committee Comment

Rule 25.01 ~~61.01~~ sets forth the basic principle that each person appearing in court has the right to be represented by counsel. Each person, however, does not necessarily have the right to court appointed ~~appointment of~~ counsel as provided in Rule 25.02 ~~61.02~~.

Rule 25.02 ~~61.02~~. Appointment of Counsel

Subd. 1. Child. Each child has the right to effective assistance of counsel in connection with a juvenile protection matter. Counsel for the child shall not also act as the child's guardian ad litem.

(a) **Juvenile Protection Matters.** Except in proceedings where the sole basis for the petition is habitual truancy, if ~~If~~ the child desires counsel but is financially unable to employ it, the court shall appoint counsel to represent the child who is ten years of age or older and may appoint counsel to represent a child under age ten in any case ~~to represent the child in any juvenile protection matter~~ in which the court determines that such appointment is appropriate.

(b) **Truancy~~, Runaway, and Prostitution~~ Matters.** In any proceeding where the sole basis for the petition is habitual truancy, the child does not have the right to appointment of a public defender or other counsel at public expense. However, before any out-of-home placement, including foster care or inpatient treatment, can be ordered, the court must appoint a public defender or other counsel at public expense to represent the child. ~~The court shall appoint counsel for a child who cannot afford to retain counsel if the child, regardless of age, is the subject of a petition based on the statutory grounds that the child is a habitual truant, a runaway, or engaged in prostitution.~~

(c) **Indian Child.** In any juvenile protection matter involving an Indian child, the court may, in its discretion, appoint counsel for an Indian child upon a finding that such appointment is in the best interests of the child.

(d) **Request; Timing.** The court may sua sponte appoint counsel for the child, or may do so upon the request of any party or participant. Any such appointment of counsel for the child shall occur as soon as practicable after the request is made.

Subd. 2. Parent or Legal Custodian. Each parent or legal custodian has the right to effective assistance of counsel in connection with a juvenile court proceeding.

(a) **Juvenile Protection Matters.** Except in proceedings where the sole basis for the petition is habitual truancy, if ~~If~~ the child's parent or legal custodian desires counsel but is financially unable to employ it, the court shall appoint counsel to represent the parent or legal custodian in any juvenile protection matter in which the court determines that such appointment is appropriate.

(b) **Truancy Matters.** In any proceeding where the sole basis for the petition is habitual truancy, the parent or legal custodian does not have the right to appointment of a public defender or other counsel at public expense.

(c ~~b~~) **Indian Custodian.** In any juvenile protection matter involving an Indian child, if the child's parent or Indian custodian is unable to afford it, the court shall appoint counsel to represent the parent or Indian custodian.

(d ~~c~~) **Timing.** The appointment of counsel for the parent, legal custodian, or Indian custodian shall occur as soon as practicable after the request is made.

Subd. 3. Guardian Ad Litem. The court may appoint separate counsel for the guardian ad litem if necessary. A public defender may not be appointed as counsel for a guardian ad litem.

Subd. 4. Child's Preference. In any juvenile protection matter where the child is not represented by counsel, the court shall determine the child's preferences regarding the proceedings, if the child is of suitable age to express a preference.

Rule 25.03 ~~61.03~~. Reimbursement

When counsel is appointed for a child or a child's parent or legal custodian, the court may inquire into the ability of the parent or legal custodian to pay for the attorney's services and, after giving the parent or legal custodian a reasonable opportunity to be heard, may order the parent or legal custodian to pay the attorney's fees ~~the court may order, after giving the parent or legal custodian reasonable opportunity to be heard, that the fees and expenses of court appointed counsel shall be reimbursed in whole or in part by the parent or legal custodian depending upon the ability of the person to pay.~~

Rule 25.04 ~~61.04~~. Notice of Right to Representation

Any child, parent, or legal custodian who appears in court and is not represented by counsel shall be advised by the court on the record of the right to representation pursuant to Rule 25 ~~61~~.

Rule 25.05 ~~61.05~~. Certificate of Representation

An attorney representing a client in a juvenile protection matter, other than a public defender or county attorney, shall on or before the attorney's first appearance file with the court a certificate of representation.

Rule 25.06 ~~61.06~~. Withdrawal of Counsel

An attorney representing a party in a juvenile protection matter, including a public defender, shall continue representation until such time as:

(a) all proceedings in the matter have been completed;
(b) the attorney has been discharged by the client in writing or on the record;
(c) the court grants the attorney's ex parte motion for withdrawal; or
(d) the court approves the attorney's ex parte written substitution of counsel.

If the court grants an attorney's ex parte motion for withdrawal, the withdrawing attorney shall serve upon all parties and the county attorney a copy of the order permitting withdrawal.

RULE 26 ~~62~~. GUARDIAN AD LITEM

Rule 26.01 ~~62.01~~. ~~Mandatory~~ Appointment for Child

Subd. 1. Mandatory Appointment Generally Required ~~Generally~~. The court shall appoint a guardian ad litem to advocate for the best interests of the ~~each~~ child in all cases where such appointment is mandated by Minnesota Statutes § 260C.163, subd. 5 ~~who is the subject of a juvenile protection matter~~.

Subd. 2. Discretionary Appointment. Except as provided in subdivision 1, in all other cases the court may appoint a guardian ad litem to advocate for the best interests of the child as permitted by Minnesota Statutes § 260C.163, subd. 5.

Subd. 3. Timing; Method of Appointment. Appointment of a guardian ad litem shall occur prior to the Emergency Protective Care Hearing or the Admit-Deny Hearing, whichever occurs first. The court may appoint a person to serve as guardian ad litem for more than one child in a proceeding. The appointment of a guardian ad litem shall be made pursuant to Rule 904 of the Rules of Guardian ad Litem Procedure.

Subd. 4. Responsibilities; Rights. The guardian ad litem shall carry out the responsibilities set forth in ~~Rule 908 of~~ the Rules of Guardian ad Litem Procedure. The guardian ad litem shall have the rights and powers set forth in ~~Rule 909 of~~ the Rules of Guardian Ad Litem Procedure.

Subd. 5 ~~2~~. Guardian Ad Litem Not Also Attorney for Child. Counsel for the child shall not also serve as the child's guardian ad litem or as legal counsel for the guardian ad litem.

1999 Advisory Committee Comment

Rule 26.01 ~~62.01~~ is consistent with Minnesota Statutes § 260C.163, subd. 5, which provides as follows:

> The court shall appoint a guardian ad litem to protect the interests of the minor when it appears, at any stage of the proceedings, that the minor is without a parent or guardian, or that the minor's parent is a minor or incompetent, or that the parent or guardian is indifferent or hostile to the minor's interests, and in every proceeding alleging a child's need for protection or services under Minnesota Statutes § 260C.007, subd. 4.

With respect to the appointment of guardians ad litem, Minnesota Statutes § 260C.163, subd. 5, complies with the federal Child Abuse Prevention and Treatment Act (CAPTA), 42 U.S.C. § 5106a(b)(2)(A)(ix). CAPTA mandates that for a state to qualify to receive federal grants for child protection prevention and treatment services, the state must have in place:

> [P]rovisions and procedures requiring that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who may be an attorney or a court appointed special advocate (or both), shall be appointed to represent the child in such proceedings –
> (I) to obtain first-hand, a clear understanding of the situation and needs of the child; and
> (II) to make recommendations to the court concerning the best interests of the child. . . .

42 U.S.C. § 5106a(b)(2)(A)(ix) (1999).

The types of cases to which guardians ad litem must be appointed are much more expansive under Minnesota's statutes than under federal statutes. Minnesota requires the appointment of a guardian ad litem not only in cases where the act of an adult places the child in need of protection or services, but also in cases where the child's act or status places the child in need of protection or services. *See* Minn. Stat. § 260C.163, subd. 5.

Rule 26.02 ~~62.02~~. Discretionary Appointment for Child's Parent or Legal Custodian

The court may sua sponte or upon the written or on-the-record request of a party or participant appoint a guardian ad litem for a parent who is a party or the legal custodian if the court determines that the parent or legal custodian:

(a) is incompetent to assist counsel in the matter or understand the nature of the proceedings; or

(b) it appears at any stage of the proceedings that the parent is under eighteen (18) years of age and is without a parent or legal custodian, or that considered in the context of the matter the minor parent's parent or legal custodian is unavailable, incompetent, indifferent to, hostile to, or has interests in conflict with the interests of the minor parent.

Appointment of a guardian ad litem for a parent shall not result in discharge of counsel for the parent.

Rule 26.03 ~~62.03~~. Term of Service of Guardian Ad Litem

Unless otherwise ordered by the court, upon appointment to a juvenile protection matter the guardian ad litem shall serve as follows:

(a) When the permanency plan for the child is to return the child home, the court shall issue an order dismissing the guardian ad litem from the case upon issuance of an order returning the child to the child's home and terminating the juvenile protection matter.

(b) When the permanency plan for the child is transfer of permanent legal and physical custody to a relative, the court shall issue an order dismissing the guardian ad litem from the case upon issuance of the order transferring custody and terminating the juvenile protection matter.

(c) When the permanency plan for the child is termination of parental rights leading to adoption, the guardian ad litem shall continue to serve as a party until the adoption decree is entered ~~for the purpose of monitoring progress toward adoption, and shall provide the foster parent and child, if of suitable age, with the address and phone number of the guardian ad litem so that they may contact the guardian ad litem if necessary~~.

(d) When the permanency plan for the child is long-term foster care, the guardian ad litem shall continue to serve as a party for the purpose of monitoring the child's welfare, and shall provide the foster parent and child, if of suitable age, with the address and phone number of the guardian ad litem so that they may contact the guardian ad litem if necessary. The guardian ad litem shall be provided notice of all social services administrative reviews and shall be consulted regarding development of any Independent Living Plan required pursuant to Rule 37.

Rule 26.04. Request for Appointment of Counsel for Child

The guardian ad litem shall request appointment of counsel for a child if the guardian ad litem determines that the appointment is necessary to protect the legal rights or legal interests of the child.

2003 Advisory Committee Comment

In deciding whether to request appointment of counsel for the child, among other factors the guardian ad litem is to assess the following factors: the child's ability to work with counsel, whether the guardian ad litem's recommendation is contrary to the child's expressed preference, whether the child's siblings are represented, and the complexity of the issues involved.

Rule 26.05. Reimbursement

The court may inquire into the ability of the parent or legal custodian to pay for the guardian ad litem's services and, after giving the parent or legal custodian a reasonable opportunity to be heard, may order the parent or legal custodian to pay the guardian ad litem's fees.

RULE 27 ~~63~~. ACCESS TO HEARINGS

Rule 27.01 ~~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. An order closing a hearing or portion of a hearing to the public shall be accessible to the public.

Rule 27.02 ~~63.02~~. Party and Participant Attendance at Hearings

Notwithstanding the closure of a hearing to the public pursuant to Rule 27.01 ~~63.01~~, any party who is entitled to summons pursuant to Rule 32.02 ~~69.02~~ or any participant who is entitled to notice pursuant to Rule 32.03 ~~69.03~~, 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 27.04 ~~63.04~~.

1999 Advisory Committee Comment

Pursuant to Rule 21 ~~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 ensuring ~~assuring~~ the child's presence in court ~~attendance at hearings~~. When a child is in emergency protective care or protective care, the responsible ~~local~~ social services agency is responsible for ensuring the child's presence in court. If the child is in the custody of the responsible social services agency ~~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 27.03 ~~63.03~~. 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 27.04 ~~63.04~~. Exclusion of Parties or Participants from Hearings

The court may exclude from any hearing any party or participant, other than a guardian ad litem or counsel for any party or participant, only if it is in the best interests of the child to do so or the person engages in conduct that disrupts the court. 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 shall not prevent the court from proceeding with the hearing or issuing a decision. An order excluding a party or participant from a hearing shall be accessible to the public.

~~**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.~~

~~**1999 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 court only), 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.~~

D. COURSE OF CASE

RULE 28 ~~65~~. EMERGENCY PROTECTIVE CARE ORDER AND NOTICE

Rule 28.01 ~~65.01~~. Emergency Protective Care Defined

A child is in "emergency protective care" when:

(a) taken into custody by a peace officer pursuant to Minnesota Statutes § 260C.151, subd. 6; § 260C.154; or § 260C.175;

(b) ordered into placement pursuant to Minnesota Statutes § 260C.178 or § 260B.198 before a disposition; or

(c) returned home before a disposition with court-ordered conditions of release.

1999 Advisory Committee Comment

A child taken into emergency protective care should never be held in secure detention.

Rule 28.02 ~~65.02~~. Ex Parte Order for Emergency Protective Care

Subd. 1. Generally. When the court makes individualized, explicit findings, the ~~The~~ court may issue an ex parte order for emergency protective care if it finds from the facts set forth in the petition or any supporting affidavits or sworn testimony that:

(a) the child has left or been removed from a court-ordered placement; or

(b) there is a prima facie showing that the child is in surroundings or conditions that endanger the child's health, safety, or welfare and that require that the child's custody and care be immediately assumed by the court; and

(c) continuation of the child in the custody of the parent or legal custodian is contrary to the child's welfare.

Subd. 2. Habitual Truant, Runaway, ~~and~~ Prostitution, Delinquent Under Age 10, Incompetent to Proceed, and Domestic Abuse Matters. In addition to the provisions of subdivision 1, the court may issue an ex parte order for emergency protective care if it finds from the facts set forth in the petition or any supporting affidavits or sworn testimony that:

(a) there is a prima facie showing that pursuant to Minnesota Statutes § 260C.007, subd. 6, the child has engaged in prostitution, ~~pursuant to Minnesota Statutes § 260C.007, subd. 4(11);~~ is a habitual truant, ~~pursuant to Minnesota Statutes § 260C.007, subd. 64(14); or~~ is a runaway, ~~pursuant to Minnesota Statutes § 260C.007, subd. 64(13);~~ has committed a delinquent act before becoming ten (10) years of age, has been found incompetent to proceed or not guilty by reason of mental illness or mental deficiency, or has been found by the court to have committed domestic abuse; and

(b) the child failed to appear after having been personally served with a summons or subpoena, reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons; and

(c) continuation of the child in the custody of the parent or legal custodian is contrary to the child's welfare.

Rule 28.03 ~~65.03~~. Contents of Order

An order for emergency protective care shall be signed by a judge, ~~and~~ shall include the findings required under Rule 28.02, subds. 1 and 2, and shall:

(a) order the child to be taken to an appropriate relative, a designated caregiver pursuant to Minnesota Statutes § 260C.181 ~~Chapter 257A~~, or a shelter care facility designated by the court pending an emergency;

(b) state the name and address of the child, unless such information would endanger the child, or, if unknown, designate the child by any name or description by which the child can be identified with reasonable certainty;

(c) state the age and gender of the child or, if the age of the child is unknown, that the child is believed to be of an age subject to the jurisdiction of the court;

(d) state the reasons why the child is being taken into emergency protective care;

(e) state the reasons for any limitation on the time or location of the execution of the emergency protective care order;

(f) state the date when issued and the county and court where issued; and

(g) state the date, time, and location of the emergency protective care hearing.

Rule 28.04 ~~65.04~~. Execution of Order

An order for emergency protective care:

(a) may only be executed by a peace officer authorized by law to execute a warrant;

(b) shall be executed by taking the child into custody;

(c) may be executed at any place in the state except where prohibited by law or unless otherwise ordered by the court;

(d) may be executed at any time unless otherwise ordered by the court; and

(e) need not be in the peace officer's possession at the time the child is taken into emergency protective care.

Rule 28.05 ~~65.05~~. Notice

When an order for emergency protective care is executed, the peace officer shall notify the child and the child's parent or legal custodian:

(a) of the existence of the order for emergency protective care;

(b) of the reasons why the child is being taken into emergency protective care;

(c) of the time and place of the emergency protective care hearing;

(d) of the name, address, and telephone number of the responsible ~~local~~ social services agency; and

(e) that the parent or legal custodian or child may request that the court place the child with a relative or a designated caregiver rather than in a shelter care facility.

The notice shall be delivered in written form and, when possible, the content of the notice shall also be orally summarized and explained. If the parent or legal custodian is not present when the child is removed from the premises, the notice shall be left with an adult on the premises. If no adult is present at the time the child is removed, the notice shall be left in a conspicuous place on the premises.

Rule 28.06 ~~65.06~~. Enforcement of Order

An emergency protective care order shall be enforceable by any peace officer in any jurisdiction.

RULE 29 ~~66~~. PROCEDURES DURING PERIOD OF EMERGENCY PROTECTIVE CARE

Rule 29.01 ~~66.01~~. Release from Emergency Protective Care

Subd. 1. Child Taken Into Emergency Protective Care Pursuant to Court Order.

(a) **Release Prohibited.** A child taken into emergency protective care pursuant to a court order shall be held for seventy-two (72) hours unless the court issues an order authorizing release.

(b) **Release Required.** A child taken into emergency protective care pursuant to a court order shall not be held in emergency protective care for more than seventy-two (72) hours unless an emergency protective care hearing has commenced pursuant to Rule 30 ~~67~~ and the court has ordered continued protective care.

2003 Advisory Committee Comment

When calculating the seventy-two (72) hour period referenced in subdivision 1, pursuant to Rule 4.01 the day the child was removed from home

and any Saturday, Sunday, or legal holiday is not counted. The last day of the period shall be included, unless it is a Saturday, Sunday, or legal holiday in which event the period runs to the end of the next day that is not a Saturday, Sunday, or legal holiday.

Subd. 2. Child Taken Into Emergency Protective Care Without Court Order.

(a) **Release Required.** A child taken into emergency protective care without a court order shall be released unless an emergency protective care hearing pursuant to Rule 30 ~~67~~ has commenced within seventy-two (72) hours of the time the child was removed from home and the court has ordered continued protective care.

(b) **Discretionary Release by Peace Officer or County Attorney.** When a peace officer has taken a child into emergency protective care without a court order, the peace officer, peace officer's supervisor, or the county attorney may release the child any time prior to an emergency protective care hearing. The peace officer, the peace officer's supervisor, or the county attorney who releases the child may not place any conditions of release on the child.

Rule 29.02 ~~66.02~~. Discretionary Release by Court; Custodial Conditions

The court at any time before an emergency protective care hearing may release a child and may:

(a) place restrictions on the child's travel, associations, or place of abode during the period of the child's release; and

(b) impose any other conditions upon the child or the child's parent or legal custodian deemed reasonably necessary and consistent with criteria for protecting the child.

Any conditions terminate after seventy-two (72) hours unless a hearing has commenced pursuant to Rule 30 ~~67~~ and the court has ordered continuation of the condition.

Rule 29.03 ~~66.03~~. Release to Custody of Parent or Other Suitable Person

A child released from emergency protective care shall be released to the custody of the child's parent, legal custodian, or other suitable person.

Rule 29.04 ~~66.04~~. Reports

Subd. 1. Report by Peace Officer. Any report required by Minnesota Statutes § 260C.176, subd. 4, shall be filed with the court on or before the first court day following placement of the child and the report shall include at least:

(a) the time the child was taken into emergency protective care;

(b) the time the child was delivered for transportation to the shelter care facility;

(c) the reasons why the child was taken into emergency protective care;

(d) the reasons why the child has been placed;

(e) a statement that the child and the child's parent or legal custodian have received the advisory required by Minnesota Statutes § 260C.176, subd. 3, or the reasons why the advisory has not been made; and

(f) reasons to support the non-disclosure, if disclosure of the location of the placement has not been made because there is reason to believe that the child's health and welfare would be immediately endangered.

Subd. 2. Report by Supervisor of Shelter Care Facility. Any report required by Minnesota Statutes § 260C.176, subd. 6, shall be filed with the court on or before the first court day following placement. The report shall include, at least, acknowledgement of receipt of the child and state the time the child arrived at the shelter care facility.

RULE 30 ~~67~~. EMERGENCY PROTECTIVE CARE HEARING

Rule 30.01 ~~67.01~~. Timing

Subd. 1. Generally. The court shall hold an emergency protective care hearing within seventy-two (72) hours of the child being taken into emergency protective care unless the child is released pursuant to Rule 29 ~~66~~. The purpose of the hearing shall be to determine whether the child shall be returned home or placed in protective care.

Subd. 2. Continuance. ~~When witnesses are to be called, the~~ The court may, upon its own motion or upon the written or oral motion of a party made at the emergency protective care hearing, continue the emergency protective care hearing for a period not to exceed eight (8) days. A continuance may be granted:

(a) upon a determination by the court that there is a prima facie showing that the child should be held in emergency protective care pursuant to Rule 28 ~~65~~; and

(b) if the court finds that a continuance is necessary for the protection of the child, for the accumulation or presentation of necessary evidence or witnesses, to protect the rights of a party, or for other good cause shown.

1999 Advisory Committee Comment

Subdivision 2 requires that the court make certain findings before permitting a continuance. This provision recognizes that parties may need time to prepare for the hearing, but assures that a child will not be held unnecessarily during the continuance.

Rule 30.02 ~~67.02~~. Notice of Hearing

The court administrator, or designee, shall inform the county attorney; the responsible social services agency; the child; ~~and~~ the child's counsel, guardian ad litem, parent, legal custodian, spouse, Indian custodian, Indian tribe, and school district of residence as required by Minnesota Statutes § 127A.47, subd. 6, of the time and place of the emergency protective care hearing.

Rule 30.03 ~~67.03~~. Inspection of Reports

Prior to the emergency protective care hearing, the parties shall be permitted to inspect reports or other written information or records that any party intends to present at the hearing.

1999 Advisory Committee Comment

Rule 30.03 ~~67.03~~ places upon each party the burden of providing to opposing parties all documentation the party intends to introduce at the hearing. The rule is intended to ensure that the parties have the relevant information before the hearing so they are prepared to respond. This rule is not intended to limit discovery allowed by Rule 17 ~~53~~.

Rule 30.04 ~~67.04~~. Determination Regarding Notice

During the hearing, the court shall determine whether ~~notice has been provided in compliance with Rule 69~~ all persons identified in Rule 30.02 have been informed of the time and place of the emergency protective care hearing and what further efforts, if any, must be taken to notify all parties and participants as rapidly as possible of the pendency of the matter and the date and time of the next hearing. Before the emergency protective care hearing, the court administrator, or designee, shall file with the court a written statement describing the efforts to inform the persons identified in Rule 30.02 of the emergency protective care hearing, including the date, time, and method of each effort to inform each such person and whether contact was actually made.

Rule 30.05 ~~67.05~~. Advisory

At the beginning of the emergency protective care hearing the court shall on the record advise all parties and participants present of:

(a) the reasons why the child was taken into emergency protective care;

(b) the substance of the statutory grounds and supporting factual allegations set forth in the petition;

(c) the purpose and scope of the hearing;

(d) the possible consequences of the proceedings;

(e) the right of the parties and participants to legal representation, including the right of the child, ~~and~~ the child's parent or legal custodian, and the child's Indian custodian to court appointed counsel ~~representation~~ pursuant to Rule 25 ~~61~~;

(f) the right of the parties to present evidence and to cross-examine witnesses regarding whether the child should return home with or without conditions or whether the child should be placed in protective care; and

(g) that failure to appear at future hearings could result in a finding that the petition has been proved, issuance of an order adjudicating the child in need of protection or services, and an order transferring permanent legal and physical custody of the child to another.

Rule 30.06 ~~67.06~~. Evidence

The court may admit any evidence, including reliable hearsay and opinion evidence, that is relevant to the decision of whether to continue protective care of the child or return the child home. Privileged communications may be admitted in accordance with Minnesota Statutes § 626.556, subd. 8.

Rule 30.07 ~~67.07~~. Filing and Service of Petition

A petition shall be filed with the court and may be served at or before the emergency protective care hearing.

Rule 30.08 ~~67.08~~. Protective Care Determinations

Subd. 1. Initial Finding. The court shall dismiss the petition if it finds that the petition fails to establish a prima facie showing that a juvenile protection matter exists and that the child is the subject of that matter.

Subd. 2. Endangerment.

(a) **Findings.** If the court finds that the petition establishes a prima facie showing that a juvenile protection matter exists and that the child is the subject of that matter, the court shall then determine whether the petition also makes a prima facie showing that:

(1) the child or others would be immediately endangered by the child's actions if the child were released to the care of the parent or legal custodian; or

(2) the child's health, safety, or welfare would be immediately endangered if the child were released to the care of the parent or legal custodian.

(b) **Determination.** If the court finds that endangerment exists pursuant to this subdivision, the court shall continue protective care or release the child to the child's parent or legal custodian and impose conditions to assure the safety of the child or others. If the court finds that endangerment does not exist, the court shall release the child to the child's parent or legal custodian subject to reasonable conditions of release.

(c) **Continued Custody by Parent Contrary to Welfare of Child.** The court may not order or continue the foster care placement of the child unless the court makes explicit, individualized findings that continued custody of the child by the parent or legal custodian is contrary to the welfare of the child.

1999 Advisory Committee Comment

Rule 30.08 ~~67.08~~ is consistent with Minnesota Statutes § 260C.178, subd. 1(b), which provides:

> Unless there is reason to believe that the child would endanger self or others, not return for a court hearing, run away from the child's parent, guardian, or custodian or otherwise not remain in the care or control of the person to whose lawful custody the child is released, or that the child's health or welfare would be immediately endangered, the child shall be released to the custody of a parent, guardian, custodian, or other suitable person, subject to reasonable conditions of release including, but not limited to, a requirement that the child undergo a chemical use assessment as provided in [Minnesota Statutes §] 260C.157, subd. 1.

Rule 30.09 ~~67.09~~. Factors

Subd. 1. Generally. Except in cases described in subdivision 2, or when the parental rights of the parent to a sibling of the child have been terminated involuntarily, or the child is an abandoned infant as defined in Minnesota Statutes § 260C.301, subd. 2, at the emergency protective care hearing the court shall require petitioner to present information regarding the following issues:

(a) whether the responsible ~~local~~ social services agency made reasonable efforts, or active efforts in the case of an Indian child, to prevent or eliminate the need for removal of the child from the home;

(b) whether there are services the court could order that would allow the child to safely return home;

(c) whether responsible relatives or other responsible adults are available to provide services or to serve as placement options if licensed;

(d) whether the placement proposed by the agency is the least restrictive and most home-like setting that meets the needs of the child;

(e) whether restraining orders, or orders expelling an allegedly abusive parent from the home, are appropriate;

(f) whether orders are needed for examinations, evaluations, or immediate services;

(g) the terms and conditions for parental visitation; and

(h) what consideration has been given for financial support of the child.

Subd. 2. Determination Regarding Reasonable or Active Efforts. Based upon the information provided to the court in the petition, sworn affidavit, certified report, or on the record, the court shall make a determination whether reasonable efforts, or active efforts in the case of an Indian child, were made to prevent the child's out-of-home placement. The court shall also determine whether there are available services that would prevent the need for further placement. In the alternative, the court shall determine that reasonable efforts are not required if the court makes a prima facie determination that one of the circumstances under subdivision 3 exists.

Subd. 3 ~~2~~. Egregious Harm.

(a) **Permanency Determination.** At the emergency protective care hearing, or at any time prior to adjudication, and upon notice and request of the county attorney, the court shall make the following determinations:

(i ~~a~~) whether a termination of parental rights petition as been filed stating that (1) the parent has subjected a child to egregious harm as defined in Minnesota Statutes § 260C.007, subd. 26; (2) the parental rights of the parent to another child have been terminated involuntarily; or (3) the child is an abandoned infant under Minnesota Statutes § 260C.301, subd. 2;

(ii ~~b~~) whether ~~that~~ the county attorney has determined not to proceed with a termination of parental rights petition under Minnesota Statutes § 260C.307; or

(iii ~~c~~) whether a termination of parental rights petition or other petition according to Minnesota Statutes § 260C.201, subd. 11, has been filed alleging a prima facia case that the provision of services or future services for the purpose of rehabilitation and reunification is futile and therefore unreasonable under the circumstances.

(b) **Permanency Hearing Required.** Once the court makes the determination required in subdivision 3(a), the court shall schedule a permanency hearing pursuant to Rule 42 within 30 days unless the county attorney files a petition to terminate parental rights.

2003 Advisory Committee Comment

Consistent with Minnesota Statutes § 260C.178, Rule 30.09 requires the court to make a determination about whether the responsible social services agency made reasonable, or active efforts in the case of an Indian child, to prevent the removal of the child. Unless the child's removal is due to circumstances which do not require efforts to reunify the child with the parent or legal custodian, the responsible social services agency should provide services to prevent the child's removal. The circumstances where reunification efforts are not required are set out in subdivision 3. When the removal occurs due to an emergency, the agency should consider what services it might put into the child's home to allow

the child to return home or whether the child's safety could be met by excluding from the child's home the individual responsible for abuse or neglect of the child. When the agency documents the services provided or attempted, or other measures it considered but rejected, to provide for the child's safety, and the court finds such actions reasonable, the court may properly find the agency has made reasonable efforts to prevent the removal of the child.

Rule 30.10 ~~67.10~~. Protective Care Findings and Order

At the conclusion of the emergency protective care hearing the court shall issue a written order which shall include findings pursuant to Rules 30.08 ~~67.08~~ and 30.09 ~~67.09~~ and which shall order:

(a) that the child:

(1) continue in protective care;

(2) return home with conditions in place to assure the safety of the child or others;

(3) return home with reasonable conditions of release; or

(4) return home with no conditions;

(b) conditions pursuant to subdivision (a), if any, to be imposed upon the parent, legal custodian, or a party;

(c) services, if any, to be provided to the child and the child's family;

(d) where the child shall be placed;

(e) terms of parental and sibling visitation pending further proceedings; and

(f) the parent's responsibility for costs of care pursuant to Minnesota Statutes § 260C.331, subd. 1.

1999 Advisory Committee Comment

Minnesota Statutes § 260C.178, subd. 1(b), provides as follows:

> In a proceeding regarding a child in need of protection or services, the court, before determining whether a child should continue in custody, shall also make a determination, consistent with [Minnesota Statutes §] 260.012 as to whether reasonable efforts, or in the case of an Indian child, active efforts, according to the Indian Child Welfare Act of 1978, United States Code, title 25, section 1912(d), were made to prevent placement ~~or to reunite the child with the child's family, or that reasonable efforts were not possible~~. The court shall also determine whether there are available services that would prevent the need for further detention.

In compliance with the statutory mandate of Minnesota Statutes § 260C.178, Rules 30.08 ~~67.08~~ and 30.09 ~~67.09~~ require the court to elicit relevant evidence from the petitioner and make findings as to whether the child is in imminent danger, whether the county made reasonable efforts to prevent removal or eliminate the need for removal, and whether there are services the court could order to allow the child to safely return home. Rule 30.10 ~~67.10~~ requires that the court issue a written order that includes specific findings in support of the order.

Rule 30.11 ~~67.11~~. Protective Care Review

Subd. 1. Consent for Continued Protective Care. The court may, with the consent of the parties and the county attorney, order that the child continue in protective care even if the circumstances of the parent, legal custodian, or child have changed.

Subd. 2. Release from Protective Care on Consent of Parties and the County Attorney. The court may, with the consent of the parties and the county attorney, order that a child be released from protective care. If the child has no guardian ad litem, the court may not release the child from protective care without a court hearing.

Subd. 3. Formal Review.

(a) **On Motion of Court.** The court may on its own motion schedule a formal review hearing at any time.

(b) **On Request of a Party or the County Attorney.** A party or the county attorney may request a formal hearing concerning continued protective care by filing a motion with the court. The court shall schedule a hearing and provide notice pursuant to Rule 32 ~~69~~ if the motion states:

(1) that the moving party has new evidence concerning whether the child should be continued in protective care; or

(2) that the party has an alternate arrangement to provide for the safety and protection of the child.

(c) **Evidence.** The court may admit any evidence, including reliable hearsay and opinion evidence, which is relevant to the decision whether to continue protective care of the child or return the child home. Privileged communications may be admitted in accordance with Minnesota Statutes § 626.556, subd. 8.

(d) **Findings and Order.** At the conclusion of the formal review hearing the court shall:

(1) return the child to the care of the parent or legal custodian with or without reasonable conditions of release if the court does not make findings pursuant to subdivision 3(d)(2);

(2) continue the child in protective care or release the child with conditions to assure the safety of the child or others if the court finds that the petition states a prima facie case to believe that a child protection matter exists and that the child is the subject of that matter, and (a) the child or others would be immediately endangered by the child's actions if the child were released to the care of the parent or legal custodian or (b) the child's health, safety or welfare would be immediately endangered if the child were released to the care of the parent or legal custodian; or

(3) modify the conditions of release.

Rule 30.12. Notification When Child Returned Home

If the parents comply with the conditions of the court order and the child is returned home, including under protective supervision, the county attorney shall immediately file with the court and serve upon all parties a notice stating the date the child was returned home.

RULE 31 ~~68~~. METHODS OF FILING AND SERVICE

Rule 31.01 ~~68.01~~. Types of Filing ~~Filing by Facsimile Transmission~~

Subd. 1. Generally. Any paper may be filed with the court either personally, by U.S. mail, or by facsimile transmission.

Subd. 2. Filing by Facsimile Transmission. ~~**Subdivision 1. Generally.**~~ Any paper may be filed with the court by facsimile transmission. Filing shall be deemed complete at the time that the facsimile transmission is received by the court. The facsimile shall have the same force and effect as the original. Only facsimile transmission equipment that satisfies the published criteria of the supreme court shall be used for filing in accordance with this rule.

Subd. 3 ~~2~~. Fees; Original Document. Within five (5) days after the court has received the transmission, the party filing the document shall forward the following to the court:

(a) a $5 transmission fee, unless otherwise provided by statute or rule or otherwise ordered by the court;

(b) the original signed document; and

(c) the applicable filing fee, if any.

Subd. 4 ~~3~~. Noncompliance. Upon failure to comply with the requirements of this rule, the court may make such orders as are just including, but not limited to, an order striking pleadings or parts thereof, staying further proceedings until compliance is complete, or dismissing the action, proceeding, or any part thereof.

Rule 31.02 ~~68.02~~. Types of Service

Subd. 1. Personal Service. Personal service means personally delivering the original document to the person to be served or leaving it at the person's home or usual place of abode with a person of suitable age and discretion residing therein, unless the court authorizes service by publication.

Subd. 2. U.S. Mail. Service by U.S. Mail means placing a copy of the document in the U.S. mail, first class, postage prepaid, addressed to the person to be served.

Subd. 3. Publication. Service by publication means the publication in full of the notice or other papers in the regular issue of a qualified newspaper, once each week for the number of weeks specified pursuant to Rule 32.02. Service by publication substitutes for personal service where authorized by the court. The court shall authorize service by publication only if the petitioner has filed a written statement or affidavit describing unsuccessful efforts to locate the party to be served.

Subd. 4. Facsimile Service. Service by facsimile means transmission by facsimile equipment that satisfies the published criteria of the supreme court, addressed to the person to be served.

Rule 31.03 ~~68.03~~. Service by Facsimile Transmission

Unless these rules require personal service, by agreement of the parties any document may be served by facsimile transmission. The facsimile shall have the same force and effect as the original.

Rule 31.04 ~~68.04~~. Service Upon Counsel; Social Services Agency

Unless personal service upon a party is required, service upon counsel for a party or counsel for a participant shall be deemed service upon the party or participant. Service upon the county attorney shall be deemed to be service upon the responsible social services agency.

Rule 31.05 ~~68.05~~. Service of Subpoena

A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the state.

Rule 31.06 ~~68.06~~. Completion of Service

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

Rule 31.07 ~~68.07~~. Proof of Service

On or before the date set for appearance, the person serving the document shall file with the court an affidavit of service stating:

(a) whether the document was served;
(b) how the document was served;
(c) the person on whom the document was served; and
(d) the date and place of service.

If the court administrator served the document, the court administrator may file a written statement in lieu of an affidavit.

RULE 32 ~~69~~. SUMMONS AND NOTICE

Rule 32.01 ~~69.01~~. Commencement

A juvenile protection matter is commenced by filing a petition with the court.

Rule 32.02 ~~69.02~~. Summons

Subd. 1. Definition. A summons is a document issued by the court that orders the initial appearance in court of the person to whom it is directed.

Subd. 2. Upon Whom; Cost.

(a) **Generally.** The court shall serve a summons upon each party identified in Rule 21 ~~57~~, except the child, ~~the person with physical custody of the child,~~ and upon any other person whose presence the court deems necessary to a determination concerning the best interests of the child. The cost of service of a petition filed by someone other than a non-profit or public agency shall be paid by the petitioner.

(b) **Termination of Parental Rights Matters.** In addition to the requirements of subdivision 2(a), in any termination of parental rights matter the court administrator shall serve the summons and a copy of the petition ~~a copy of the petition shall be served with the summons~~

~~and shall be served~~ upon the county attorney, any guardian ad litem for the child's legal custodian, ~~the guardian ad litem for the child,~~ and any attorney representing a party in an ongoing child in need of protection or services proceeding involving the subject child.

Subd. 3. Service.

(a) **~~Personal Service~~ Generally ~~Required~~.** Unless the court orders service by publication pursuant to Rule 31.02, subd. 3, the ~~The~~ summons shall be personally served upon the child's parent or legal custodian, and the summons shall be served personally or by U.S. mail upon all other parties and attorneys ~~in all juvenile protection matters unless the court orders service by publication pursuant to Rule 68.02, subd. 3~~.

(b) **Habitual Truant, Runaway, and Prostitution Matters.**

(1) **Generally.** When the sole allegation is that the child is a habitual truant, a runaway, or engaged in prostitution, initial service may be made as follows:

(i) the court may send notice and a copy of the petition or notice to appear by U.S. mail to the legal custodian, the person with custody or control of the child, and each party and participant, or

(ii) a peace officer may issue a notice to appear or a citation.

(2) **Failure to Appear.** If the child or the child's parent or legal custodian or the person with custody or control of the child fails to appear in response to the initial service, the court shall order such person to be personally served with a summons.

(c) Voluntary Placement – Service by Mail. In all cases involving a voluntary placement of a child pursuant to Rule 44, the summons shall be served by U.S. mail upon the parent or legal custodian.

Subd. 4. Content.

(a) **Generally.** A summons shall contain or have attached:

(1) a copy of the petition, court order, motion, affidavit or other legal documents not previously provided (however, these documents shall not be contained in or attached to the summons and complaint if the court has authorized service of the summons by publication pursuant to Rule 32.02~~69.02~~, subd. 3(a));

(2) a statement of the time and place of the hearing;

(3) a statement describing the purpose of the hearing;

(4) a statement explaining the right to representation pursuant to Rule 25; and

(5~~4~~) a statement that failure to appear may result in: ~~a finding of contempt of the court's order to appear or the issuance of a warrant for the arrest of the person summoned or both; and~~

(i) the child being removed from home pursuant to a child in need of protection or services petition;

(ii) the parent's parental rights being permanently severed pursuant to a termination of parental rights petition;

(iii) permanent transfer of the child's legal and physical custody to a relative;

(iv) a finding that the statutory grounds set forth in the petition have been proved; and

(v) an order granting the relief requested.

~~(5) a statement explaining the right to representation pursuant to Rule 61.~~

(b) **Child in Need of Protection or Services Matters.** In addition to the content requirements set forth in subdivision 4(a), in any child in need of protection or services matter the summons shall also contain or have attached a statement that:

(1) if the person summoned fails to appear, the court may conduct the hearing in the person's absence; and

(2) a possible consequence of the hearing is that the child may be removed from the home of the parent or legal custodian and placed in foster care, and such removal may lead to other proceedings for permanent out-of-home placement of the child or termination of parental rights.

(c) **Termination of Parental Rights Matters.** In addition to the content requirements set forth in subdivision 4(a), in any termination of parental rights matter the summons shall also contain or have attached a statement that if the person summoned fails to appear the court may conduct the hearing in the person's absence and the hearing may result in termination of the person's parental rights.

(d) **Permanent Placement Matters.** In addition to the content requirements set forth in subdivision 4(a), in any permanent placement matter the summons shall also contain or have attached a statement that if the person summoned fails to appear the court may conduct the hearing in the person's absence and the hearing may result in an order granting the relief requested in the petition.

Subd. 5. Timing of Service.

(a) **Generally.** The summons shall be served either at or before the emergency protective care hearing held pursuant to Rule 30 ~~67~~, or at least three (3) days prior to the admit/deny hearing, whichever is earlier. At the request of a party, the hearing shall not be held at the scheduled time if the summons has been served less than three (3) days before the hearing. If service is made outside the state or by publication, the summons shall be personally served, mailed, or last published at least ten (10) ~~twenty (20)~~ days before the hearing. In cases where publication of a Child In Need of Protection or Services petition is ordered, published notice shall be made one time with the last publication at least 10 days before the date of the hearing.

(b) **Termination of Parental Rights Matters and Permanent Placement Matters.** In any termination of parental rights matter or permanent placement matter the summons shall be served upon all parties in a manner that will allow for completion of service at least ten (10) days prior to the date set for the admit/deny hearing. In cases where publication of a Termination of Parental Rights or other permanency petition is ordered ~~under Minnesota Statutes § 645.11 is required~~, published notice shall be made once per week for three (3) weeks with the last publication at least ten (10) days before the date of the hearing. Pursuant to Minnesota Statutes § 260C.307, subd. 3, notice sent by certified mail to the last known address shall be mailed at least twenty (20) days before the date of the hearing.

Subd. 6. Waiver. Service is waived by voluntary appearance in court or by a written waiver of service filed with the court.

Subd. 7. Failure to Appear. If any person personally served with a summons or subpoena fails, without reasonable cause, to appear or bring the child if ordered to do so, or if the court has reason to believe the person is avoiding personal service, the court may sua sponte or upon the motion of a party or the county attorney pursuant to Rule 51 proceed against the person

for contempt of court or the court may issue a warrant for the person's arrest, or both. When it appears to the court that service will be ineffectual, or that the welfare of the child requires that the child be immediately brought into the custody of the court, the court may issue a warrant for immediate custody of the child.

1999 Advisory Committee Comment

Rule 32.02 ~~69.02~~ specifies the procedure for summoning a party to his or her first appearance in a case. Rule 32.03 ~~69.03~~ specifies the procedure for providing initial notice to a participant. While failure to notify a non-legal custodial parent does not create a jurisdictional defect, the best practice is to invite that parent to participate in the proceedings as failure to do so may create substantial barriers to permanency.

Rule 32.03 ~~69.03~~. Notice of Emergency Protective Care or Admit/Deny Hearing

Subd. 1. Definition. A notice is a document issued by the court notifying the person to whom it is addressed of the specific time and place of a hearing.

Subd. 2. Upon Whom.

(a) **Emergency Protective Care Hearing.** If the initial hearing is an Emergency Protective Care Hearing, written notice is not required to be served. Instead, the court administrator, or designee, shall use whatever method is available to inform all parties and participants identified by the petitioner, and their attorneys, of the date, time, and location of the hearing.

(b) **Admit/Deny Hearing.** If the initial hearing is an Admit/Deny Hearing, the ~~The~~ court administrator shall serve a summons upon all parties identified in Rule 21, except the child, and a notice upon all participants identified in Rule 22 ~~58~~, the county attorney, any attorney representing a party in the matter, and the child through the child's attorney, if represented, or the child's physical custodian.

Subd. 3. Content. A notice shall contain or have attached ~~a statement~~:

(a) a copy of the petition, but only if it is the initial hearing or the person has intervened or been joined as a party and previously has not been served with a copy of the petition;

(b~~a~~) a statement of ~~setting forth~~ the time and place of the hearing;

(c~~b~~) a statement describing the purpose of the hearing;

(d) a statement explaining the right to representation pursuant to Rule 61;

(e~~d~~) a statement explaining intervention as of right and permissive intervention pursuant to Rule 23 ~~59~~; ~~and~~

(f~~e~~) a statement that failure to appear may result in: ~~if the person fails to appear at the hearing the court may still conduct the hearing and grant appropriate relief; and failure to appear may result in: a finding of contempt of the court's order to appear or the issuance of a warrant for the arrest of the person summoned or both; and~~

(1) the child being removed from home pursuant to a child in need of protection or services petition;

(2) the parent's parental rights being permanently severed pursuant to a termination of parental rights petition;

(3) permanent transfer of the child's legal and physical custody to a relative;

(4) a finding that the statutory grounds set forth in the petition have been proved; and

(5) an order granting the relief requested; and

(g~~f~~) a statement that it is the responsibility of the individual to notify the court administrator of any change of address.

Subd. 4. Service by Mail or Delivery at Hearing. Notice shall be served by U.S. Mail or may be delivered at a hearing. The court may order service of notice to be by personal service.

~~**Subd. 5. Timing of Service.** A copy of the notice shall be mailed at least five (5) days before the date of the hearing or fifteen (15) days before the hearing if mailed to an address outside the state.~~

1999 Advisory Committee Comment

Rule 32.02 ~~69.02~~ specifies the procedure for summoning a party to his or her first appearance in a case. Rule 32.03 ~~69.03~~ specifies the procedure for providing initial notice to a participant. While failure to notify a non-legal custodial parent does not create a jurisdictional defect, the best practice is to invite that parent to participate in the proceedings as failure to do so may create substantial barriers to permanency.

Rule 32.04. Notice of Subsequent Hearings

For each hearing following the Emergency Protective Care or Admit/Deny Hearing, the court administrator shall serve upon each party, participant, and attorney a notice of the date, time, and location of the next hearing. The notice shall be delivered at the close of the hearing or ~~A copy of the notice shall be~~ mailed at least five (5) days before the date of the hearing or fifteen (15) days before the date of the hearing if mailed to an address outside the state. If written notice is delivered at the end of the hearing, later written notice is not required.

Rule 32.05 ~~69.04~~. Orders on the Record

An oral order stated on the record directed to the parties which either separately or with written supplementation contains the information required by this rule is sufficient to provide notice and compel the presence of the parties at a stated time and place. Such an order shall be reduced to writing pursuant to Rule 46.

Rule 32.06 ~~69.05~~. Indian Child

In any juvenile protection proceeding where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an ~~the~~ Indian child shall notify the parent or Indian custodian and the Indian child's tribe of the pending proceedings and of the right of intervention pursuant to Rule 23 ~~59~~. Such notice shall be by registered mail with return receipt requested, unless personal service has been accomplished. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary of the Interior in like manner, who shall have fifteen (15) days after receipt to provide the requisite notice to the parent or

Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior, provided that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty (20) additional days to prepare for such proceeding.

RULE 33 ~~70~~. PETITION

Rule 33.01 ~~70.01~~. Drafting and Filing

Subd. 1. Generally. A petition may be drafted and filed by the county attorney or any responsible person.

Subd. 2. Habitual Truant and Runaway Matters. A matter based solely on grounds that a child is a habitual truant or a runaway may be initiated by citation issued by a peace officer or school attendance officer. A citation shall contain:

(a) the name, address, date of birth, and race of the child;

(b) the name and address of the parent or legal custodian of the child;

(c) the offense alleged and a reference to the statute which is the basis for the charge; and

(d) the time and place the alleged offense was committed. In the event the child is alleged to be a runaway, the place where the offense was committed may be stated in the notice as either the child's parent's residence or lawful placement or where the child was found by the officer. In the event the child is alleged to be a habitual truant, the place where the offense was committed may be stated as the school or the place where the child was found by the officer.

Subd. 3. Termination of Parental Rights Matters.

(a) **Drafting ~~Generally~~.** A petition may be drafted and filed by the county attorney or any responsible person.

(b) **Filing.** Any termination of parental rights petition shall be filed in the child in need of protection or services file, if one exists.

(c~~b~~) **Egregious Harm or Abandonment of an Infant.** The county attorney shall file a termination of parental rights petition within thirty (30) days of the responsible ~~local~~ social services agency determining that a child:

(1) has been subjected to egregious harm as defined in Minnesota Statutes § 260C.007, subd. 26;

(2) is the sibling of another child who was subjected to egregious harm by the parent; ~~or~~

(3) is an abandoned infant as defined in Minnesota Statutes § 260C.301, subd. 2;

(4) is a child of a parent whose parental rights to another child have been involuntarily terminated; or

(5) is the child of a parent whose custodial rights to another child have been involuntarily transferred to a relative under Minnesota Statutes § 260C.211, subd. 11, or similar law of another jurisdiction.

The county attorney need not file a termination of parental rights petition if the county attorney determines and files with the court an affidavit that a transfer of permanent legal and

physical custody to a relative is in the best interests of the child or there is a compelling reason documented by the responsible ~~local~~ social services agency that filing a termination of parental rights petition is not in the best interests of the child.

Subd. 4. Permanent Placement Matters.

(a) **Generally.** Any permanent placement petition shall be filed in the child in need of protection or services file, if one exists.

(b) **Filing by Whom.** The county attorney shall file a permanent placement petition in juvenile court to determine the permanent placement of a child. Any party may also file a petition to establish the basis for a permanent placement order. A party, including a guardian ad litem for the child, shall file a permanent placement petition if the party disagrees with the permanent placement determination set forth in the petitions filed by other parties.

1999 Advisory Committee Comment

If a child in need of protection or services matter is pending at the time a termination of parental rights matter is filed regarding the same child, the termination petition should be filed in the same file as the child in need of protection or services matter.

Rule 33.02 ~~70.02~~. Content

Subd. 1. Generally. Every petition filed with the court in a juvenile protection matter, or a sworn affidavit accompanying such petition, shall contain:

(a) a statement of facts that, if proven, would support the relief requested in the petition;

(b) the child's name, date of birth, race, gender, and current address unless stating the address would endanger the child or seriously risk disruption of the current placement;

(c) the names, race, date of birth, residence, and post office addresses of the child's parents when known;

(d) the name, residence, and post office address of the child's legal custodian, the person having custody or control of the child, or the nearest known relative if no parent or legal custodian can be found;

(e) the name, residence, and post office address of the spouse of the child;

(f) the statutory grounds on which the petition is based, together with a recitation of the relevant portion of the subdivision(s);

(g) a statement regarding the applicability of the Indian Child Welfare Act; ~~and~~

(h) the names and address of the parties identified in Rule 21, as well as a statement designating them as parties; and.

(i) the names and addresses of the participants identified in Rule 22 ~~58~~, as well as a statement designating them as participants.

If any information required by subdivision 1 is unknown at the time of the filing of the petition, as soon as such information becomes known to the petitioner it shall be provided to the court and parties either orally on the record, by sworn affidavit, or by amended petition. If presented orally on the record, the court shall annotate the petition to reflect the updated information.

Subd. 2. Child in Need of Protection or Services Matters.

(a) **Petitions Drafted and Filed by County Attorney.** A child in need of protection or services matter is defined in Minnesota Statutes § 260C.007, subd. 4. All child in need of protection or services petitions shall be drafted and filed under the supervision of the county attorney, except as provided in Minnesota Statutes § 260C.141, subd. 1, and subdivision 2(b) of this rule.

(b) **Petitions Drafted and Filed By Others.**

(1) **Petition Form**. A child in need of protection or services petition filed by an individual who is not a county attorney or an agent of the commissioner of human services shall be filed on a form developed by the state court administrator. Copies of the form shall be available from the court administrator in each county.

(2) **Additional Content Requirements for Petitions Not Filed by County Attorney.** In addition to the content requirements set forth in subdivision 1, a petition filed by an individual who is not a county attorney or an agent of the commissioner of human services shall contain:

(i) a statement that the petitioner has reported the circumstances underlying the petition to the responsible ~~local~~ social services agency and that protection or services were not provided to the child;

(ii) a statement, including court file numbers where possible, of pending juvenile or family court proceedings and prior or present juvenile or family court orders relating to the child; and

(iii) a statement regarding the relationship of the petitioner to the child and to any other parties.

(3) **Review by Court Administrator.** Any petition filed by an individual who is not a county attorney or an agent of the commissioner of human services shall be reviewed by the court administrator before it is filed to determine whether it is complete. The court administrator may reject the petition as incomplete if it does not indicate that the petitioner has contacted the responsible ~~local~~ social services agency.

(4) **Court Review.** Within three (3) days of the date a petition is filed by a person who is not a county attorney or an agent of the commissioner of human services, the court shall review the petition. If the court determines that the petition and attachments establish a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter, the court shall set the matter for an admit/deny hearing pursuant to Rule 71 and shall direct notice pursuant to Rule 69. The court shall not allow a petition to proceed if it appears that the sole purpose of the petition is to modify custody between the parents or if it fails to set forth the information required in subdivisions 1 and 2(b) of this rule.

(c) **Petition Based Upon Prima Facie Case.**

(1) **When Required.** In addition to the content requirements of subdivisions 1 and 2(b), a petition establishing a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter shall be filed with the court:

(i) before the court may issue an ex parte order for emergency protective care pursuant to Rule 28~~-65~~; or

(ii) before an emergency protective care hearing is held pursuant to Rule 30~~-67~~ for a child taken into emergency protective care without a court order.

(2) **Manner.** The facts establishing a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter may be set forth

in writing in or with the petition, or in supporting affidavits, and may be supplemented by sworn testimony of witnesses taken before the court. If such testimony is taken, a note stating this fact shall be made by the court on the petition. The testimony shall be recorded pursuant to Rule 11 ~~47~~.

Subd. 3. Termination of Parental Rights Matters.

(a) **Generally.** A termination of parental rights matter shall be entitled "Petition to Terminate Parental Rights" and shall conform to the requirements of Minnesota Statutes § 260C.141.

(b) **Petitions Drafted and Filed By Others.**

(1) **Petition Form**. A termination of parental rights petition filed by an individual who is not a county attorney or an agent of the commissioner of human services shall be filed on a form developed by the state court administrator. Copies of the form shall be available from the court administrator in each county.

(2) **Additional Content Requirements for Petitions Not Filed by County Attorney.** In addition to the content requirements set forth in subdivision 1, a petition filed by an individual who is not a county attorney or an agent of the commissioner of human services shall contain:

(i) statement, including court file numbers where possible, of pending juvenile or family court proceedings and prior or present juvenile or family court orders relating to the child;

(ii) a statement regarding the relationship of the petitioner to the child and to any other parties; and

(iii) a statement identifying any past or pending cases involving the child or family that is the subject of the petition.

(3) **Review by Court Administrator.** Any petition filed by an individual who is not a county attorney or an agent of the commissioner of human services shall be reviewed by the court administrator before it is filed to determine whether it is complete. The court administrator may reject the petition if incomplete.

(c~~b~~) **Petitions Seeking Alternative Permanent Placement Relief.** In addition to the content requirements set forth in subdivision 1, any termination of parental rights petition may seek alternative permanent placement relief, including transfer of permanent legal and physical custody to a relative or placement of the child in long-term foster care. A petition seeking alternative permanent placement relief shall identify which permanent placement option the petitioner believes is in the best interests of the child. A petition may seek separate permanent placement relief for each child named as a subject of the petition as long as the petition identifies which option(s) is sought for each child and why that option(s) is in the best interests of the child. At the admit/deny hearing on a petition that seeks alternative relief, each party shall identify on the record the permanent placement option that is in the best interests of the child.

Subd. 4. Permanent Placement Matters.

(a) **Captions and Title ~~Generally~~.** Every petition in a permanent placement matter, or a sworn affidavit accompanying such petition, shall contain a title denoting the permanency relief sought:

(1) A transfer of permanent legal and physical custody matter shall be entitled "Juvenile Protection Petition to Transfer Permanent Legal and Physical Custody" and shall name a fit and willing relative as a proposed permanent legal and physical custodian; ~~conform to the~~

~~requirements of Minnesota Statutes § 518.156 and, in cases where the local social services agency is the petitioner, the petition shall identify:~~

~~(i) the local social services agency as petitioner; and~~

~~(ii) the proposed relative custodian as co-petitioner when the local social services agency petitions on behalf of the proposed relative custodian.~~

(2) A request for long-term foster care shall be entitled "Juvenile Protection Petition for Long-term Foster Care."

(3) A request for foster care for a specified period of time for a child adjudicated to be in need of protection or services solely on the basis of the child's behavior shall be entitled "Juvenile Protection Petition for Foster Care for a Specific Period of Time."

(b) **Petitions Seeking Alternative Permanent Placement Relief.** Any permanent placement petition may seek alternative permanent placement relief, including termination of parental rights, transfer of permanent legal and physical custody to a relative, or placement of the child in long-term foster care. A petition seeking alternative permanent placement relief shall identify which permanent placement option the petitioner believes is in the best interests of the child. A petition may seek separate permanent placement relief for each child named as a subject of the petition as long as the petition identifies which option(s) is sought for each child and why that option is in the best interests of the child. At the admit/deny hearing on a petition that seeks alternative relief, each party shall identify on the record the permanent placement option that is in the best interests of the child. <u>If another party files a permanent placement petition in response to the county's petition, it must be filed and served at least fifteen (15) days prior to the date of trial.</u>

Subd. 5. Out of State Party. If a party resides out of state, or if there is likelihood of interstate litigation, the petition or an attached affidavit shall include a statement regarding the whereabouts of the party and any other information required by the Uniform Child Custody Jurisdiction and Enforcement Act, Minnesota Statutes § 518D.101 to § 518D.317.

Subd. 6. Disclosure of <u>Name and</u> Address – Endangerment. If there is reason to believe that an individual may be endangered by disclosure of ~~an~~ <u>a name or</u> address required to be provided pursuant to this rule, that <u>name or</u> address may be provided to the court in a separate informational statement and shall not be accessible to the public or to the parties. Upon notice and motion, the court may disclose the <u>name or</u> address as it deems appropriate.

Rule <u>33.03</u> ~~70.03~~. Verification

A petition shall be verified by a person having knowledge of the facts and may be verified on information and belief.

Rule <u>33.04</u> ~~70.04~~. Amendment

Subd. 1. Prior to Trial. The petition may be amended at any time prior to the commencement of the trial, including, in a child in need of protection or services matter, adding a child as the subject matter of the petition. The petitioner shall provide notice of the amendment to all parties and participants. When the petition is amended, the court shall grant all other parties sufficient time to respond to the amendment.

Subd. 2. After Trial Begins. The petition may be amended after the trial has commenced if the court finds that the amendment does not prejudice a party and all parties are given sufficient time to respond to the proposed amendment. Upon receipt of approval from the court, the petitioner shall provide notice of the proposed amendment to all parties and participants.

Rule 33.05 ~~70.05~~. Timing

If a child is in emergency protective care pursuant to Rule 28 ~~65~~, the petition shall be filed at or prior to the time of the emergency protective care hearing held pursuant to Rule 30 ~~67~~.

1999 Advisory Committee Comment

Minnesota Statutes § 260C.143 provides that a peace officer or school attendance officer may issue a notice to a child to appear in court and file the notice with the juvenile court.

RULE 34 ~~71~~. ADMIT/DENY HEARING

Rule 34.01 ~~71.01~~. Generally

An admit/deny hearing is a hearing at which the statutory grounds set forth in the petition are admitted or denied pursuant to Rule 35 ~~72~~.

Rule 34.02 ~~71.02~~. Timing

Subd. 1. Child in Placement.

(a) **Generally.** When the child is placed out of the child's home by court order, an admit/deny hearing shall be held within ten (10) days of the date of the emergency protective care hearing. Upon agreement of the parties, an admit/deny hearing may be combined with an emergency protective care hearing held pursuant to Rule 30 ~~67~~.

(b) **Termination of Parental Rights Matters.** In a termination of parental rights matter the admit/deny hearing shall be held not less than ten (10) days after service is complete upon the party.

(c) **Permanent Placement Matters.** In a permanent placement matter the admit/deny hearing shall be held at least twenty (20) days prior to the date set for the permanent placement hearing held pursuant to Rule 42 ~~77~~.

Subd. 2. Child Not in Placement.

(a) **Generally.** When the child is not placed outside the child's home by court order, an admit/deny hearing shall be held no sooner than five (5) days and no later than twenty (20) days after the parties have been served with the petition.

(b) **Child's Behavior ~~Habitual Truant, Runaway, and Prostitution Matters~~.** In matters where the sole allegation is that the child's behavior is the basis for the petition ~~is an habitual truant, a runaway, or engaged in prostitution~~ and the child is not in placement, an admit/deny hearing shall be commenced within a reasonable time after service upon the child.

Subd. 3. Possession of Petition. The parties have the right to have a copy of the petition at least three (3) days before the admit/deny hearing.

Rule 34.03 ~~71.03~~. Hearing Procedure

Subd. 1. Initial Procedure. At the commencement of the hearing the court shall on the record:

(a) verify the name, age, race, and current address of the child who is the subject of the matter, unless stating the address would endanger the child or seriously risk disruption of the current placement;

(b) inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe has been notified;

(c) determine whether all parties are present and identify those present for the record;

(d) advise any child and the child's parent or legal custodian who appears in court and is not represented by counsel of the right to representation pursuant to Rule 25 ~~61~~;

(e) determine whether notice requirements have been met and, if not, whether the affected person waives notice;

(f) if the child who is a party or the child's parent or legal custodian appears without counsel, explain basic trial rights;

(g) determine whether the child and the child's parent or legal custodian understand the statutory grounds and the factual allegations set forth in the petition and, if not, provide an explanation; and

(h) explain the purpose of the hearing and the possible transfer of custody of the child from the parent or legal custodian to another, when such transfer is permitted by law and the permanency requirements of Minnesota Statutes § 260C.201, subd. 11.

Subd. 2. Child in Need of Protection or Services Matters. In addition to the initial procedures set forth in subdivision 1, in each child in need of protection or services matter the court shall also advise all persons present that if the petition is proven and the child is not returned home, a hearing to determine the permanent placement of the child will be held:

(a) within six (6) months of the date of the child's out-of-home placement if the child was under eight (8) years of age at the time of the filing of the petition; or

(b) within twelve (12) months of the date of the child's out-of-home placement if the child was eight (8) years of age or older at the time of the filing of the petition.

Subd. 3. Termination of Parental Rights Matters.

(a) In each termination of parental rights matter, after completing the initial inquiries set forth in subdivision 1, the court shall determine whether the petition states a prima facie case in support of termination of parental rights under the statutory grounds stated in the petition.

(b) When the petition alleges that reasonable efforts, or active efforts in the case of an Indian child, have been made to reunify the child with the parent or legal custodian, the court shall enter a separate finding regarding whether the factual allegations contained in the petition state a prima facie case that the agency has provided reasonable efforts, or active efforts in the case of an Indian child, to reunify the child and the parent or legal custodian. In the alternative, the court may enter a finding that reasonable efforts, or active efforts in the case of an Indian child, to reunify the child and the parent or legal custodian were not required under Minnesota Statutes § 260C.012.

(c) If the court determines that the petition states a prima facie case in support of termination of parental rights, the court shall proceed pursuant to Rule 35 ~~72~~. If the court

determines that the petition fails to state a prima facie case in support of termination of parental rights, the court shall:

(i ~~a~~) return the child to the care of the parent or legal custodian;

(ii ~~b~~) give the petitioner ten (10) days to file an amended petition or supplementary information if the petitioner represents there are additional facts which, if presented to the court, would establish a prima facie case in support of termination of parental rights;

(iii ~~c~~) give the petitioner ten (10) days to file a child in need of protection or services petition; or

(iv ~~d~~) dismiss the petition.

Subd. 4. Permanent Placement Matters.

(a) In each permanent placement matter, after completing the initial inquiries set forth in subdivision 1, the court shall review the facts set forth in the petition, consider such argument as the parties may make, and determine whether the petition states a prima facie case in support of one or more of the permanent placement options.

(b) When the petition seeking permanent placement of the child away from the parent or legal custodian requires a determination by the court that reasonable efforts, or active efforts in the case of an Indian child, have been made to reunify the child with the parent or legal custodian, the court shall enter a separate finding regarding whether the factual allegations in the petition state a prima face case that the agency has provided reasonable efforts, or active efforts in the case of an Indian child, to reunify the child and the parent or legal custodian. In the alternative, the court may enter a finding that reasonable efforts, or active efforts in the case of an Indian child, were not required under Minnesota Statutes § 260C.012.

(c) If the court determines that the petition states a prima facie case, the court shall proceed pursuant to Rule 35 ~~72~~. If the court determines that the petition fails to state a prima facie case, the court may:

(i ~~a~~) return the child to the care of the parent;

(ii ~~b~~) give the petitioner ten (10) days to file an amended petition or supplementary information if the petitioner represents there are additional facts which, if presented to the court, would establish a prima facie case; or

(iii ~~c~~) dismiss the petition.

Subd. 5 Motions. The court shall hear any motions, made pursuant to Rule 15 ~~51~~, addressed to the sufficiency of the petition or jurisdiction of the court without requiring any person to admit or deny the statutory grounds set forth in the petition prior to making a finding on the motion.

1999 Advisory Committee Comment

Rule 34.03 ~~71.03~~, subd. 2, is consistent with Minnesota Statutes § 260C.201, subd. 11, which provides that a permanent placement determination hearing must be held within six (6) months of a child's removal from the home if the child is under eight (8) years of age at the time the petition is filed. The requirements of Rule 34.03, subds. 3 and 4, are consistent with federal requirements regarding the timing of reasonable efforts determinations and permanency hearings.

RULE 35 ~~72~~. ADMISSION OR DENIAL

Rule 35.01 ~~72.01~~. Generally

Subd. 1. Parent or Legal Custodian.

(a) **Generally.** Unless the child's parent or legal custodian is the petitioner, a parent who is a party or a legal custodian shall admit or deny the statutory grounds set forth in the petition or remain silent. If the parent or legal custodian denies the statutory grounds set forth in the petition or remains silent, or if the court refuses to accept an admission, the court shall enter a denial of the petition on the record.

(b) **Termination of Parental Rights Matters.** In a termination of parental rights matter, only the parents of the child are required to admit or deny the petition. A party who is not required to admit or deny the petition may object to the admission if that party has filed a petition pursuant to Rule 33 ~~70~~.

(c) **Permanent Placement Matters.** In a permanent placement matter:

(1) only the legal custodian of the child is required to admit or deny the petition. A party who is not required to admit or deny the petition may object to the entry of the proposed permanent placement order if that party has filed a petition pursuant to Rule 33 ~~70~~.

(2) When the county attorney petitions for transfer of permanent legal and physical custody on behalf of a relative who is not represented by counsel, the court may not enter an order granting the transfer of custody unless there is testimony from the proposed custodian establishing that the proposed custodian understands:

(i) the legal consequences of a transfer of permanent legal and physical custody;

(ii) the nature and amount of financial support and services that will be available to help care for the child;

(iii) how the custody order can be modified; and

(iv) any other permanent placement options available for the subject child.

Subd. 2. Child.

(a) **Generally.** The child shall not admit or deny the petition.

(b) **Child's Behavior ~~Habitual Truant, Runaway, and Prostitution Matters~~.** In matters where the sole allegation is that the child's behavior is the basis for the petition, ~~cases where the child is alleged to be a habitual truant, a runaway, or engaged in prostitution,~~ the child shall admit or deny the statutory grounds set forth in the petition or remain silent.

Subd. 3. Contested Petition. Any party has the right to contest the basis of a petition filed by an individual who is not a county attorney or an agent of the commissioner of human services.

Rule 35.02 ~~72.02~~. Denial

Subd. 1. Denial Without Appearance. A written denial or a denial on the record of the statutory grounds set forth in a petition may be entered by counsel without the personal appearance of the person represented by counsel.

Subd. 2. Further Proceedings After Denial. When a denial by any party is entered, the court shall schedule further proceedings pursuant to Rule 36 ~~73~~ or Rule 39 ~~74~~.

Rule 35.03 ~~72.03~~. Admission

Subd. 1. Admission Under Oath. Any admission must be made under oath.

Subd. 2. Admission Without Appearance. Upon approval of the court, a written admission of the statutory grounds set forth in the petition, made under oath, may be entered by counsel without personal appearance of the person represented by counsel.

Subd. 3. Questioning of Person Making Admission.

(a) **Generally.** Before accepting an admission the court shall determine on the record or by written document signed by the person admitting and the person's counsel, if represented, whether:

(1) the person admitting acknowledges an understanding of:

(i) the nature of the statutory grounds set forth in the petition;

(ii) if unrepresented, the right to representation pursuant to Rule 25 ~~61~~;

(iii) the right to a trial;

(iv) the right to testify; and

(v) the right to subpoena witnesses; and

(2) the person admitting acknowledges an understanding that the facts being admitted establish the statutory grounds set forth in the petition.

(b) Child in Need of Protection or Services Matters, and Habitual Truant, Runaway, and Prostitution Matters. In addition to the questions set forth in subdivision 3(a), before accepting an admission in a child in need of protection or services matter or a matter alleging a child to be a habitual truant, a runaway, or engaged in prostitution, the court shall also determine on the record or by written document signed by the person admitting and the person's counsel, if represented, the following:

(1) whether the person admitting acknowledges an understanding that a possible effect of a finding that the statutory grounds are proved may be the transfer of legal custody of the child to another or termination of parental rights to the child; and

(2) whether the person admitting acknowledges an understanding that, if the child is not returned home, a hearing to determine the permanent placement of the child will be held within six (6) months of the date of the child's out-of-home placement if the child was under eight (8) years of age at the time of the filing of the petition, or within twelve (12) months of the date of the child's out-of-home placement if the child was eight (8) years or older at the time of the filing of the petition.

Subd. 4. Basis for Admission. The court shall refuse to accept an admission unless there is a factual basis for the admission.

(a) **Full Admission.** A party may admit all of the statutory grounds set forth in the petition.

(b) **Partial Admission.** Pursuant to a Rule 19 ~~55~~ settlement agreement, a person may admit some, but not all, of the statutory grounds set forth in the petition.

Subd. 5. Withdrawal of Admission. After filing a motion with the court:

(a) an admission may be withdrawn at any time upon a showing that withdrawal is necessary to correct a manifest injustice; or

(b) the court may allow a withdrawal of an admission before a finding on the petition for any fair and just reason.

Subd. 6. Acceptance or Non-Acceptance of Admission. At the time of the admission, the court shall make a finding that:

(a) the admission has been accepted and the statutory grounds admitted have been proved;

(b) the admission has been conditionally accepted pending the court's approval of a settlement agreement pursuant to Rule 19 ~~55~~; or

(c) the admission has not been accepted.

Subd. 7. Future Proceedings. If the court makes a finding that the admission is accepted and the statutory grounds admitted are proved, or that the admission is conditionally accepted pending the court's approval of a settlement agreement pursuant to Rule 19 ~~55~~, the court shall enter an order with respect to adjudication pursuant to Rule 40 ~~75~~ and proceed to disposition. If the court makes a finding that the admission has not been accepted, the court shall schedule further proceedings pursuant to Rule 36 ~~73~~ or Rule 39 ~~74~~.

RULE 36 ~~73~~. PRETRIAL CONFERENCE

Rule 36.01 ~~73.01~~. Timing

The court may convene a pretrial conference on its own motion or upon the motion of any party. Any pretrial conference shall take place at least ten (10) days prior to trial.

Rule 36.02 ~~73.02~~. Purpose

The purposes of a pretrial conference shall be to:

(a) determine whether a settlement of any or all of the issues has occurred or is possible;

(b) determine whether all parties have been served and, if not, review the efforts that have taken place to date to serve all parties;

(c) advise any child or the child's parent or legal custodian who appears in court and is unrepresented of the right to representation pursuant to Rule 25 ~~61~~. If counsel is appointed at the pretrial conference, the conference shall be reconvened at a later date;

(d) determine whether the child shall be present and testify at trial and, if so, under what circumstances;

(e) identify any unresolved discovery matters;

(f) resolve any pending pretrial motions;

(g) identify and narrow issues of law and fact for trial, including identification of:

(1) the factual allegations admitted or denied;

(2) the statutory grounds admitted or denied;

(3) any stipulations to foundation and relevance of documents; and

(4) any other stipulations, admissions, or denials;

(h) exchange witness lists and a brief summary of each witness' testimony;

(i) exchange exhibit lists;

(j) confirm the trial date and estimate the length of trial; and

(k) determine any other relevant issues.

The pretrial order shall specify all factual allegations and statutory grounds admitted and denied. From the date of the pretrial conference through the date of trial, the parties shall have a continuing obligation to update information provided during the pretrial conference.

1999 Advisory Committee Comment

Rule 36.02(d) ~~73.02(d)~~ addresses the need to determine whether the child will testify. The intent of the rule is to provide that an order protecting the child from testifying or placing conditions on the child's testimony can only be made after notice of motion and a hearing. The Committee intends that any such motion be heard and resolved at the pretrial conference.

RULE 37. CASE PLANS

Rule 37.01. Case Plans and Reports Generally

When the responsible social services agency is the petitioner, the agency shall file with the court and provide to the parties and foster parent a case plan for the child and the parents or legal custodians, as appropriate. A case plan shall be prepared according to the requirements of Minnesota Statutes § 245.4871, subds. 19 or 21; § 245.492, subd. 16; § 256B.092; § 256E.08; § 260C.212, subd. 1; or § 626.556, subd. 10, whichever is applicable.

Rule 37.02. Child in Court-Ordered Out-of-Home Placement: Out-of-Home Placement Plan

Subd. 1. Plan Required. When a child is placed out of the care of a parent or legal custodian by court order, the responsible social services agency shall file with the court and provide to the parents and foster parents the out-of-home placement plan required under Minnesota Statutes § 260C.212, subd. 1.

Subd. 2. Timing. The out-of-home placement plan shall be filed with the court within thirty (30) days of the filing of the petition alleging the child to be in need of protection services.

Subd. 3. Content. The out-of-home placement plan shall include a statement about whether the parent, legal custodian, and child participated in the preparation of the plan. If a parent or legal custodian refuses to participate in the preparation of the plan, the information submitted with the plan shall describe the agency's efforts to solicit the parents' participation and describe the parents' response. The plan shall also include a statement about whether the child's guardian ad litem; the child's tribe, if the child is an Indian child; and the child's foster parent or representative of the residential facility have been consulted in the plan's preparation. The agency shall document whether the parent or legal custodian; the child, if appropriate; the child's tribe, if the child is an Indian child; and foster parents have received a copy of the plan.

Subd. 4. Procedure for Approving or Ordering Out-of-Home Placement Plan Prior to Disposition.

(a) Upon receipt of the out-of-home placement plan, together with the information about whether the parent or legal custodian; the child, if appropriate; the child's tribe, if the child is an Indian child; and the foster parents have received a copy of the plan, the court may approve the plan based upon the allegations contained in the petition. The court shall send written notice of the approval of the plan to all parties and the county attorney or may state such approval on

the record at a hearing after the plan has been filed with the court and provided to the parents and foster parents and the child, as appropriate.

(b) Upon notice and motion by a parent or child who agrees to comply with the terms of an out-of-home placement plan, the court may modify the plan and order the responsible social services agency to provide other or additional services for reunification, if reunification services are required, and the court determines the agency's plan inadequate under Minnesota Statutes § 260.012.

(c) Unless the parent agrees to the plan, the court may not order a parent to comply with the plan until there is a disposition ordered under Minnesota Statutes § 260C.201, subd. 1, and Rule 41. However, the court may find that the responsible social services agency had made reasonable efforts for reunification if the agency makes efforts to implement the terms of an out-of-home placement plan approved under this rule and Minnesota Statutes § 260C.178, subd. 7.

(d) When the out-of-home placement plan is either ordered or approved, a copy of the plan shall be incorporated into the order by reference. The plan need not be served with the order, unless the plan has been modified.

Subd. 5. Procedure for Ordering Out-of-Home Placement Plan at Disposition. Rule 41 governs the ordering of an Out-of-Home Placement Plan at the time of Disposition.

Rule 37.03. Child in Voluntary Out-of-Home Placement: Out-of-Home Placement Plan

Subd. 1. Child in Voluntary Placement Not Due Solely to Child's Disability.

(a) **Timing.** The out-of-home placement plan required under Minnesota Statutes § 260C.212, subd. 1, must be filed and served with the petition asking the court to review a voluntary placement of a child in placement when the placement is not due solely to the child's disability under Minnesota Statutes § 260C.141, subd. 2, and Rule 44.

(b) **Content.** The plan shall include a statement about whether the parent, legal custodian, and child participated in the preparation of the plan. The plan shall also include a statement about whether the child's guardian ad litem; the child's tribe, if the child is an Indian child; and the child's foster parent or representative of the residential facility have been consulted in the plan's preparation. The agency shall document whether the parent or legal custodian; the child, if appropriate; the child's tribe, if the child is an Indian child; and foster parents have received a copy of the plan.

Subd. 2. Child in Voluntary Placement Due Solely to Child's Disability.

(a) **Timing.** The out-of-home placement plan required under Minnesota Statutes § 260C.212, subd. 1, must be filed with the report or petition asking the court to review a voluntary placement of a child in placement when the placement is due solely to the child's disability, as defined in Minnesota Statutes § 260C.007, subd. 12 or 16, under Minnesota Statutes § 260C.141, subd. 2, and Rule 4.

(b) **Content.** The plan shall include a statement about whether the parent, legal custodian, and child participated in the preparation of the plan. The plan shall also include a statement about whether the child's guardian ad litem; the child's tribe, if the child is an Indian child; and the child's foster parent or representative of the residential facility have been consulted in the plan's preparation. The agency shall document whether the parent or legal custodian; the child, if appropriate; the child's tribe, if the child is an Indian child; and foster parents have received a copy of the plan.

Subd. 3. Procedure for Approving Out-of-Home Placement Plan for Child in Voluntary Placement. The court must consider the appropriateness of the out-of-home placement plan in determining whether the voluntary placement is in the best interests of the child as required under Rule 44.

Rule 37.04. Child Not in Out-of-Home Placement: Child Protective Services Case Plan

A responsible social services agency may file a petition alleging that the child is in need of protection or services seeking to ensure the provision of adequate child protective services as required under Minnesota Statutes § 626.556, subd. 10, and Minnesota Rule 9560.0028.

(a) **Timing.** When the child is not in out-of-home placement, the Child Protective Services Plan required under Minnesota Statutes § 626.556, subd. 10, and Minnesota Rule 9560.0028 shall be filed with the petition alleging the child in need of protection or services unless the responsible social services agency includes a statement in the petition explaining why it has not been possible to develop the plan which may include exigent circumstances or the non-cooperation of the child's parents or guardian.

(b) **Procedure for Ordering Child Protective Services Plan.** When the child is not in out-of-home placement or is not recommended to continue in out-of-home placement, but the court finds endangerment under Rule 30, the court may order the parties to comply with the provisions of the child protective services case plan as a condition of the child remaining in the care of the parent, guardian, or custodian. The court may also order the parties to comply with the provisions of the plan as part of a disposition under Rule 41. When the court orders a Child Protection Services Plan, a copy of the plan shall be attached to the court's order and incorporated into it by reference.

Rule 37.05. Child with Disability: Case Plan

If a child found to be in need of protection or services has a physical or mental disability and a case plan is required under Minnesota Statutes § 245.4871, subd. 19 or 21; § 245.492, subd. 16; § 256B.092; or § 256E.08, the plan shall be filed with the court to address the child's needs and services may be ordered provided to the child according to the provisions of Minnesota Statutes § 260C.201, subd. l(a)(3). When an Out-of-Home Placement Plan is required under Rule 37.02 or a Child Protective Services Plan is required under 37.04, the requirements of a plan under this paragraph may be included in such plans and need not be a separate document.

Rule 37. 06. Non-Child Protection Cases; Child Not in Out-of-Home Care

Subd. 1. Timing of Filing of Case Plan for Child under Protective Supervision, in Need of Special Care or Services, Allowed to Live Independently, or Who is a Runaway or Habitual Truant. When a petition is filed alleging a child to be in need of protection or services and no plan is required under Rule 37.02, 37.04, or 37.05, the responsible social services agency or other agency shall file a case plan designed to correct the conditions underlying the allegations that make the child in need of protection or services and may be based on the investigation and report required under subdivision 2. The case plan must be filed and served not later than five (5) days prior to the date of the disposition hearing.

Subd. 2. Predisposition Investigation and Report. Upon request of the court, the responsible social services agency or probation officer shall investigate the personal and family

history and environment of any minor coming within the jurisdiction of the court under Minnesota Statutes § 260C.101 and shall report its findings to the court. The court may order any minor coming within its jurisdiction to be examined by a duly qualified physician, psychiatrist, or psychologist appointed by the court, the cost of which shall be paid pursuant to Minnesota Statutes § 260C.331, subd. 1. The predisposition report shall be governed by Rule 41.

RULE 38. REPORTS TO THE COURT

Rule 38.01. Court Reports Generally

Subd. 1. Periodic Reports Required. After an out-of-home placement plan or case plan is approved or ordered by the court pursuant to Rule 36 or Rule 41, the responsible social services agency shall make periodic reports to the court regarding progress made on the plan. When the report relates to plans for siblings who are in out-of-home placement, the agency may combine information related to each child's plan into one report as long as the report addresses each child's individual needs and circumstances. The agency may also submit written information from collateral sources regarding assessments or the delivery of services in support of the report or as a supplement to the report.

Subd. 2. Content. The report shall include a statement certifying the content as true based upon information and belief and shall include the case caption, the date of the report, and the date of the hearing at which the report is to be considered.

Subd. 3. Timing of Reports. Periodic reports required under this Rule shall be filed with the court and served upon the parties not later than five (5) days prior to review hearings or as otherwise directed by the court.

Rule 38.02. Reports to the Court by the Responsible Social Services Agency – Child Ordered into Out-of-Home Placement

Subd. 1. Content. A report regarding an Out-of-Home Placement Plan shall include the following:

(a) **Identifying Information.** Identifying and baseline placement information regarding the child shall be included as follows:

(1) the child's name and date of birth and, in the case of an Indian child, the Tribe in which the child is enrolled or eligible for membership;

(2) the names of the child's parents or legal custodians;

(3_ the dates of birth of the child's parents who are minors;

(4) the date the child was first placed out of the care of the parent or legal custodian;

(5) the date the child was ordered placed out of the home of the parent or legal custodian;

(6) the total length of time the child has been in out-of-home care, including all cumulative time the child may have experienced within the previous five (5) years;

(7) the number of moves the child has experienced while in out-of-home care, including all moves during the previous five (5) years;

(8) if the child's placement has changed since the Out-of-Home Placement Plan was approved or ordered, a description of how the child's placement meets the child's best interests as set out in the modified Out-of-Home Placement Plan, or in the case of an Indian

child, whether the placement complies with placement preferences established in 25 U.S.C. § 1915; and

(9) when the child has siblings, the names and ages of the child's siblings, the residence or placement status of each sibling and, where appropriate, the efforts the agency has made to place the children together; and

(b) **Review of Out-of-Home Placement Plan.** As applicable, a description of:

(1) the agency's efforts to implement the Out-of-Home Placement Plan requirements;

(2) the parent's or legal custodian's compliance with the plan requirements;

(3) services provided to child;

(4) the child's adjustment in placement;

(5) visitation between the parents or legal custodian and the child and between the child and the siblings; and

(6) the agency's efforts to finalize adoption; and

(c) **Placement with Relatives.** At least once during the first six (6) months the child is in placement or until placement is made with a relative or the court finds the agency's efforts adequate under Minnesota Statutes § 260C.212, subd. 5, the report shall describe the efforts the agency has made to identify and notify relatives, or in the case of an Indian child the report shall describe how the placement complies with requirements of 25 U.S.C. § 1915; and

(d) **Independent Living Plan.** When the child is age 16 or older, the report shall include a description of the elements of the child's independent living plan and how the child is progressing on that plan; and

(e) **Recommendations**. The report shall include recommendations to the court for modification of the plan or for actions the parents or legal custodian must take to provide protection or services for the child.

Subd. 2. Reports Between Disposition Review Hearings. Once disposition has been ordered, the responsible social services agency, through the county attorney, may ask the court for orders related to meeting the safety, protection, and best interests of the child based on a sworn report that states the child's identifying and baseline placement information and the factual basis for the request including, where appropriate, other relevant reports or data. Such reports shall be filed with the court together with proof of service upon all parties. Any party may request a hearing regarding the agency's report. Pending hearing, if any, upon two day's actual notice and based upon the report the court may issue an order that is in the best interests of the child. Upon a finding that an emergency exists, the court may issue a temporary order that is in the best interests of the child.

Rule 38.03. Reports to the Court by Responsible Social Services Agency – Child Not in Out-of-Home Placement

The report regarding the case plan shall be a sworn statement, which may be on information and belief, and shall include the following:

(a) **Identifying Information.** Identifying information regarding the child shall be included as follows:

(1) the child's name and date of birth and, in the case of an Indian child, the Tribe in which the child is enrolled or eligible for membership;

(2) the names of the child's parents or legal custodians;

(3) the dates of birth of the child's parents who are minors;

(4) the child's residence and, if the child's residence has changed since the case plan was ordered, the date of the change;

(5) the date the case was most recently opened for services in the responsible social services agency;

(6) the date of all other case openings for this child or the child's siblings with the responsible social services agency and, if known, case openings for this child or the child's siblings with any other social services agency responsible for providing child welfare or child protection services to this child; in addition to the date of other case openings, the report should contain a brief description of the nature of the contact with the responsible or other social services agency; and

(b) **Review of Plan.** As applicable, a description of:

(1) the agency's efforts to implement the case plan;

(2) the parents' or legal custodian's and child's compliance with plan requirements; and

(3) the services provided to the child; and

(c) **Recommendations.** The report shall include recommendations to the court for modification of the plan or for actions the parent or legal custodian must take to provide adequate protection or services for the child.

Rule 38.04. Objections to Agency's Report or Recommendations

Any party objecting to the content or recommendations of the responsible agency's report may submit a written objection to the report. The objection shall be supported by a sworn statement of the party's factual basis for the objection and may state other or additional facts on information and belief and argument that the court should consider in making its determinations or orders. An objection may also be supported by reports from collateral service providers or assessors. Objections to the agency's report and recommendations may also be stated on the record as long as the court gives the agency a reasonable opportunity to respond to the party's objection.

Rule 38.05. Reports to the Court by Child's Guardian ad Litem

Subd. 1. Periodic Reports Required. The guardian ad litem for the child shall submit periodic written reports to the court which may be supplemented at or before the hearing either orally or in writing.

Subd. 2. Content. The report shall include a statement certifying the content as true based upon information and belief and shall include the following:

(a) the case caption;

(b) the date of the report;

(c) the date of the hearing at which the report is to be considered;

(d) the date the guardian ad litem was appointed by the court;

(e) a brief summary of the issues that brought the child and family into the court system;

(f) a list of the resources or persons contacted who provided information to the guardian ad litem since the date of the last court hearing;

(g) a list of the dates and types of contacts the guardian ad litem had with the child(ren) since the date of the last court hearing;

(h) a list of all documents relied upon when generating the court report;

(i) a summary of information gathered regarding the child and family since the date of the last hearing relevant to the pending hearing;

(j) a list of any issues of concern to the guardian ad litem about the child's or family's situation; and

(k) a list of recommendations designed to address the concerns and advocate for the best interests of the child.

Subd. 3. Timing of Reports. Except for an Emergency Protective Care Hearing for which no written report is required, reports required under this rule shall be filed with the court and served upon the parties not later than five (5) days prior to the hearing at which the report is to be considered or as otherwise directed by the court.

Subd. 4. Objections to Guardian Ad Litem's Report or Recommendations. Any party objecting to the content or recommendations of the guardian ad litem may submit a written objection to the report. The objection shall be supported by a sworn statement of the party's factual basis for the objection and may state other or additional facts on information and belief and argument that the court should consider in making its determinations or orders. An objection may also be supported by reports from collateral service providers or assessors. Objections to the guardian ad litem's report and recommendations may also be stated on the record as long as the court gives the guardian ad litem a reasonable opportunity to respond to the party's objection.

RULE 39 ~~74~~. TRIAL

Rule 39.01 ~~74.01~~. Generally

A trial is a hearing to determine whether the statutory grounds set forth in the petition are or are not proved.

Rule 39.02 ~~74.02~~. Timing

Subd. 1. Commencement of Trial.

(a) **Child in Need of Protection or Services Matters.** A trial regarding a child in need of protection or services matter shall commence within sixty (60) days from the date of the emergency protective care hearing or the date of the admit/deny hearing, whichever is earlier.

(b) **Permanent Placement Matters.** A trial regarding a permanent placement matter not involving a termination of parental rights matter shall commence on or before the three hundred and sixty-fifth (365^{th}) day after the child is ordered out of the care of the parent. In the case of a child under eight (8) years of age at the time the child in need of protection or services petition is filed, a permanent placement determination hearing shall commence on or before the one hundred and eightieth (180^{th}) day after the child is ordered out of the care of the parent. If the responsible ~~local~~ social services agency demonstrates at this hearing that the parent is not complying with the case plan or visiting the child and that the permanency plan for the child is transfer of permanent legal and physical custody to a relative or termination of parental rights, a petition supporting the plan shall be filed in juvenile court within thirty (30) days of the hearing under this paragraph and a trial on the petition shall be held within thirty (30) days of the filing of a petition in the case of a transfer of legal custody or within ninety (90) days in the case of a petition for termination of parental rights.

(c) **Termination of Parental Rights Matters.** A trial regarding a termination of parental rights matter shall commence within ninety (90) days from the date of the filing of the petition ~~admit/deny hearing~~.

(d) **Simultaneous Criminal Proceedings.** If criminal charges have been filed against a parent arising out of conduct alleged to constitute egregious harm, the county attorney shall determine whether the criminal matter or the juvenile court matter should proceed to trial first, consistent with the best interests of the child and subject to the defendant's right to a speedy trial.

(e) **Sufficient Time.** The court shall set aside sufficient time to avoid interruption of the trial.

Subd. 2. Continuance.

(a) **Generally.** The court may, either on its own motion or upon motion of a party or the county attorney, continue a trial to a later date upon written findings or oral findings made on the record that a continuance is necessary for the protection of the child, for accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown, so long as the permanency time requirements set forth in these rules are not delayed.

(b) **Child in Need of Protection or Services Matters and Termination of Parental Rights Matters.** In child in need of protection or services matters and termination of parental rights matters, a trial may not be continued or adjourned for more than one (1) week unless the court makes specific findings that the continuance or adjournment is in the best interests of the child. In any event, the trial shall be commenced and completed within ninety (90) days of the denial of the statutory grounds.

Subd. 3. Effect of Mistrial; Order for New Trial. Upon a declaration of a mistrial, or an order of the trial court or a reviewing court granting a new trial, a new trial shall be commenced within thirty (30) days of the order.

Rule 39.03 ~~74.03~~. Procedure

Subd. 1. Initial Procedure. At the beginning of the trial the court shall on the record:

(a) verify the name, age, race, and current address of the child who is the subject of the matter, unless stating the address would endanger the child or seriously risk disruption of the current placement;

(b) inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe has been notified;

(c) determine whether all parties are present and identify those present for the record;

(d) determine whether any child or the child's parent or legal custodian is present without counsel and, if so, explain the right to representation pursuant to Rule 25 ~~61~~;

(e) determine whether notice requirements have been met and, if not, whether the affected person waives notice;

(f) if the child who is a party or the child's parent or legal custodian appears without counsel, explain basic trial rights;

(g) determine whether the child and the child's parent or legal custodian understand the statutory grounds and the factual allegations set forth in the petition and, if not, provide an explanation; and

(h) explain the purpose of the hearing and the possible transfer of custody of the child from the parent or legal custodian to another when such transfer is permitted by law and the permanency requirements of Minnesota Statutes § 260C.201, subd. 11.

Subd. 2. Conduct and Procedure.

(a) **Trial Rights.** The parties and the county attorney shall have the right to:

(1) present evidence;

(2) present witnesses;

(3) cross-examine witnesses;

(4) present arguments in support of or against the statutory grounds set forth in the petition; and

(v) ask the court to order that witnesses be sequestered.

(b) **Trial Procedure.** The trial shall proceed as follows:

(1) the party that drafted and filed the petition pursuant to Rule 33 ~~70~~ may make an opening statement confining the statement to the facts expected to be proved;

(2) the other parties, in order determined by the court, may make an opening statement or may make a statement immediately before offering evidence, and the statement shall be confined to the facts expected to be proved;

(3) the party that drafted and filed the petition pursuant to Rule 33 ~~70~~ shall offer evidence in support of the petition;

(4) the other parties, in order determined by the court, may offer evidence;

(5) the party that drafted and filed the petition pursuant to Rule 33 ~~70~~ may offer evidence in rebuttal;

(6) the other parties, in order determined by the court, may offer evidence in rebuttal;

(7) when evidence is presented, other parties may, in order determined by the court, cross-examine witnesses;

(8) at the conclusion of the evidence the parties, other than the party that drafted and filed the petition pursuant to Rule 33 ~~70~~, in order determined by the court, may make a closing statement;

(9) the party that drafted and filed the petition pursuant to Rule 33 ~~70~~ may make a closing statement; and

(10) if written argument is to be submitted, it shall be submitted within fifteen (15) days of the conclusion of testimony, and the trial is not considered completed until the time for written arguments to be submitted has expired.

Rule 39.04 ~~74.04~~. Standard of Proof

Subd. 1. Generally. To be proved at trial, the statutory grounds set forth in the petition must be proved by clear and convincing evidence.

Subd. 2. Indian Child.

(a) **Foster Care Placement.** In the case of an Indian child, no foster care placement may be ordered in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, as defined in Minnesota Rules parts 9560.0221 and 9560.0500 to 9560.0670, that the continued custody of the child by the parent or legal

custodian or Indian custodian is likely to result in serious emotional or physical damage to the child.

(b) **Termination of Parental Rights.** In the case of an Indian child, no termination of parental rights may be ordered in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, as defined in Minnesota Rules parts 9560.0221 and 9560.0500 to 9560.0670, that the continued custody of the child by the parent or legal custodian or Indian custodian is likely to result in serious emotional or physical damage to the child.

1999 Advisory Committee Comment

In *In Re the Matter of M.S.S.,* 465 N.W.2d 412 (Minn. Ct. App. 1991), the court held that the parental rights to an Indian child may not be terminated unless the county proves beyond a reasonable doubt that it has complied with section 1912(f) of the Indian Child Welfare Act, 25 U.S.C. § 1901 *et. seq.*, requiring the county to make active efforts to prevent or avoid placement.

Rule 39.05 ~~74.05~~. Decision

Subd. 1. Generally. Within fifteen (15) days of the conclusion of the trial, the court shall make a finding and issue an order regarding whether the statutory grounds set forth in the petition have or have not been proved. For good cause, the court may extend this period for an additional fifteen (15) days. The trial is not considered completed until written arguments, if any, are submitted or the time for submission of written arguments has expired. The court shall dismiss the petition if the statutory grounds have not been proved.

Subd. 2. Child in Need of Protection or Services Matters and Habitual Truant, Runaway, and Prostitution Matters. The court shall issue its findings and order concerning adjudication within fifteen (15) days of the date that the trial is completed. If written argument is to be submitted, such argument must be submitted within fifteen (15) days of the conclusion of testimony. For good cause, the court may extend this period for an additional fifteen (15) days. The trial is not considered completed until written arguments, if any, are submitted or the time for submission of written arguments has expired. If the court makes a finding that the statutory grounds set forth in the petition have been proved, the court shall schedule the matter for further proceedings pursuant to Rule 40 ~~75~~. The findings and order shall be filed with the court administrator who shall proceed pursuant to Rule 10 ~~46~~.

Subd. 3. Termination of Parental Rights Matters.

(a) **Generally.** Within fifteen (15) days of the conclusion of the trial, the court shall make a finding that the statutory grounds set forth in the petition have or have not been proved. If the court finds that the statutory grounds set forth in the petition are not proved, the court shall dismiss the petition or determine that the child is in need of protection or services and schedule further proceedings pursuant to Rule 40 ~~75~~. If the court finds that the statutory grounds set forth in the petition are proved, the court may ~~shall~~ terminate parental rights. The findings and order shall be filed with the court administrator who shall proceed pursuant to Rule 10 ~~46~~.

(b) **Particularized Findings.** The court may not enter an order terminating parental rights unless it finds that the statutory grounds have been proved by the applicable standard of proof and one of the following:

(1) **Reasonable Efforts and Remedial Services.** In any termination of parental rights matter, the court shall make specific findings regarding the nature and extent of efforts made by the responsible social services agency to rehabilitate the parent and reunite the family, including, where applicable, a statement that:

(i) reasonable efforts are not required because the facts demonstrate that the parent has subjected the child to egregious harm;

(ii) the provision of services or further services for the purpose of rehabilitation and reunification is futile and therefore unreasonable under the circumstances; or

(iii) reasonable efforts at reunification are not required as provided under Minnesota Statutes § 260.012.

(2) **Active Efforts – Indian Child.** In any termination of parental rights proceeding involving an Indian child, the court shall make specific findings that the petitioner has proven beyond a reasonable doubt that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(c) **Case Caption Following Termination of Parental Rights.** Any order terminating parental rights shall include a provision that the case caption on future pleadings, reports, orders, or other documents filed shall be captioned as follows: "In Re the Child in the Custody of the Commissioner of Human Services."

Subd. 4. Permanent Placement Matters. The court shall issue its decision regarding permanency consistent with Rule 42 ~~77~~.

RULE 40 ~~75~~. ADJUDICATION

Rule 40.01 ~~75.01~~. Adjudication

If the court makes a finding that the statutory grounds set forth in a petition alleging a child to be in need of protection or services are proved, the court shall:

(a) adjudicate the child as in need of protection or services and proceed to disposition pursuant to Rule 41 ~~76~~; or

(b) withhold adjudication of the child pursuant to Rule 40.02 ~~75.02~~.

Rule 40.02 ~~75.02~~. Withholding Adjudication

Subd. 1. Generally. When it is in the best interests of the child to do so, the court may withhold an adjudication that the child is in need of protection or services. The court may withhold adjudication for a period not to exceed ninety (90) days from the finding that the statutory grounds set forth in the petition have been proved. During the withholding of an adjudication, the court may enter a disposition order pursuant to Rule 41 ~~76~~.

Subd. 2. Further Proceedings. At a hearing, which shall be held within ninety (90) days following the court's withholding of adjudication, the court shall either:

(a) dismiss the matter without an adjudication if both the child and the child's legal custodian have complied with the terms of the continuance; or

(b) adjudicate the child in need of protection or services if either the child or the child's legal custodian has not complied with the terms of the continuance. If the court enters an adjudication, the court shall proceed to disposition pursuant to Rule 41 ~~76~~.

RULE 41 ~~76~~. DISPOSITION

Rule 41.01 ~~76.01~~. Disposition

After an adjudication that a child is in need of protection or services pursuant to Rule 40 ~~75~~, the court shall conduct a hearing to determine disposition. Dispositions in regard to review of voluntary out-of-home placement matters shall be pursuant to Minnesota Statutes § 260C.205 and § 127A.47.

Rule 41.02 ~~76.02~~. Timing

To the extent practicable, the court shall conduct a disposition hearing and enter a disposition order the same day it makes a finding that the statutory grounds set forth in the petition have been proved. The disposition order must be issued within ten (10) days of the date the court finds that the statutory grounds set forth in the petition have been proved.

Rule 41.03 ~~76.03~~. Pre-Disposition Reports

Subd. 1. Investigations and Evaluations. At any time after the court accepts or conditionally accepts an admission pursuant to Rule 35 ~~72~~ or finds that the statutory grounds set forth in the petition have been proved, the court may, upon its own motion or the motion of a party or the county attorney, order a pre-disposition report which may include:

(a) an investigation of the personal and family history and environment of the child;

(b) medical, psychological, or chemical dependency evaluations of the child and any parent who is a party; and

(c) information regarding the factors set forth in Rule 41.05 ~~76.05~~.

Subd. 2. Advisory. The court shall advise the persons present in court that a pre-disposition investigation is being ordered, the nature of the evaluations to be included, the date when the reports resulting from the investigation are to be filed with the court, and the right of each party to present opposing evidence and reports.

Subd. 3. Filing and Inspection of Pre-Disposition Reports. The person who intends to offer the pre-disposition report shall file the report with the court and serve the report on all parties at least forty-eight (48) hours prior to the time scheduled for the hearing. When the child or the child's parent or legal custodian is not represented by counsel, the court may limit the inspection of reports by the child or the child's parent and legal custodian if the court determines it is in the best interests of the child. Any party or the person making the pre-disposition report may by motion request a protective order limiting the release of confidential or sensitive information contained in the report.

Subd. 4. Discussion of Contents of Reports. The person making the pre-disposition report may discuss the contents of the report with all parties and the county attorney.

Subd. 5. Discussion of Content of Report - Limitation by Court. The court may upon a showing of good cause limit the extent of the discussion of the contents of the pre-disposition report with the parties if the court finds the limitation to be in the best interests of the child. The limitation may be made:

(a) on the court's own motion; or

(b) upon the written or on-the-record motion of a party, the county attorney, or the person making the pre-disposition report.

Rule 41.04 ~~76.04~~. Procedure; Evidence

Disposition hearings shall be conducted in an informal manner designed to facilitate the opportunity for all parties to be heard.

The court may admit any evidence, including reliable hearsay and opinion evidence, which is relevant to the disposition of the matter. Privileged communications may be admitted in accordance with Minnesota Statutes § 626.556, subd. 8.

Rule 41.05 ~~76.05~~. Disposition Order

Subd. 1. Findings. The disposition order shall contain written findings of fact to support the disposition ordered and shall also set forth in writing the following information:

(a) a statement explaining how the disposition serves the best interests and safety of the child;

(b) a statement of all alternative dispositions or services under the case plan considered by the court and why such dispositions or services are not appropriate ~~for the child~~ in the instant case;

(c) if the disposition is out-of-home placement through legal custody to a responsible social services agency, ~~how the court's disposition will serve the child's needs in~~ a statement reviewing the agency's use of the factors set out below in making the child's placement. Among the factors to be considered in determining the needs of the child are:

(1) the child's current functioning and behaviors;

(2) the medical, educational, and developmental needs of the child;

(3) the child's history and past experience;

(4) the child's religious and cultural needs;

(5) the child's connection with a community, school, and faith community;

(6) the child's interests and talents;

(7) the child's relationship to current caretakers, parents, siblings, and relatives; and

(8) reasonable preference of the child, if the court deems the child to be of sufficient age to express a preference; and

(d) ~~(9)~~ a brief description of the efforts made to prevent or eliminate the need for removal of the child from home and to reunify the family after removal, and why further efforts could not have prevented or eliminated the necessity of removal or that reasonable efforts were not required under Minnesota Statutes § 260.012 or § 260C.178, subd. 1.

The court may authorize or continue an award of legal custody to the responsible ~~local~~ social services agency despite a finding that the agency's preventive or reunification efforts have not been reasonable if the court finds that further preventive or reunification efforts could not permit the child to safely remain at home.

If the child has been identified by the responsible social services agency as the subject of concurrent permanency planning, the court shall review and make findings regarding the reasonable efforts of the agency to recruit, identify, and make a placement with a foster parent or

relative who has committed to providing the legally permanent home for the child in the event reunification efforts are not successful.

Subd. 2. Content.

(a) Mandatory Provisions. The court shall enter an order making one or more of the following dispositions for the child:

(1) place the child under the protective supervision of the ~~local~~ responsible services agency or child-placing agency in the ~~child's own~~ home of a parent or legal custodian under conditions directed to correction of the child's need for protection or services;

(i) order the child into the home of a parent who does not otherwise have legal custody of the child, however, an order under this section does not confer legal custody on that parent;

(ii) if the court orders the child into the home of a father who is not adjudicated, the order shall require the alleged or presumed father to cooperate with paternity establishment proceedings regarding the child in the appropriate jurisdiction as one of the conditions prescribed by the court for the child to continue in his home;

(iii) the court may order the child into the home of a noncustodial parent with conditions and may also order both the noncustodial and the custodial parent to comply with the requirements of a case plan under subdivision 2;

(2) transfer legal custody to a child-placing agency or the responsible ~~local~~ social services agency for placement in foster care;

(3) in the case of a child who needs special treatment and care for reasons of physical or mental health when the child's parent~~, guardian,~~ or legal custodian is unable to provide the treatment or care, order that the treatment and care be provided; or

(4) allow a child 16 years old or older to live independently under appropriate supervision, if the court determines that the child has sufficient maturity and judgment, and the responsible ~~local~~ social services agency after consultation with the court has specifically authorized this alternative.

(b) **Additional Provisions.** As part of the disposition order the court shall also:

(1) ~~set reasonable rules for~~ approve or modify the plan for supervised or unsupervised visitation for the child's parent or legal custodian, ~~and for an individual who is related to the child by blood, marriage or adoption or is an important friend with whom the child has resided or had significant contact~~ relatives, and siblings of the child, if siblings are not in out-of-home placement together, as set out in the out-of-home placement plan; the court may set reasonable rules for visitation that contribute to the objectives of the court order and the maintenance of the familial relationship; the court may deny visitation when visitation would act to prevent the achievement of the court's disposition order or would endanger the child's physical or emotional well-being;

(2) review the case plan, make modifications supported by the evidence~~, and incorporate the plan into the disposition order~~ if appropriate, and approve the plan;

(3) order all parties to comply with the approved case plan;

(4) incorporate into the order by reference the approved case plan and attach a copy of the plan only if it has been modified;

(5) give notice to the parent on the record and in writing of the requirements of Minnesota Statutes § 260C.201, subds. 11 and 11a; and

(6) ~~(3)~~ set the date and time for the permanency placement determination hearing pursuant to Rule 42~~-77~~.

(c) **Habitual Truant~~,~~ and Runaway~~, and Prostitution~~ Matters.** If the child is adjudicated in need of protection or services because the child is a habitual truant~~,~~ or a runaway, ~~or engaged in prostitution,~~ the court may order any of the following dispositions in addition to or as alternatives to the dispositions ordered under subdivisions (a) and (b):

(1) counseling for the child or the child's parent or legal custodian;

(2) place the child under the supervision of a probation officer or other suitable person in the child's own home under conditions prescribed by the court, including reasonable rules for the child's conduct and the conduct of the parent or legal custodian designed for the physical, mental, and moral well-being and behavior of the child;

(3) with the consent of the commissioner of corrections, place the child in a group foster care facility that is under the commissioner's management and supervision;

(4) subject to the court's supervision, transfer legal custody of the child to one of the following:

(i) a reputable person of good moral character; or

(ii) a county probation officer for placement in a group foster home established under the direction of the juvenile court and licensed pursuant to Minnesota Statutes § 241.021;

(5) require the child to pay a fine of up to $100, to be paid in a manner that will not impose undue financial hardship upon the child;

(6) require the child to participate in a community service project;

(7) order the child to undergo a chemical dependency evaluation and, if warranted by the evaluation, order participation by the child in a drug awareness program or an inpatient or outpatient chemical dependency treatment program;

(8) order the commissioner of public safety to cancel the child's driver's license or permit or, for a child who does not have a driver's license or permit, order a denial of driving privileges for any period up to the child's 18th birthday; or

(9) order the child's parent or legal custodian to deliver the child to school at the beginning of each school day for a period of time specified by the court.

Rule 41.06~~-76.06~~. Hearings to Review Disposition

Subd. 1. Timing. When disposition is an award of legal custody to the ~~local~~ responsible social services agency, the court shall review the disposition in court at least every ninety (90) days. Any party or the county attorney may request a review hearing before ninety (90) days. When the disposition is protective supervision, the court shall review the disposition in court at least every six (6) months from the date of disposition.

Subd. 2. Procedure in Reviewing Disposition.

(a) Legal Custody to Agency. When disposition is legal custody to the responsible social services agency, the court shall conduct a hearing at least every 90 days to review whether out-of-home placement is necessary and continues to be appropriate or whether the child should be returned home. The review shall include the following:

(1) whether the out-of-home placement plan is relevant to the safety and best interests of the child;

(2) whether the agency is making reasonable or, in the case of an Indian child, active efforts to implement the requirements of the out-of-home placement plan;

(3) the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement;

(4) whether the parents or legal custodian of the child are visiting the child and, if not, what barriers exist to visitation;

(5) whether the child is receiving appropriate services under the Out-of-Home Placement Plan;

(6) when a child has siblings in out-of-home placement:

i. whether the child resides with the siblings;

ii. when the child and siblings are not placed together, whether further efforts are appropriate to place the siblings together; and

iii. when the child and siblings are not placed together, whether there is visitation amongst siblings;

(7) when a child is not placed with a relative, whether the agency's efforts under Minnesota Statute § 260C.212, subd. 5, are adequate; in the case of an Indian child, whether the placement preferences of 25 U.S.C. 1915 are met;

(8) when the agency is utilizing concurrent permanency planning, the agency's efforts to place the child with a relative or a foster parent who has committed to providing the child's legally permanent home in the event reunification efforts are not successful; and

(9) whether the parent or legal custodian understands the requirements of Minnesota Statutes § 260C.201, subd. 11, related to the required permanency placement determination hearing including the projected date by which the child will be returned home or the hearing will be held.

(b) Protective Supervision. When the disposition is protective supervision of the child in the home of a parent, the court shall conduct a hearing at least every six (6) months to review:

(1) whether the agency has submitted a case plan for the parents or legal custodian and child as required under Rule 37;

(2) after the agency has submitted a plan to the court as required under Rule 37, whether the plan continues to be relevant to the safety and best interests of the child;

(3) whether the agency is making appropriate efforts to implement the plan;

(4) whether the agency, child's attorney and the guardian ad litem have reasonable access to the child to determine the child's safety, health, and well-being;

(5) whether the parents or legal custodian are able to utilize the services set out in the plan to correct the conditions which led to the court's determination that the child is in need of protection or services, and if not, what other services might be appropriate; and

(6) whether the child is receiving necessary services identified in the plan and whether those services are meeting the best interests of the child.

Subd. 3 ~~2~~. Procedure. Any party or the county attorney may seek modification of a disposition order by motion made pursuant to Rule 15 ~~51~~. The motion may be heard at the scheduled review hearing or at an earlier date or may be considered by the court without hearing if no party objects.

Subd. 4 ~~3~~. Modification of Disposition or Case Plan.

(a) **Agreement.** The court, on its own motion or that of any party, may modify the disposition or order the case plan modified when all parties agree the modification is in the best interests of the child and:

(1 ~~a~~) a change of circumstances requires a change in the disposition or modification of the case plan; or

(2 ~~b~~) the original disposition or case plan is inappropriate.

(b) **Objection.** If a party objects to a proposed modification, or if the child does not have a guardian ad litem at the time the motion is made, the court shall schedule a hearing for the next available date. A party has a right to request a court review of the reasonableness of the case plan upon a showing of a substantial change in circumstances. The court may also:

(1) order the agency to make further efforts to identify and place a child with a relative if the court finds the agency has failed to perform duties required under Minnesota Statutes § 260C.212, subds. 2 and 5; or

(2) find that the agency has performed required duties under Minnesota Statutes § 260C.212, subdivision 5, and no further efforts to locate relatives are required; or

(3) in the case of an Indian child, unless good cause is found under 25 U.S. C. § 1915, order the agency to make additional efforts to comply with the placement preferences of 25 U.S.C. § 1915.

Subd. 5 ~~4~~. Notice. Notice of the review hearing shall be given to all parties and participants.

Subd. 6 ~~5~~. Procedure. Review hearings shall be conducted pursuant to Rule 41.04 ~~76.04~~.

Subd. 7 ~~6~~. Findings and Order. In the event the disposition is modified, the court shall issue a disposition order in accordance with Rule 41.05 ~~76.05~~.

RULE 42~~77~~. PERMANENT PLACEMENT MATTERS

Rule 42.01 ~~77.01~~. Timing and Purpose

Subd. 1. Timing. The court in its disposition order shall set the date or deadline for the permanent placement determination hearing. Not later than when the court sets the date or deadline for the permanent placement determination hearing, the court shall notify the parties and participants of the following requirements of Minnesota Statutes § 260C.201, subd. 11:

(a) **Requirement of Six (6) Month Hearing for Child Under Eight (8) Years of Age.** For a child under eight (8) years of age at the time a petition is filed alleging the child to be in need of protection or services, unless a termination of parental rights petition has been filed, the court shall conduct a hearing to ~~determine the permanent status of a child~~ review the progress of the case, the parent's progress on the out-of-home placement plan, and the provision of services not later than six (6) months after the child is placed out of the home of the parent.

(b) **Requirement of Twelve (12) Month Hearing for Child Eight (8) Years of Age or Older.** ~~For a child eight (8) years of age or older at the time a petition is filed alleging the child to be in need of protection or services, unless~~ Unless a termination of parental rights petition has been filed, the court shall conduct a hearing to determine the permanent status of a child not later than twelve (12) months after the child is placed out of the home of the parent.

Subd. 2. Purpose.

(a) **Child Eight (8) Years of Age and Older.** The purpose of the permanent placement determination hearing is to review the progress of the case and the case plan, including the services provided by the responsible ~~local~~ social services agency. The court shall determine whether the child shall be returned home or, if not, order permanent placement consistent with the child's best interests.

(b) **Child Under Eight (8) Years of Age.** The court shall determine whether the child shall be returned home or, if not, determine whether

(1) the parents or legal custodian have maintained regular contact with the child, the parents are complying with the court-ordered case plan, and the child would benefit from continuing this relationship;

(2) grounds for termination of parental rights do not exist; or

(3) the permanent plan for the child is transfer of permanent legal and physical custody to a relative.

1999 Advisory Committee Comment

Rule 42.01 ~~77.01~~ is consistent with Minnesota Statutes § 260C.201, subd. 11, which became effective July 1, 1999. The statute provides that a permanent placement determination hearing must be held within six months of a child's removal from the home if the child is under eight (8) years of age at the time the petition is filed or within twelve (12) months of the child's removal if the child is eight (8) years of age or older at the time the petition is filed.

Rule 42.02 ~~77.02~~. Calculating Time Period

The child shall be considered placed out of the care of the parent at the earlier of:

(a) the date the child's placement out of the care of the parent was ordered by the court; or

(b) sixty (60) days after the date on which the child has been voluntarily placed out of the home as a result of a voluntary placement agreement between the parents and the responsible ~~local~~ social services agency.

Rule 42.03 ~~77.03~~. Cumulation of Out-of-Home Placement Time

The time period requiring court review of the permanent status of the child shall be calculated as follows:

(a) during the pendency of a petition alleging a child to be in need of protection or services, all time periods when a child is placed out of the home of the parent are cumulated; and

(b) if a child has been placed out of the home of the parent within the previous five years under one or more previous petitions, the lengths of all prior time periods when the child was placed out of the home within the previous five years. If a child under this clause has been out of the home for twelve (12) months or more, the court, if it is in the best interests of the child and for compelling reasons, may extend the total time the child may continue out of the home under the current petition up to an additional six (6) months before making a permanency determination.

Rule 42.04 ~~77.04~~. Procedures for Permanent Placement Hearing

Subd. 1. Child Under Eight (8) Years of Age. The following procedures govern a permanent placement determination hearing for a child under the age of eight (8) at the time the petition was filed alleging the child to be in need of protection or services:

(a) **Written Report.** Not later than ten (10) days prior to the hearing, the county attorney must file with the court and serve upon the parties a written report prepared by the responsible ~~local~~ social services agency describing the progress of the case and the case plan including the services provided to the parents. This requirement may be fulfilled by filing either a petition to transfer permanent legal and physical custody of the child to a relative or a petition to terminate parental rights.

(b) **Termination of Parental Rights.**

(1) **Order to Show Cause.** The court may order the responsible ~~local~~ social services agency to show cause why it should not file a termination of parental rights petition. If the court determines that the responsible ~~local~~ social services agency has not shown cause why it should not file a termination of parental rights petition, the court may order the agency to file such a petition within thirty (30) days of the date of the hearing pursuant to Rule 33.01 ~~70.01~~.

(2) **Agency Determination**. If the permanent placement plan is to terminate parental rights, unless the social services agency has already filed a petition to terminate parental rights, a petition supporting such a plan shall be filed within thirty (30) days of the hearing and the case will proceed according to Rule 33.01 ~~70.01~~.

(c) **Transfer of Permanent Legal and Physical Custody to a Relative.** If the court determines that the appropriate permanent placement plan for the child is transfer of permanent legal and physical custody to a relative, the court shall order such a petition be filed within thirty (30) days of the date of the hearing and a trial on the matter held within 30 days of the filing of the petition.

(d) **Extension of Time.** If the court determines that the parent is making sufficient progress on the case plan and is visiting the child, or if the court determines the responsible ~~local~~ social services agency has not provided appropriate services to the parent, the court may extend the time for a permanency determination for up to a total of six (6) additional months.

Subd. 2. Child Eight (8) Years of Age or Older or a Child Under Age Eight (8) for Whom Permanency Has Not Been Ordered. Unless the responsible ~~local~~ social services agency recommends return of the child to the custodial parent or parents, not later than thirty (30) days prior to this hearing, the responsible ~~local~~ social services agency shall file pleadings to establish the basis of the juvenile court to order permanent placement of the child according to Rule 42.05 ~~77.05~~.

Rule 42.05 ~~77.05~~. Permanent Placement Order

Subd. 1. Timing. Within fifteen (15) days of the close of the permanent placement hearing the court shall issue a permanent placement order. The court may extend this period for an additional fifteen (15) days if the court finds that an extension of time is required in the interests of justice and the best interests of the child. The order shall be filed with the court administrator who shall proceed pursuant to Rule 10 ~~46~~.

Subd. 2. Order.

(a) **Return Child Home.** If the court orders the child to be returned to the care of a parent, the court may enter or continue a prior finding that the child is in need of protection or services and may order conditions directed to correction of the child's need for protection or services.

(b) **Transfer of Permanent Legal and Physical Custody.** If the court transfers permanent legal and physical custody to a relative, juvenile court jurisdiction is terminated unless specifically retained by the court in its order. The court may maintain jurisdiction over the responsible social services agency, the parents or legal custodian of the child, the child, and the permanent legal and physical custodian for purposes of ensuring that appropriate services are delivered to the child and permanent legal custodian or for the purpose of ensuring that conditions ordered by the court related to the care and custody of the child are met. The court may order further in-court hearings at such intervals as it determines to be in the best interests of the child. When juvenile court jurisdiction is terminated, the court shall include an order directing the juvenile court administrator to file the order with the family court. Any further proceedings shall be brought in the family court pursuant to Minnesota Statutes § 518.18. Notice of any family court proceedings shall be provided to the responsible ~~local~~ social services agency.

(c) **Termination of Parental Rights.** Unless the responsible ~~local~~ social services agency has already filed a termination of parental rights petition, the court may order such a petition be filed pursuant to Rule 33.01 ~~70.01~~.

(d) **Guardianship and Legal Custody to the Commissioner of Human Services**. The court may award guardianship and legal custody the to commissioner of human services under the following procedures and conditions:

(1) there is an identified prospective adoptive home that has agreed to adopt the child and the court accepts the parent's voluntary consent to adopt under Minnesota Statutes § 259.24;

(2) the matter is reviewed in court at least every ninety (90) days under the requirements of Rule 78 as if a termination of parental rights had occurred; and

(3) the court forwards to the Commissioner of Human Services a copy of the consent to adopt, together with a certified copy of the order transferring guardianship and legal custody to the commissioner.

(e) **Long-term Foster Care.**

(1) The court may only order long term foster care if it finds compelling reasons that neither an award of permanent legal and physical custody to a relative, nor termination of parental rights, is in the child's best interests and all of the requirements of Minnesota Statutes § 260C.201, subd. 11, are met.

(2) If the court orders long-term foster care, the court shall order such further in-court review as it determines appropriate or in the best interests of the child but in any event at least every twelve (12) months from the date of the permanency hearing.

(3) If the long-term foster care placement disrupts, the responsible ~~local~~ social services agency shall return to court within ten (10) days for further review of the permanent status of the child.

(4) A parent may only seek modification of an order for long-term foster care ~~is reviewable~~ upon motion and a showing by the parent of a substantial change in the parent's circumstances such that the parent could provide appropriate care of the child and that removal

of the child from the child's permanent placement and return to the parent's care would be in the best interests of the child.

(f) **Foster Care for a Specified Period of Time.**

(1) The court may only order foster care for a specified period of time if it finds compelling reasons that neither an award of permanent legal and physical custody to a relative, nor termination of parental rights, is in the child's best interests and all of the requirements of Minnesota Statutes § 260C.201, subd. 11, are met.

(2) If the court orders foster care for a specified period of time, the court shall order in-court review hearings at least annually or a such shorter intervals ~~time and manner~~ as will serve the child's best interests.

(g) **Continued Reviews for Long-term Foster Care and for Foster Care for a Specified Period of Time.** Court reviews of an order for long-term foster care or foster care for a specified period of time must be conducted at least yearly and must review the child's out-of-home placement plan and the reasonable efforts of the agency to:

(1) identify a specific long-term foster home for the child while out of the care of the parent, if one has not already been identified;

(2) support continued placement of the child in the identified home, if one has been identified;

(3) ensure appropriate services are provided to the child during the period of long-term foster care or foster care for a specified period of time;

(4) plan for the child's independence upon the child's leaving long-term foster care as required under Minnesota Statutes § 260C.212, subd. 1; and

(5) where placement is for a specified period of time, plan for the safe return of the child to the care of the parent.

RULE 43 ~~78~~. TERMINATION OF PARENTAL RIGHTS MATTERS

Rule 43.01 ~~78.01~~. Birth Certificate

Upon entry of an order terminating parental rights of any person who is identified on the original birth certificate of the child, the court shall serve upon that person at the person's last known address written notice setting forth a statement regarding:

(a) the right of the person at any time to file with the state registrar of vital statistics a consent to disclosure, as defined in Minnesota Statutes § 144.212, subd. 11;

(b) the right of the person at any time to file with the state registrar of vital statistics an affidavit stating that the information on the original birth certificate shall not be disclosed as provided in Minnesota Statutes § 144.1761,

(c) the effect of failure to file either document; and

(d) the right of the parent to file an appeal pursuant to Rule 47 ~~82~~.

Rule 43.02 ~~78.02~~. Order for Guardianship

Subd. 1. Generally. Upon entry of an order terminating parental rights, the court shall order the guardianship and legal and physical custody of the minor child transferred to:

(a) the commissioner of human services;

(b) a licensed child placing agency; or

(c) an individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

Subd. 2. Commissioner of Human Services. The court administrator shall forward one certified copy of the order for guardianship and the termination of parental rights findings of fact, conclusions of law, and order to the Commissioner of Human Services.

Rule 43.03 ~~78.03~~. Further Proceedings

Subd. 1. Review when Plan is Adoption. If the court terminates parental rights, the court shall schedule a review hearing ninety (90) days from the date the termination order is filed with the court, and every ninety (90) days thereafter, for the purpose of reviewing progress of the child towards adoption. Review under this rule is required unless the court has ordered the child into long-term foster care. The court shall notify the responsible social services agency ~~county welfare board~~, the child's guardian ad litem, the child's attorney, and the child's foster parent or other relative who has asked for notice of the date and time of the hearing. In lieu of the court report required under Rule 38, the responsible social services agency shall submit a report which addresses the following:

(a) where the child currently resides, the length of time the child has resided in the current placement, the number of other placements the child has experienced, and whether the current foster care provider is willing to adopt the child;

(b) whether the responsible social services agency has made adequate efforts to identify, locate, and place the child with a relative willing to adopt the child; if the child is an Indian child, the agency's plan to meet the adoptive placement preferences of 25 U.S.C. § 1915;

(c) if the child has siblings in out-of-home placement or previously placed for adoption, whether the child is placed with the siblings; if the child is not placed with siblings, whether the agency:

(1) must make further efforts to place the child with siblings; or

(2) obtain the consent of the commissioner of human services to separate the child from siblings for adoption under Minnesota Statutes § 259.24 and Minnesota Rules 9560.0450, subpart 2; and

(3) has developed a visitation plan for the siblings; if no visitation plan exists, the reason why;

(d) the efforts the agency has made to identify non-relative adoptive resources for the child including utilizing the State of Minnesota Adoption Registry and other strategies for identifying potential adoptive homes for the child; and

(e) if an adoptive home has been identified whether:

(1) placement has been made in the home;

(2) a preadoptive placement agreement has been signed;

(3) the child qualifies for adoption assistance payments, and if so, what the status of the adoption assistance agreement is;

(4) an adoption petition has been filed;

(5) a finalization hearing has been scheduled; and

(6) there are barriers to adoption and how those barriers might be removed.

At least every twelve (12) months, the court shall enter a finding regarding whether or not the responsible social services agency has made reasonable efforts to finalize the permanent plan for the child as long as the permanent plan remains adoption;

If the adoptive placement was made more than twelve (12) months prior to the review hearing and no hearing to finalize the adoption has been scheduled, a hearing under Minnesota Statutes § 259.22, subd. 4, must be scheduled.

Subd. 2. Long Term Foster Care For State Wards. The court may order long term foster care for a state ward based upon the child's special needs and for compelling reasons pursuant to Minnesota Statutes § 260C.317, subd. 3(c).

Subd. 3. Review when Child is Ordered into Long-term Foster Care. When a child has been ordered into long-term foster care after termination of parental rights, the court must review the matter in court at least every twelve (12) months to consider whether long-term foster care continues to be the best permanent plan for the child and to ensure the reasonable efforts of the agency to:

(a) identify a specific long-term foster home for the child, if one has not already been identified;

(b) support continued placement of the child in the identified home, if one has been identified;

(c) ensure appropriate services are provided to the child during the period of long-term foster care; and

(d) plan for the child's independence upon the child's leaving long-term foster care living as required under Minnesota Statutes § 260C.212, subd. 1.

Rule 43.04 ~~78.04~~. Voluntary Termination of Parental Rights Matters

The court shall conduct a hearing when a parent voluntarily consents to the termination of his or her parental rights. At the hearing, petitioner shall make a prima facie showing that there is good cause for termination of parental rights and that it is in the best interests of the child to terminate parental rights.

If the parent is present in court, the court shall advise the parent of the right to trial, the right to representation by counsel, and shall determine whether the parent fully understands the consequences of termination of parental rights and the alternatives to termination.

If the parent is not present in court but has signed a voluntary consent to termination of parental rights, the court shall determine whether there has been compliance with all statutory requirements regarding a written consent to termination of parental rights and whether the parent was thoroughly advised of and understood the right to trial, the right to representation by counsel, the consequences of termination of parental rights, and the alternatives to termination.

If the child is an Indian child, the consent of the parent or Indian custodian shall not be valid unless:

(a) executed in writing;

(b) recorded before the judge; and

(c) accompanied by the presiding judge's certificate that the terms and consequences of the consent were explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian

custodian understood. Any consent given prior to, or within ten days after, the birth of the Indian child shall not be valid.

RULE 44 ~~79~~. REVIEW OF VOLUNTARY PLACEMENT MATTERS

Rule 44.01 ~~79.01~~. Generally

Subd. 1. Scope of Review. This rule governs review of all placements made pursuant to Minnesota Statutes § 260C.212, subds. 8 or 9.

Subd. 2. Jurisdiction. The court assumes jurisdiction to review a voluntary placement of a child pursuant to Minnesota Statutes § 260C.212, subd. 8 (child in voluntary placement) upon the filing of a petition pursuant to Minnesota Statutes § 260C.141, subd. 2(a). ~~or~~ The court assumes jurisdiction to review voluntary placement of a child pursuant to Minnesota Statutes § 260C.212, subd. 9 (child in voluntary placement due solely to disability) upon the filing of a report or petition ~~alleging the child to be in need of protection or services~~ pursuant to the requirements of Minnesota Statutes § 260C.141, subd. 2(b).

Subd. 3. Court File Required. Upon the filing of a report or petition under this Rule, the court administrator shall open a juvenile protection file which is part of the juvenile protection case record related to the matter. If a Child In Need of Protection or Services file regarding this child already exists, the voluntary placement report or petition shall be filed in that file.

Rule 44.02 ~~79.02~~. Petition and Hearing

Subd. 1. Child in Placement Due to Child's Disability. ~~Status as Developmentally Delayed or Emotionally Handicapped~~

(a) Court Report, Hearing, Petition, and Judicial Determinations.

(1) Court Report. In the case of a child in voluntary placement pursuant to Minnesota Statutes § 260C.212, subd. 9, and due solely to the child's disability as defined in Minnesota Statutes § 260C.007, subd. 12 or 16, a written report shall be filed with the court within 165 days of the date of the voluntary placement agreement. No petition under Minnesota Statutes § 260C.141, subd. 1, is necessary. A written report under this rule is in lieu of a report under Rule 38 and shall contain:

(i) a statement of facts that necessitate the child's placement;

(ii) the child's name, date of birth, race, gender, and current address;

(iii) the names, race, date of birth, residence, and post office addresses of the child's parents or legal custodian;

(iv) a statement regarding the child's eligibility for membership or enrollment in an Indian tribe and the agency's compliance with applicable provisions of Minnesota Statutes 260.751 to 260.835;

(v) the names and addresses of the foster parents or chief administrator of the facility in which the child is placed , if the child is not in a family foster home or group home;

(vi) a copy of the out-of-home placement plan required under Minnesota Statutes § 260C.212, subd. 1;

(vii) a written summary of the proceedings of any administrative review required under Minnesota Statutes § 260C.212, subd. 7; and

(viii) any other information the responsible social services agency, parent or legal custodian, the child or the foster parent or other residential facility wants the court to consider;

(2) Additional Requirements for Court Report. In addition to filing the report with the court, the responsible social services agency must provide to the child, parent or legal custodian, and foster parent or representative of the residential facility a statement regarding the agency's advice or notice of the following:

(i) that they have been advised of the requirements of this rule and that they have a right to submit information to the court;

(ii) that they have a right to submit information to the court or to be heard in person by the court;

(iii) that they have received the date the court report will be filed with the court and the identifying information necessary for the court administrator to accept information from the child, parent or legal custodian, the foster parent, or representative of the residential facility in the event they wish to submit any information to the court; and

(iv) that no hearing will be held unless the child, parent or legal custodian, or foster parent or representative of the residential facility requests a hearing.

(3) Required Hearing if Requested by Parent or Child. If the parent or legal custodian, foster parent or representative of the residential facility, or the child states that they wish to be heard in person by the court, the county attorney must notify the court administrator of the request. The court administrator shall set a hearing before the court and send notice to the parent or legal custodian, the child, the responsible social services agency, and the foster parent or representative of the residential facility.

(4) Judicial Determinations after Report or Hearing without Petition.

(i) After receiving the required report or after conducting a hearing under paragraph (a)(3) of this rule, the court has jurisdiction to make the following determinations and must do so within ten days of receiving the forwarded report:

(A) whether the placement of the child is in the child's best interests; and

(B) whether the parent and agency are appropriately planning for the child. Unless requested by a parent or legal custodian, foster parent or representative of the residential facility, or child, an in-court hearing need not be held in order for the court to make findings and issue an order under this paragraph.

(ii) If the court finds the placement is in the child's best interests and that the agency and parent are appropriately planning for the child, the court shall issue an order containing explicit, individualized findings to support its determination. The court shall send a copy of the order to the county attorney, the responsible social services agency, the parent or legal custodian, the child, and the foster parents. The court shall also send the parent or legal custodian, the child, and the foster parent notice of the required review under clause (2).

(iii) If the court finds continuing the placement not to be in the child's best interests or that the agency or the parent or legal custodian is not appropriately planning for the child, the court shall notify the county attorney, the responsible social services agency, the parent or legal custodian, the foster parent, the child, and the county attorney of the court's determinations and the basis for the court's determinations.

(b ~~a~~) **Petition in Lieu of Court Report.**

(1) **Petition alleging child to be in need of protection or services, for termination of parental rights, or other permanent placement of the child.** ~~In the case of a child in voluntary placement pursuant to Minnesota Statutes § 260C.212, subd. 9, the petition shall be filed within six (6) months of the date of the voluntary placement agreement.~~ In lieu of a report under subdivision (a)(1), a petition alleging the child to be in need of protection or services, for termination of parental rights, or other permanent placement of the child may be filed in time for the matter to be heard by the court within 180 days of the date of the voluntary placement agreement. The petition shall state the date of the voluntary placement agreement, the nature of the child's ~~developmental delay or emotional handicap~~ disability, the plan for the ongoing care of the child and the parent's participation in that plan, and the statutory basis for the petition. The matter shall proceed according to the requirements of Rule 30 or 34 which ever is applicable. If the court proceeds under Rule 34, based on the content of the petition and the Out-of-Home Placement Plan filed with the court, the court must determine whether placement is in the child's best interests. If the court proceeds under Rule 30, the court must make the findings required under that rule in order for the child to continue in out-of-home placement.

(2) By-pass Report; Petition for Permanency Review. The responsible social services agency may by-pass the report required under paragraph (a) (1) and proceed to petition for permanency review under paragraph (c) (1) of this rule. The petition must be filed in time to permit the matter to be heard prior to the child being in placement 180 days.

~~(b) **Decision.** Based upon the contents of the petition, and the agreement of all parties, including the child where appropriate, the court may find the voluntary arrangement in the best interests of the child, approve the voluntary arrangement, and dismiss the matter from further jurisdiction of the court.~~

~~(c) **Further Proceedings.**~~

~~(1) The court shall give notice to the local social services agency that the matter must be returned to court for further review if the child remains in placement after twelve (12) months.~~

~~(2) If any party, including the child, disagrees with the voluntary arrangement or the sufficiency of the services offered by the local social services agency, the court shall direct the parties to answer the petition and set the matter for further hearing pursuant to Rule 71.~~

(~~d~~ b) In the case of a voluntary placement agreement pursuant to Minnesota Statutes § 260C.212, subd. 9 where the child is in placement due solely to the child's disability as defined in Minnesota Statutes § 260C.007, subd. 12 and 16, the provisions of Minnesota Statutes § 260C.212, subd. 11, do not apply unless custody of the child is transferred to the responsible ~~local~~ social services agency pursuant to Minnesota Statutes § 260C.201, subd. 1.

(c) **Permanency review by petition.**

(1) **Required Permanency Hearing when Child in Placement 13 Months.** If a child with a developmental disability or an emotional disturbance continues in out-of-home placement for 13 months from the date of a voluntary placement, a petition alleging the child to be in need of protection or services, for termination of parental rights, or for permanent placement of the child away from the parent under Minnesota Statutes § 260C.201 shall be filed. The court shall conduct a permanency hearing on the petition no later than fourteen (14) months after the date of the voluntary placement.

(2) **Conduct of Permanency Hearing**. At the permanency hearing, the court shall determine:

(i) the need for an order permanently placing the child away from the parent; or

(ii) whether there are compelling reasons that continued voluntary placement is in the child's best interests; and

(iii) whether the responsible social services agency has made reasonable efforts to finalize a permanent plan for the child.

(d) **Petition alleging Child is in Need of Protection or Service; Hearing; Adjudication not Required.**

(1) Petition. A petition alleging the child to be in need of protection or services may be filed stating the date of the voluntary placement agreement, the nature of the child's developmental disability or emotional disturbance, the plan for the ongoing care of the child, the parents' participation in the plan, and the statutory basis for the petition.

(2) Hearing. If a petition alleging the child to be in need of protection or services is filed under this paragraph, based on the contents of the sworn petition, and the agreement of all parties, including the child, where appropriate, the court may:

(i) find that there are compelling reasons that the voluntary arrangement is in the best interests of the child;

(ii) approve the continued voluntary placement;

(iii) find that the responsible social services agency has made reasonable efforts to finalize a permanent plan for the child; and

(iv) continue the matter under the court's jurisdiction for the purpose of reviewing the child's placement as a continued voluntary arrangement every 12 months as long as the child remains in out-of-home placement;

(3) *No Adjudication or Transfer of Custody Required.* No adjudication that the child is in need of protection or services need be entered and no transfer of legal custody under Minnesota Statutes § 260C.201, subd. 1, is necessary as a result of permanency hearings conducted under this rule.

(e) **Continued Review Required**. The matter must be returned to the court for further review every 12 months from the date of the Permanency Hearing as long as the child remains in placement. The court shall give notice to the parent or legal custodian of this continued review requirement. At the time of the continued reviews, the court shall determine whether the continued voluntary arrangement is in the best interests of the child and the reasonable efforts of the agency to:

(1) Identify a specific long-term foster home or residential facility for the child, if one has not already been identified;

(2) Support continued placement of the child in the identified home or residential facility, if one has been identified;

(3) Ensure appropriate services are being provided to the child;

(4) Upon the child becoming age 16, plan for the child's transition to an appropriate living arrangement and for appropriate services once the child reaches age 18.

(f) **Proceedings if Termination of Parental Rights or Other Permanency Petition Filed.** If a petition for termination of parental rights, for transfer of permanent legal and physical custody to a relative, for long-term foster care, or for foster care for a specified period of time is filed, the court must proceed under rule 30 or 34, whichever is applicable, and Minnesota Statutes § 260C.201, subd. 11.

(1) If any party, including the child, disagrees with the voluntary arrangement, the court shall proceed under rule 30 or 34, whichever is applicable, and Minnesota Statutes 260C.163.

(2) Nothing in this rule shall be construed to mean the court must order permanent placement for the child under Minnesota Statutes § 260C.201, subd. 11, as long as the court finds compelling reasons at the first review required under this rule.

Subd. 2. Other Voluntary Placements.

(a) **Petition.** In the case of a child in voluntary placement pursuant to Minnesota Statutes § 260C.212, subd. 8, the petition shall be filed within ninety (90) days of the date of the voluntary placement agreement and shall state the reasons why the child is in placement, the progress on the case plan required pursuant to Minnesota Statutes § 260C.212, subd. 1, and the statutory basis for the petition pursuant to Minnesota Statutes § 260C.007, subd. 4; § 260C.201 subd. 11; or § 260C.301.

(b) **Hearing.** The matter shall be set for hearing within twenty (20) days of service.

(c) **Findings.** If all parties agree and the court finds that it is in the best interests of the child, the court may find the petition states a prima facie case that:

(1) the child's needs are being met;

(2) the placement of the child in foster care is in the best interests of the child;

(3) reasonable efforts to reunify the child and the parent or legal custodian are being made; and

(~~3~~4) the child will be returned home in the next ninety (90) days.

(d) **Approval of Placement.** If the court makes findings required pursuant to subdivision 2(c), the court shall approve the voluntary placement arrangement and continue the matter for ninety (90) days to assure the child returns to the parent's home.

(e) **Further Proceedings.**

(1) The responsible ~~local~~ social services agency shall report to the court when the child returns home and the progress made by the parent on the case plan required pursuant to Minnesota Statutes § 260C.212, subd. 1. If the child does not return home within the ninety (90) days approved by the court, the matter shall be returned to court for further proceedings pursuant to Rule 34 ~~71~~.

(2) If the court or any party, including the child, disagrees with the voluntary placement or the sufficiency of the services offered by the responsible ~~local~~ social services agency, or if the court finds that the placement or case plan is not in the best interests of the child, the court shall direct the parties to admit or deny the petition and set the matter for further proceedings pursuant to Rule 36 ~~73~~ or 39 ~~74~~. If the court makes required findings pursuant to Rule 30 ~~67~~, the court may order the child in protective care.

(f) **Calculating Time Period.** When a child is placed pursuant to a voluntary placement agreement pursuant to Minnesota Statutes § 260C.212, subd. 8, the time period the child is considered to be in placement for purposes of determining whether to proceed pursuant to Minnesota Statutes § 260C.201, subd. 11, is sixty (60) days after the voluntary placement agreement is signed, the date the court approves the placement of the child, or the date the court orders the child in protective care, whichever is earlier.

Subd. 3. Child Determined to be in Need of Protection or Services.

(a) **Further Proceedings After Adjudication.** Pursuant to subdivision 1(c)(2) or 2(e), after the parties admit the petition or the petition is proven at trial, the court may determine that the child is in need of protection or services or withhold adjudication pursuant to Rule 40 ~~75~~.

(b) If the court determines that the child is in need of protection or services or withholds adjudication, and the court ~~issues an~~ orders services provided without transferring legal custody to the responsible social services agency pursuant to Minnesota Statutes § 260C.201, subd. 1(a)(3), the provisions of Minnesota Statutes § 260C.201, subd. 11, shall not apply.

(c) When the court determines the child is in need of protection or services, the court may make orders pursuant to Minnesota Statutes § 260C.201 or § 260C.205.

(d) When the court determines the child is in need of protection or services or withholds such a determination, further proceedings shall be pursuant to Rule 41 ~~76~~.

RULE 45 ~~80~~. POST-TRIAL MOTIONS

Rule 45.01 ~~80.01~~. Procedure and Timing

Subd. 1. Scope. This rule applies only to non-dispositional post-trial matters. It does not apply to matters concerning disposition.

Subd. 2. Timing. All non-dispositional post-trial motions shall be filed within fifteen (15) days of the filing of the court's order finding that the statutory grounds set forth in the petition are or are not proved.

Subd. 3. Basis of Motion. A post-trial motion shall be made and decided on the files, exhibits, and minutes of the court. Pertinent facts that would not be a part of the minutes may be shown by affidavit except as otherwise provided by these rules. A full or partial transcript of the court reporter's notes of the testimony taken at the trial or other verbatim recording thereof may be used in deciding the motion.

Subd. 4. Time for Serving Affidavits. When a post-trial motion is based upon affidavits, such affidavits shall be served with the notice of motion. The parties and the county attorney shall have ten (10) days after such service in which to serve opposing affidavits pursuant to Rule 15 ~~51~~. The period may be extended by the court upon an order extending the time for hearing under this rule. The court may permit reply affidavits.

Rule 45.02 ~~80.02~~. New Trial on Court's Own Motion

Not later than fifteen (15) days after finding that the statutory grounds set forth in the petition are or are not proved, the court may upon its own initiative order a new trial for any reason for which it might have granted a new trial on a motion. After giving appropriate notice and an opportunity to be heard, the court may grant a motion for a new trial, timely served, for reasons not stated in the motion. In either case, the court shall specify in the order the basis for ordering a new trial.

Rule 45.03 ~~80.03~~. Grounds for New Trial

A new trial may be granted on all or some of the issues for any of the following reasons:

(a) irregularity in the proceedings of the court, referee, or prevailing party, or any order or abuse of discretion whereby the moving party was deprived of a fair trial;

(b) misconduct of counsel;

(c) fraud, misrepresentation, or other misconduct of the county attorney, any party, their counsel, or their guardian ad litem;

(d) accident or surprise that could not have been prevented by ordinary prudence;

(e) material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the trial;

(f) errors of law occurring at the trial and objected to at the time, or if no objection need have been made, then plainly assigned in the motion;

(g) a finding that the statutory grounds set forth in the petition are proved is not justified by the evidence or is contrary to law; or

(h) if required in the interests of justice.

Rule 45.04 ~~80.04~~. Decision

The court shall rule on all post-trial motions within fifteen (15) days of submission. For good cause shown, the court may extend this period for not more than an additional fifteen (15) days. All findings shall be stated orally on the record or in writing.

Rule 45.05 ~~80.05~~. Relief

In response to any post-trial motion, including a motion for a new trial, the court may:

(a) conduct a new trial;

(b) reopen the proceedings and take additional testimony;

(c) amend the findings of fact and conclusions of law; or

(d) make new findings and conclusions as required.

RULE 46 ~~81~~. RELIEF FROM ORDER

Rule 46.01 ~~81.01~~. Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time upon its own initiative or upon motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected with leave of the appellate court.

Rule 46.02 ~~81.02~~. Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud

Upon motion and upon such terms as are just, the court may relieve a party or the party's legal representatives from a final order or proceeding, including a default order, and may order a new trial or grant such other relief as may be just for any of the following reasons:

(a) mistake, inadvertence, surprise, or excusable neglect;

(b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial;

(c) fraud (whether denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(d) the judgment is void; or

(e) any other reason justifying relief from the operation of the order.

The motion shall be made within a reasonable time, but in no event shall it be more than ninety (90) days following the filing of the court's order.

Rule 46.03. Petition to Invalidate Under ICWA

Subd. 1. Petition. Any Indian child who is the subject of any action for foster care placement or termination of parental rights under state law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may file with the court and serve upon the parties a Petition to Invalidate such action upon a showing that such action violates the Indian Child Welfare Act, 25 U.S.C. § § 1911, 1912, 1913, or 1914 (1978). The form and content of the petition shall be in writing and shall be governed by Rule 33.

Subd. 2. Evidentiary Hearing. Upon the filing of a Petition to Invalidate, the court shall schedule an evidentiary hearing.

Subd. 3. Findings and Order. At the conclusion of the evidentiary hearing, the court shall issue findings of fact, conclusions of law, and an order regarding the Petition to Invalidate.

RULE 47 ~~82~~. APPEAL

Rule 47.01 ~~82.01~~. Applicability of Rules of Civil Appellate Procedure

Except as provided in Rule 47.02~~82.02~~, appeals of juvenile protection matters shall be in accordance with the Rules of Civil Appellate Procedure.

Rule 47.02 ~~82.02~~. Procedure

Subd. 1. Appealable Order. An appeal may be taken by the aggrieved person from a final order of the juvenile court affecting a substantial right of the aggrieved person, including but not limited to an order adjudging a child to be in need of protection or services, neglected and in foster care.

Subd. 2. Timing. Any appeal shall be taken within thirty (30) days of the filing of the appealable order. In the event of the filing and service of a proper post-trial motion under Rule 45~~80~~, the provisions of Minnesota Rules of Civil Appellate Procedure Rule 104.01, subdivisions 2 and 3, apply, except that the time for appeal runs for all parties from the time of filing of the order.

Subd. 3. Service and Filing of Notice of Appeal. Within the time allowed for an appeal from an appealable order, the person appealing shall:

(a) serve a notice of appeal upon the county attorney and all parties or their counsel if represented, including notice of the correct case caption pursuant to Rule 8.08; and

(b) file with the clerk of appellate courts a notice of appeal, together with proof of service upon all parties, including notice of the correct case caption pursuant to Rule 8.08 ~~with the clerk of appellate courts and the court administrator~~.

Subd. 4. Notice to Court Administrator. At the same time as the appeal is filed the appellant shall provide notice of the appeal to the court administrator. Failure to notify the court administrator does not deprive the court of appeals of jurisdiction.

Subd. 54. Failure to File Proof of Service. Failure to file proof of service does not deprive the court of appeals of jurisdiction over the appeal, but is grounds only for such action as the court of appeals deems appropriate, including a dismissal of the appeal.

Subd. 5. Notice to Legal Custodian. The court administrator shall notify the child's legal custodian of the appeal. Failure to notify the legal custodian does not affect the jurisdiction of the court of appeals.

2003 Advisory Committee Comment

The committee recognizes that the timing provision of Rule 47.02 is a departure from the Rules of Civil Appellate Procedure. This departure is intended to expedite the appellate process, which the committee deems to be in the best interests of the child.

Rule 47.03 82.03. Application for Stay of Trial Court Order

The service and filing of a notice of appeal does not stay the order of the trial court. The order of the juvenile court shall stand pending the determination of the appeal, but the reviewing court may in its discretion and upon application stay the order.

Rule 47.04 82.04. Right to Additional Review

Upon an appeal, any party or the county attorney may obtain review of an order entered in the same case which may adversely affect that person by filing a notice of review with the clerk of appellate courts. The notice of review shall specify the order to be reviewed, shall be served and filed within fifteen (15) days after service of the notice of appeal, and shall contain proof of service.

Rule 47.05 82.05. Transcript of Proceedings

The requirements regarding preparation of a transcript shall be governed by Rule 110.02 of the Rules of Civil Appellate Procedure, except that the estimated completion date contained in the certificate of transcript shall not exceed thirty (30) days.

Rule 47.06 82.06. Time for Rendering Decisions

All decisions regarding juvenile protection matters shall be issued by the appellate court within sixty (60) days of the date the case is deemed submitted pursuant to the Rules of Civil Appellate Procedure.

Ramona C. Lackore
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432 LITCHFIELD AVENUE SW • PO BOX 1529 • WILLMAR, MINNESOTA 56201
TELEPHONE (320) 235-9203 • FAX (320) 231-6065

June 19, 2003

In Re: Proposed Amendments to Juvenile Protection Rules

To Whom It May Concern:

I realize I am late in sending these comments. If they are disregarded, so be it. However, given that I spent significant time reviewing the proposed amendments, I could not resist sending some comments even though they are late.

First, with regard to the summaries, I am encouraged to see the recommendation that children, at least age 10 and older, be included as parties. However, I would strongly recommend that children under the age of 10 be a party if the allegation is that they have committed a delinquent act under the age of 10 (see page 13 of the report). I think it is extremely unfair and irrational for a child in such a situation not to be automatically considered a party.

Similarly, page 17 of the report references delinquents under the age of 10 (actually, it is a child who committed a delinquent act but is under the age of 10 and therefore has not been determined to be "delinquent," just as delinquent children are not determined to be "criminals" even though they have committed a criminal act), and indicate that an emergency protective care order may be issued with regard to such children. My position again is that those children should be made parties and should be entitled to counsel.

With regard to Rule 30, summarized on page 17 of the report, I have a major issue with regard to the right to remove a judge. This is not an issue which comes up very often, at least in my experience, but when it comes up it is a mess. The rule about removal (7.07, subdivision 3) allows a party to file a motion to remove "within ten (10) days of the date the party receives notice of the name of the judge who is to preside over the proceeding, but not later than the commencement of the proceeding." However, it also states that such a motion "shall not be filed against a judge who has presided at a motion or any other proceeding in the

matter." This creates a conflict with regard to emergency protective care hearings.

At least in my county, the court tries very hard to schedule an EPC hearing in front of the judge who will hear the case ongoing. Therefore, a party has about five minutes to figure out whether or not he or she wishes to remove that judge, since that is the judge who is likely to continue to hear the case and if you do not file the removal prior to the EPC hearing the judge will then have "presided at a motion or other proceeding," and will not be able to be removed.

In my opinion, as a practical matter, that eviscerates the right to remove a judge in any case in which there is an EPC hearing. It is simply impossible to adequately consider the issue of removal prior to an EPC hearing. The party may or may not have counsel, if counsel does appear with them it may or may not be the attorney who will represent them ongoing, there are numerous other more immediate issues which must be discussed in the extremely short time one is allowed (or is available) to meet with one's client before the hearing simply must commence, and it is simply unrealistic to think that the issue of removal can be evaluated at that time.

Furthermore, one also has extremely difficult scheduling problems if one does choose to file a removal of the judge who is presiding at the EPC hearing. If I were to file a removal, absolutely everyone would be furious with me because it takes a great deal of effort to coordinate everyone to try to get to court at that time in the first place, and of course there are very short time lines which must be met. The client may well be upset, as well, because then one is postponing the opportunity to argue for a return of the child to the home. I do not believe that issue has been considered by the Rules Committee, and I think it is a valid concern. My suggestion, perhaps not surprisingly, is that the rule be modified to state that presiding at an EPC hearing does **not** preclude a removal being filed on that judge, so long as it is filed within ten days from that point. In the alternative, if it is decided that such a stance is inappropriate, then I would ask that the rule be clarified to state that the motion must be served and filed within ten days of receiving notice of the name of the judge, but not later than the commencement of the proceeding "including

an Emergency Protective Care hearing," so there is no question about the issue.

With regard to case captions, proposed Rule 8.08 (page 52 of the report), I would simply go on record as stating that I have changed my mind. I was one of the individuals who recommended that the caption should list the parents' names rather than the children's names, due to the "stigma" the children might suffer. However, I have decided that it is much more awkward that way, and given that everything is open anyway, perhaps it would be simpler to go back to the children's names. I recognize this is a hotly contested issue, and I do not think there is any easy answer.

Another question I have is with regard to Rule 16.02 (page 60), in combination with Rule 22.02 (page 68). According to Rule 22.02, unless a participant intervenes as a party, the participant only has the right to receive notice and a copy of the petition, the right to attend hearings, and the right to offer information "at the discretion of the court." My question is whether participants also receive copies of other documents filed with the court, including reports, motions (which are referenced in Rule 16.02), and so on.

I have some trouble with proposed Rule 18 regarding default (page 64 of the report). I absolutely oppose any provision allowing the court to proceed with essentially a default trial at the admit-deny hearing. There are many reasons someone may not appear for an initial hearing, whether that be failure to actually receive the notice, car trouble, forgetting the hearing, a family emergency, or what have you. I do not have a problem with a default hearing taking place at the time scheduled for a trial, or perhaps even at a scheduled pretrial hearing (if the party fails to appear). However, I think if someone fails to appear for the admit-deny hearing, the matter should be set for a default hearing with notice of that default hearing being at least mailed out. While the notices which are included with the petition may well spell out legally the possible consequences, we all know that the people who receive those documents may not read them all, and even if they read it all are very unlikely to fully understand it. I think it is a grave injustice to allow a default order to be entered on the merits of the petition itself at an admit-deny hearing based on failure to appear.

Regarding appointment of counsel, Rule 25.02 (page 71 of the report), I have major disagreements. Under Rule 25.02, subdivision 1(b), I note that a child alleged to be truant has no right to court appointed counsel until the point where an out of home placement is actually being ordered. In my opinion, appointing counsel at that point simply "sanitizes" the process without providing any substantive benefit to the child. All decisions have essentially already been made at that point, and there is little or nothing an attorney for the child can do. Similarly, in subdivision 2(b) of that same rule, the proposed rules indicate that a parent of an alleged truant **never** has the right to court appointed counsel, even at the point the child is ordered out of the home. I also believe this is a grave injustice. There are many truancy cases where all kinds of things are going on in the home which have nothing to do directly with school attendance. It is essential, in my opinion, that parents have an attorney any time the court is even considering placing a child out of the home.

I have two questions about proposed Rule 26.05 (page 75). First, what does it mean to "give the parent a reasonable opportunity to be heard?" Does that mean that there is a formal hearing? Does that mean that the court looks at some kind of financial application which the parent has filled out, but the parent does not get to add any verbal statements? Does that mean there is an in chambers conference between the judge and the parent? Secondly, I note that the option is for the court to order payment of "the guardian ad litem's fees." I would assume that allows for ordering **a portion of** the fees, as well. That perhaps should be clarified.

I noted an inconsistency, in my opinion, in Rule 28, beginning on page 76 of the report. Rule 28.01(c) states that a child is in Emergency Protective Care (among other times) when "returned home before a disposition with court-ordered conditions of release." I believe that is inconsistent with proposed Rule 28.02, subdivision 1(c), which requires a finding that continuation of the child in the custody of the parent or legal custodian is contrary to the child's welfare (before the court can order the child into "emergency protective care"), as well as 28.04(b) which states that an order for Emergency Protective Care "shall be executed by taking the child into custody."

In Rule 39 (page 109) I have a couple of comments regarding subdivision 4. First, I think it might be better to say "any party objecting to the content or recommendations of the Guardian ad Litem **report** may

submit a written objection to the report." However, I have a couple of concerns about this subdivision in general. It states that the objection "**shall** be supported by a sworn statement of the party's factual basis for the objection," although it goes on to state that objections may be stated on the recorded so long as the guardian has an opportunity to respond. Realistically, there is no way a represented party would have time to prepare and distribute a sworn affidavit between the time the Guardian ad Litem report is received and the time of any hearing. I would also appreciate clarification that the Guardian ad Litem report may indeed be distributed to the parents and other parties. Reports of Guardians ad Litem are often treated as confidential, and as an attorney I am at times specifically told **not** to give a copy of the report to my client, generally because of information shared by the children with the guardian, but perhaps for other reasons as well. I have struggled with that, as I am not sure how I can adequately respond to anything in such a report, on behalf of my client, without my client having an opportunity to read the report itself. Furthermore, the court obviously reads it, and if the court is making a decision based at least in part on such a report, certainly the party should be able to see it. Again, perhaps it would make things easier if it were made clear somewhere in the rules that all parties (and not just counsel for the parties) are entitled to copies of all Guardian ad Litem reports. (I have no problem providing that copy to my client; I just would like assurance that I am not violating anything by providing that copy.)

I believe there is a typographical error in proposed Rule 42.05, subdivision 2(d)(2), which references **Rule 78.**

I disagree with the language in proposed Rule 42.05, subdivision 2(e)(4), which states that "a parent may only seek modification of an order for long-term foster care" if there has been a substantial change **in the parent's circumstances**. Actually, my quarrel is also with the way the rule previously read. I understand and do not disagree with the premise that a parent may not seek return of the child to the parent's custody unless there has been a change in the parent's circumstances. However, it seems to me the parent should have the right to, for example, seek a change in the foster care placement if the parent is aware of circumstances which make that continued placement inappropriate, even if it would not be appropriate to return the child to the parent. Or the parent may feel additional services should be provided to the child, and

thus the order should be modified. It may be that Family Services would seek a modification in such circumstances, but it seems to me there should be some checks and balances which allow the parent to request the court to look into the situation, as well. We all know there are situations where children do fall through the cracks, and if a parent becomes aware of a problem the parent should be able to ask the court to address it.

I question the necessity of one of paragraphs added to proposed Rule 43.03, subdivision 1 (page 124). The next to the last full paragraph of that subdivision (and the last full paragraph on page 124) seems redundant to me. It requires that the court enter a finding at least every 12 months regarding whether or not reasonable efforts have been made to finalize the permanent plan for the child. However, a review hearing is required every 90 days "for the purpose of reviewing progress of the child toward adoption." I would assume the court is entering such a finding (regarding reasonable efforts to finalize the permanent plan) following every one of those 90 days review. It certainly should be an issue that is addressed at each of those hearings.

Again, I apologize for the lateness of these comments, and I sincerely thank you for your consideration of these issues and all issues related to the juvenile rules.

Sincerely yours,

Ramona C. Lackore
Assistant Public Defender

RCL/fm

THE MINNESOTA

COUNTY ATTORNEYS

ASSOCIATION

May 29, 2003

Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Boulevard
St. Paul, Minnesota 55155

RE: Notice to Provide an Oral Presentation on the Proposed Amendments to Minnesota Rules of Juvenile Protection

Dear Mr. Grittner:

The Minnesota County Attorneys Association desires to make an oral presentation at the hearing on June 24, 2003 to consider proposed amendments to Minnesota rules of juvenile procedure, juvenile protection rules. Don Bruce, head of the Dakota County Attorney Juvenile and Protective Services Division, will address the Court on behalf of the Association. His comments will expand on the issues identified in the letter addressed to Ms. Nord earlier this year.

If you have any questions, please contact me. Thank you.

Sincerely,

John P. Kingrey
Executive Director

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www.mcaa-mn.org

Judy Nord, Staff Attorney
Minnesota Supreme Court
25 Constitution Avenue, Suite 105
St. Paul, MN 55155

RE: Comments on Proposed Changes to Minnesota Juvenile Child Protection Rules

Dear Ms. Nord:

I am writing in my role as current President of the Minnesota County Attorneys Association (MCAA) and submitting these written comments prepared by the MCAA Juvenile Rules Subcommittee. We would like to offer the following comments on some of the proposed changes:

Rule 18.01. The MCAA supports the amendment which clarifies the default procedures.

Rule 21.01. The MCAA opposes making a child a party to the proceedings as proposed. We believe the current Rule, which allows a child to be a participant in the proceedings, appropriately protects a child's interests and does not create the confusion that will result under the partial party status proposed by this amendment. For children under the age of 10 in particular, party status is not appropriate. The Rules Committee seems to have recognized this by exempting children from a number of the rights adult parties to the proceedings are given. For example, the proposed Rules provide that not all children are entitled to court-appointed counsel (Rule 25.02); children are exempt from service (Rule 32.02) and children may be excluded from hearings (Comment to Rule 21). Thus, although the Rules purport to define children as parties, they are not given full party status. This is confusing and will create numerous issues. For example, does an infant have to sign off on a settlement agreement? Thus, the MCAA believes that the current rule best protects a child's interests.

Rule 22.01. The MCAA opposes removal of the child from the definition of participants. For the reasons set forth regarding Rule 21.01, it is our position that children should be afforded participant status when appropriate. Therefore, we believe the Rule should not be amended to exclude the term "child".

Rule 30.04. The proposed amendment to this Rule would require the filing of a written statement describing the efforts to inform the parties of the Emergency Protective Care hearing. It is our position that this information can be made part of the record orally as well as in writing if notice is an issue in the case. Emergency Protective Care proceedings are, by their very nature, scheduled quickly. To require a written statement regarding notice is unduly burdensome to these proceedings.

Rule 30.12. The MCAA does not oppose this provision but recommends deleting the phrase "including under protective supervision" because we question whether the court can return a child in an Emergency Protective Care proceeding under protective supervision. This is a dispositional option and inclusion of the term here seems confusing.

Rules 37 and 38. The MCAA questions the need for the Rules to contain the level of specificity proposed. The format and content of these proposed Rules seem inconsistent with other child protection rules. Although they provide helpful guidance for social service agencies, we question the need for the Rules to be so detailed. This level of detail is especially difficult if there are changes to governing statutes which then differ from the Rules. If the Committee believes that this level of specificity is necessary, our recommendation would be that the body of these Rules be moved to a comment section.

Thank you for the opportunity to comment on the Minnesota Child Protection Rules. The MCAA requests that you forward our comments to the members of the Supreme Court Rules Committee for their consideration.

Sincerely,

Amy Klobuchar

AMY KLOBUCHAR
President, Minnesota County Attorneys Association

LEONARDO CASTRO
CHIEF PUBLIC DEFENDER

612-348-5671
FAX: 612 348-6179

OFFICE OF THE PUBLIC DEFENDER
HENNEPIN COUNTY-FOURTH JUDICIAL DISTRICT
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STATEMENT OF THE OFFICE OF THE PUBLIC DEFENDER, HENNEPIN COUNTY, REGARDING THE PROPOSED AMENDMENTS TO MINNESOTA RULES OF JUVENILE PROCEDURE JUVENILE PROTECTION RULES

Thank you for the opportunity to submit a written statement regarding the proposed amendments to Minnesota Rules of Juvenile Procedure Juvenile Protection Rules. Please accept the following comments regarding the proposed revisions.

Rule 7, Referees and Judges
Rule 7.03 subd.4, Rule 7.07 subd. 4

We continue to stand by the comments made in our December 27, 2002 comments. We are concerned that the same judicial officer who hears the underlying child protection case will automatically continue to serve as the fact finder in the permanency case. In reviewing the Summary of Proposed Substantive Amendments, it is noted that the one judge-one family issue was sufficiently contentious to warrant a committee vote. The committee discussed concerns which are similar to ours. During the C.H.I.P.S. case, the court is monitoring the progress being made toward family reunification. The filing of a permanency pleading signifies a shift in the nature of the case. The new petition should be treated as a new case, and parties should be provided the option of removing the judicial officer who heard the underlying case.

Rule 8, Accessibility of Juvenile Protection Case Records
Rule 8.08, Case Captions

We support captioning the case in the names of the parents. As we indicated in our previous comments, captioning the cases in this way was done to "minimize the stigma to children involved in juvenile protection matters that are accessible to the public. It is more appropriate to label these cases in the mane of the adults involved..." Deleted advisory comment to the former rule 44. We support this amendment.

Rule 18, Default
We continue to have significant concern about the use of default proceedings in child protection matters. While the amendments to the proposed Rule provide for both better notice and process for the procedure, we continue to oppose the default process at the admit-deny or pretrial hearing.

There is a typographical error in Rule 18.02, last sentence. Order is misspelled.

C. Parties and Participants
Rule 21 Parties
Rule 21.01, Party Status
We support the proposed rule which confers party status on children who are ten and older.

Rule 30, Emergency Protective Care Hearing
Rule 30.12, Notification When Child Returning Home
We support this language which provides that the county attorney shall immediately file with the court and serve upon all parties a notice providing the date the child was returned home. This process will effectively stop the clock for purposes of computing permanency timelines.

Rule 32, Summons and Notice
Rule 32.02, subd. 4 Content
Should any default proceedings be allowed, this language is consistent with the amendment to the default rule and provides better notice to parents of the possible consequences of a failure to appear.

Rule 38, Reports to the Court
Rule 38.03, subd. 2, Reports Between Disposition Review Hearings
We continue to have concerns about orders being made between court hearings. As indicated in our last comments, we are concerned about the definition of "emergency" We have seen various situations described as emergencies which are essentially issues which had previously been ruled upon by the trial court. Second, the burden falls on the opposing party to request a hearing to contest the agency's report. It is difficult enough to schedule review hearings during the next month; it will be virtually impossible to obtain a hearing time within a week. Should it be impossible to schedule that hearing, the court may issue the order pending the hearing. Issues should be litigated in the courtroom. We are concerned that the use of these reports will direct the case without providing all parties the opportunity to be heard in a timely manner.

Rule 41, Disposition
Rule 41.05, Disposition Order, subd. 2(b)
Rule 41.06, Hearings to Review Disposition, subd. 2
We support the emphasis on the need for keeping siblings together and, if that is not possible, the need for sibling contact.

Thank you again for the opportunity to comment on the proposed rules. We also thank you for the thoughtful consideration given to all previous comments made regarding the initial drafts. Please contact us at the telephone numbers listed below if you have any questions or need further clarification.

Sincerely,

Leonardo Castro
Chief Public Defender
612-348-5671

Lisa McNaughton
Managing Attorney, Juvenile Court and Appeals
612-348-4375

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TENTH JUDICIAL DISTRICT

HONORABLE GARY J. MEYER
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June 9, 2003

Mr. Fred Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Re: Proposed Amendments to Minnesota Rules of Juvenile Procedure, Juvenile Protection Rules

Dear Mr. Grittner:

Enclosed are 14 copies of a presentation to the Minnesota Supreme Court in connection with the proposed amendments to the Minnesota Rules of Juvenile Procedure, Juvenile Protection Rules.

I do desire to make an oral presentation before the Minnesota Supreme Court on June 24, 2003. I will be speaking in support of the Rules.

Thank you.

Very truly yours,

Gary J. Meyer
District Court Judge
Tenth Judicial District
Washington County

Enclosures

PRESENTATION BY GARY J MEYER
TO THE MINNESOTA SUPREME COURT
IN SUPPORT OF JUVENILE PROTECTION RULES
June 24, 2003

HONORABLE CHIEF JUSTICE BLATZ AND HONORABLE ASSOCIATE JUSTICES OF THE MINNESOTA SUPREME COURT:

I am here today to support Rule 8 of the Juvenile Protection Rules and particularly 8.06 and 8.08. Rule 8 deals with the accessibility of juvenile protection case records and open juvenile protection hearings. Rule 8.06 prohibits direct public access to juvenile protection case records maintained in electronic format in court information systems. Rule 8.08 requires that all juvenile protection court files and any petitions, pleadings, and orders be captioned in the name of the child's parents or legal custodians and not in the name of the child.

The case comment to Rule 8.08 explains the reason for captioning the case in the name of the parent and not the child. It says Rule 8.08 "is designed to minimize the stigma to children involved in juvenile protection matters that are accessible to the public. It is more appropriate to label these cases in the name of the adults involved, who are often the perpetrators of abuse or neglect."

I served on the Conference of Chief Judges as Chief of the Tenth Judicial District in 1998 when the Conference voted 17-3 against opening child protection proceedings. At the request of then Chief Justice-Designee Kathleen Blatz, we established a subcommittee to take another look at the issue. I chaired that subcommittee. After taking testimony and conducting hearings, the subcommittee and the Conference voted to approve pilot projects in several counties with some rules to protect Minnesota's children. A cornerstone of those rules was the rule to put the caption of the proceeding in the name of the parent, not the children.

Subsequently, Judge Heidi Schellhas chaired an "Open Juvenile Protection Hearings" committee of the Supreme Court to develop rules and eventually receive the report of the National Center for State Courts reporting on the pilot project. I was a member of that committee, which recommended rules, including the rule to caption the file in the name of the parents, not the

children. This Court adopted the rule, which became Rule 44.08, and included the Advisory Committee comment.

Both the subcommittee of the Conference and the Supreme Court's Open Juvenile Protection Hearings Committee considered the concern of some county attorneys and court administrators that captioning the case in the name of the parents might cause some inconvenience. However, the concerns for the welfare of the children far outweighed the inconvenience of some administrators, county attorneys, and judges.

Rule 8.06 does prohibit direct public access to juvenile protection cases records maintained in electronic format without authorization by the district court. I encourage this Court to keep this rule, which was also recommended by the Conference of Chief Judges and the Open Child Protection Hearings Supreme Court Committee, and was adopted by this Court as Rule 44.06.

However, the technical experts have not been able to make assurances that this would preclude likelihood of easy access in the future. With the name of the file in the parent rather than the child, there is additional insulation that today's child will not be victimized as tomorrow's adult because of something well beyond their control as a child.

Your attention is called to the Advisory Comment to Rule 8.06 (formerly 44.06):

> "Rule 44.06 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 on the petition and other documents include only the names of the parent or legal custodian and exclude the names or initials of the children."

Since last July, I have presiding over child protection cases in open hearings. The captions have been titled in the name of the parents or guardians. I have heard no criticism or comments about this from the court administrator or county attorneys in my county. There may have been a few

instances where it would have been easier for me had the file been captioned in the child's name. However, I am happy to sacrifice that small inconvenience for the welfare and protection of the child, who was the innocent victim of abuse or neglect.

I am told that it is inconvenient for some to have to file in the name of the parent of a child when another child by the same parent is also the subject of a child protection proceeding. Often in our justice system, we have repetitive files. For example, when John Doe commits a second, third, or fourth offense, each of the files are named "State of Minnesota v. John Doe." They may be differentiated only by different offense dates.

Prior to the 1999 opening of child protection hearings to the public, children were protected against future discrimination in seeking employment or credit which may result from the child protection cases because the file was closed to the public. When the hearings became open to the public and the files also opened, this Court, the Conference of Chief Judges, and this Court's Open Hearings Committee all recommended that the files be captioned in the name of the parent to protect the children from harm in the future for something over which they had absolutely no control as a child. Without this safeguard, it is likely that the children of today will not be protected against future harm. There may be other alternatives, such as captioning with the child's initials, or first name and last initial. I believe the best alternative, however, is to caption in the name of the parents or guardians.

I hope we remember that the rules we pass are "Juvenile Protection Rules." I urge you to continue to protect today's children from victimization as adults by captioning the files in the names of parents or guardians.

Thank you.

Gary J. Meyer

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May 27, 2003

Frederick Grittner, Clerk of the Appellate Courts
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St. Paul, Minnesota 55155

OFFICE OF
APPELLATE COURTS

MAY 29 2003

FILED

RE: Comment on Proposed Revisions to Juvenile Protection Rules

Dear Mr. Grittner,

I am submitting this comment to you for consideration by the Supreme Court as they consider changes to the Juvenile Protection Rules. The Minnesota County Attorney's Association has submitted comments that I support and I will be testifying on behalf of the MCAA concerning those comments. However, I wanted to raise another issue, this one concerning Rule 8.08, which addresses case captioning.

Captioning the cases in the name or names of the parents has been extremely troubling and confusing since our county was required to do this beginning July 1, 2002. There are so many different permutations of parenting and parentage, that it makes it very difficult to determine an appropriate caption for a case. We often see situations where there are multiple children involved, with one mother and several different fathers, creating cases captions that may consist of four, five and six names, many of which are of individuals who never appear in court and who have no ongoing relationship with the child, other than a strictly legal or biological one. We see cases where children are being cared for by relatives, or legal custodians, or guardians, so that captioning those is confusing. We see cases where the name of a parent changes during the course of a case. I recently had a case in which Dakota County filed a CHIPS petition on 2 children who were in the care of their legal custodian after Hennepin County had transferred custody of those children to this person, a Dakota County resident. She wanted no part of the children after the petition was filed and there was no plan to reunite her with these children. Yet the case is captioned in her name, though she has nothing to do with it.

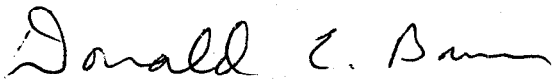
My example above also shows that the court records concerning a child or a family of children could be inconsistently captioned, and thus missed, if the family moves from one county to another and a case is opened under a completely different name. Consistency in captioning would aid in tracking a family with a history of moving from county to county.

My point is that the only constant in so many of these cases is the children. They are the subjects of the petition and there was far less confusion when the cases were opened in their names. I would strongly urge the Supreme Court to return to this simpler and more effective practice.

I have also noted that proposed Rule 8.08, Subdivision 1(b), concerning termination of parental rights cases, will now require a new caption after termination has occurred, removing the parents' names and substituting the Commissioner of Human Services in every case. How confusing is that going to be when the Court Administrator, the Judge, the court clerks, the attorneys, the GALs, and everyone else involved in the case now has dozens, and in Hennepin and Ramsey Counties cases, perhaps hundreds of these cases with the same case caption? A slight slip in the case file number and no one may have any idea which case is being referred to. Again, I would point out that the children are the constant. They are still involved with the case after a termination of parental rights is ordered. There would be no need for a new, repetitive, and confusing case heading if the case starts and continues with the heading that covers the subjects of the proceeding, the children.

I strongly urge the Supreme Court to reconsider this basic element of a CHIPS case and allow for consistency and simplicity by having cases captioned in the name or names of the subjects, the children. Thank you for the opportunity to comment.

Very truly yours,



Donald E. Bruce
Assistant Dakota County Attorney

/DEB

STATE OF MINNESOTA
FIFTH JUDICIAL DISTRICT

JEFFREY L. FLYNN
DISTRICT COURT JUDGE
P.O. BOX 547
WORTHINGTON, MN 56187
507-372-8263

14 May 2003

Minnesota Supreme Court
25 Rev. Dr. Martin Luther King, Jr. Boulevard
Saint Paul, Minnesota 55155

Re: Comment on Proposed Juvenile Protection Rules, Specifically Rule 8.08, Case Captions.

Honorable Members of the Supreme Court:

I appreciate the opportunity to comment on the proposed Juvenile Protection Rules now under consideration. I wish to address one proposed change: captioning cases in the name of the parents. On December 26, 2001, this Court ordered that, henceforth, all juvenile protection matters be captioned in the names of the parents rather than in the name of the juvenile. The proposed Rule continues this practice and is the result of a "committee determination" that captioning cases in the parents' names would "minimize the stigma to children involved in juvenile protection matters."

I have been working with juvenile protection matters for 25 years. I cannot recall one case over this time period where a juvenile was "stigmatized" by having the case captioned in his or her name. For that matter, I do not even know what "stigmatized" means. Perhaps some sociologist back in the 1950's determined that children identified in juvenile proceedings would be marked for life because his or her name appeared in the caption of a confidential file. Without some factual basis, I refuse to indulge this rather facile assumption simply because someone, somewhere believed such to be the case.

In 99.9% of cases involving juveniles, the only people who know anything about the case are the parties involved. In the extremely rare case, where there is media or public involvement, the judge can take steps to prevent the "stigmatization" of a participating child by concealing the identity of the affected children (e.g., using the juvenile's initials).

A return to the former method of captioning would facilitate court administration. At times we have more than one juvenile involved in a file or have the same juvenile involved in separate cases. If we have two or more children involved in a particular case, we may have three or more parents involved. Without expending considerable time examining a file named after parents it is difficult to determine which child or children we are dealing with. At times the family service agency or the mother does not even know the identity of the father. Are we to caption the case in the matter of the children of John Doe or Mary Roe? In cases where the

parental rights have been terminated, and the child is a ward of the State, are we to continue to use the "terminated" parents' names?

Over the past several months, 30% of our calendar in Nobles County has been conducted in a language other than English. Our significant immigrant population has resulted in several instances where a child has been staying with or living with a brother, sister, aunt or uncle or family friends. The parents are not even in this country. Under the proposed rule we will name files after people who have not even heard of Minnesota or even know that their child is involved in a court proceeding here. We have dealt with juveniles who, themselves, do not know the whereabouts of their parents.

In addition, *we have had multiple cases where the parent or parents are working in this country under an alias because of their immigration status.* Which name are we to use? Under the proposed rule we must caption the case in the name of the parent(s). Should we use the name that the parent(s) is/are using because that is the name on the social security card they are using? Or, should we subject the parents to immigration problems by obliging them to disclose their true identity? I can envision a nightmare scenario in the years to come because we are "worried" that a child will be stigmatized by the use of his or her name in a juvenile protection matter (E.g., parents are deported because of their illegal status and the child, born here, and thus, a citizen of the United States, is shuttled off to live with relatives or friends in this country).

Finally, we are required by the Rules of Public Access to Records of the Judicial Branch to make available to the public all 16-year old juvenile felony matters. We seem to be headed in opposite directions. CHPS children are not to be "stigmatized" by inclusion of their names in the caption of confidential files. Delinquent children, on the other hand, are fair game because their records and files must be provided to the public. This incongruent approach to public disclosure of juvenile matters seems to be at odds with reason and logic, unless, of course, opprobrium is part of the punishment for delinquent behavior. It is, in my opinion, time to use some common sense and enact a rule that will facilitate, rather than obfuscate, the handling of juvenile protection matters. I would urge you to order a return to our former practice of captioning cases in the name(s) of the children involved in the cases. I appreciate your consideration of the problems created by the proposed rule change. Thank you.

Jeffrey L. Flynn
District Court Judge

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June 9, 2003

OFFICE OF
APPELLATE COURTS

JUN 12 2003

FILED

Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Boulevard
St. Paul, MN 55155

Re: Request to Make Oral Presentation

Dear Mr. Grittner:

I hereby request that I be permitted time to make an oral presentation at the hearing on the Proposed Juvenile Protection Rules which is scheduled for June 24, 2004, at 2:00 p.m. Thank you.

Very truly yours,

Mary R. Vasaly

MRV/kj
244345.4

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June 9, 2003

Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Boulevard
St. Paul, MN 55155

Re: Comments to Proposed Revisions to Juvenile Protection Rules

Dear Mr. Grittner:

Thank you for the opportunity to comment on the proposed rules. I am a partner at Maslon Edelman Borman & Brand, and have practiced law for almost twenty years. As a volunteer attorney for Children's Law Center of Minnesota, I have had experience with juvenile proceedings. Please be advised that I would like to testify on June 24, 2003, regarding the proposed changes to the Juvenile Protection Rules. I also wish to provide the following written comments regarding the proposed changes:

Rule 21.01 Subd. 1 (a)

I am quite pleased to see the proposed change in the rule, which makes the child a party to the proceedings. Because the proceedings often profoundly affect the child's life, it is appropriate that the child have all of the procedural and substantive due process rights accorded any party, including the right to notice, to attend hearings, to conduct discovery, to bring motions, to participate in settlement agreements, and to subpoena witnesses.

Rule 30.10 Protective Care Findings and Order

This rule revision now appropriately provides that the protective care order be explicit in identifying the terms of parental and sibling visitation pending further proceedings. This is usually an item of particular importance to children.

Rule 30.12 Notification When Child Returned Home

This rule revision now properly requires the county attorney, when the child is returned home, immediately to serve on all parties and file with the court a notice stating the date when the child returned home.

Rule 32.04 – Notice of Subsequent Hearings

The rule should require that "written" notice of the date, time and location of the next hearing be given. Also, the rule is unclear: it should state that

> The written notice shall be delivered at the close of the initial hearing or mailed at least five (5) days before the date of the subsequent hearing or fifteen (15) days before the date of the subsequent hearing if mailed to an address outside the state. If written notice is delivered at the end of the initial hearing, later written notice is not required, unless the date of the hearing provided in the notice has been subsequently changed."

In addition, it should be made clear that such written notice is required for any hearing, including initial hearings, if there has been a change in the date for that hearing, and in connection with other matters, including TPR hearings, permanent placement matters and CHIPS proceedings.

Rule 33.02, subd. 3 - Termination of Parental Rights Matters

The new rule provides for the initiation of private TPR petitions. The rule should clarify who has standing to file such petitions to avoid opening the floodgates to non-custodial parents who wish to terminate the custodial parent's parental rights.

Rule 37.02, subd. 3 – Case Plans - Content

Under the statute, the child has a right to legal counsel in connection with the preparation of the case plan. The rule provides that the plan shall indicate whether the child participated in the plan but does not require the agency to describe its efforts to solicit the child's counsel's participation. The rule should provide that the child's legal counsel is entitled to participate in the development of the case plan.

Rule 37.06, Case Plan – timing of filing

Language should be added to the rule that would provide that the plan must be served "on all parties" at the time that the plan is filed.

Rule 38.01, Subd. 2 - Reports to the court

We agree that the rule should state that reports to the court must be provided in affidavit form and suggest that they be notarized as well. I agree with the proposal that the report be provided to the parties at least five days in advance of the hearing.

Rule 38.02, Subd. 1 (a)(9)

This subpart should include whether the child has had and should have sibling visits.

Rule 38.02, subd. 1 (d)

The provision for an independent living plan should require the participation of the child and/or the child's attorney in developing the plan.

Rule 38.02, subd. 2 – Reports between Disposition Review hearings

I agree that any change of disposition should be supported by a sworn statement. It is critically important that the parties receive the report in advance of any action by the court so they can request a hearing and so that attorneys can confer with their clients. However, the rule also says that "Pending hearing, if any, upon two day's actual notice and based upon the report the court may issue an order that is in the best interests of the child." Although it may not be the intention of this rule, the language of the rule suggests that *before* the hearing, the court may act on the report so long as it gives two days notice. A hearing should be held, if requested, before any such action is taken. The rule already provided for temporary orders in the case of emergency.

Rule 38.04 – Objections to Agency's Report

The rule is unclear with respect to written objections. If the agency's report and recommendations are served not later than five days before the hearing, there will be little time for a party to file written objections in advance of the hearing. The rule suggests that a party may be entitled to make oral objections on the record but only if the court gives the agency a reasonable opportunity to respond. It is unclear whether the court may simply decline to allow the oral objection rather than allowing the agency time for a response. The rule should be clarified expressly to permit oral objections on the record, allowing the agency time to respond, and that any such oral objections be supported by affidavits, to be filed with the court, reports, or sworn testimony.

Rule 38.05, subds. 3 and 4 Timing of the Guardian ad Litem's Report

I agree that all guardian ad litem reports should be in writing and provided prior to the hearing because otherwise the attorney for the child will have insufficient time to confer with his/her client and respond.

Rule 41 – Disposition

I agree that the judge should have a list of issues to review in the disposition review under 41.06, subd. 2, including whether the child has siblings in out-of-home placement, whether the child and siblings are placed together, whether there is visitation amongst siblings, and whether the agency has made efforts to place the child with a relative or foster parent who has committed to providing the child a legal permanent home.

Rule 42.05, subd. 2 (b) Transfer of Permanent Legal and Physical Custody

I agree with the proposal that the court may maintain jurisdiction over the responsible social services agency.

Rule 42.05, subd. 2(d) Guardianship and Legal Custody to the Commissioner of Human Services

The rule leaves unclear what will happen if there is a TPR and there is no identified prospective adoptive home that has agreed to adopt the child, under (d)(1). In that case, who has custody? This should be addressed in the rule.

Rule 43.03, subd. 1 – Review when Plan is Adoption

I agree that the report should have the specificity required under subd. 1.

Rule 43.03, subd. 2 – Review when Child is Ordered into Long-term Foster Care

I believe the rule should be clear that in-court reviews are contemplated when the child is in long-term foster care.

Rule 47.02 - Procedure for Appeal

In Subd. 2, the last sentence should clarify that the time for appeal "begins to run" for all parties from the time of filing of the order. In addition, the rule should clarify which order triggers the commencement of the appeal period after a post-trial motion has been filed. The rule should clarify that the appeal begins to run from the

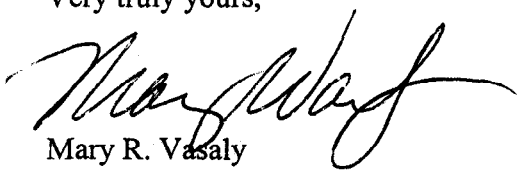
filing of the order disposing of the last outstanding post-trial motion. Otherwise, there may be confusion as to the appeal period.

Subd. 3 specifies how an appeal is taken. It should refer to subd. 2 in the first sentence to avoid confusion, since the appeal time differs from the usual rule for appealing from an order. In addition, although the rule is similar to the Rules of Civil Appellate Procedure, it omits some provisions, such as the requirement for filing a cost bond, statement of the case and notice of serving the court administrator. It is not clear whether these provisions supplement or supersede the civil appellate rules in this regard. This should be clarified.

In Subd. 4, the rule states that notice of the appeal should be provided to the court administrator but does not specify which court administrator must be served with notice.

Thank you for providing me the opportunity to comment, both orally and in writing, on the proposed rules.

Very truly yours,



Mary R. Vasaly

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CHILDREN'S LAW CENTER OF MINNESOTA

Making children's voices heard

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June 9, 2003

Honorable Kathleen Blatz
Chief Justice
Minnesota Supreme Court
25 Rev. Dr. Martin Luther King, Jr., Blvd.
St. Paul, MN 55155

Re: Comments to Proposed Amendments to Minnesota Rules of Juvenile Procedure
Juvenile Protection Rules

Dear Justice Blatz and Members of the Supreme Court:

I wish to make an oral presentation at the Supreme Court public hearing on the proposed amendments to the Minnesota Rules of Juvenile Procedure Juvenile Protection Rules scheduled for Tuesday, June 24 at 2 p.m.

I enclose fourteen copies of my presentation.

Thank you for the opportunity to comment.

Very truly yours,

Gail Chang Bohr

Gail Chang Bohr, Esq.
Executive Director

enc.

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Making children's voices heard

Comments to Proposed Amendments to Minnesota Rules of Juvenile Procedure
Juvenile Protection Rules

Thank you for the opportunity to comment on the proposed rules.

I am an attorney and since 1995, have been the executive director of Children's Law Center of Minnesota.

My comments are as follows:

Rule 21.01 Subd. 1 (a)

I strongly support the Proposed Amendment to make the child a party. Of all the changes proposed in the rules, I believe that this is the most critical one. Being a party affords the child the full panoply of due process rights. It makes sense that the child, the subject of the proceedings, should have the right to notice, to be present at hearings, to conduct discovery, to bring motions, to participate in settlement agreements and to subpoena witnesses, among other rights that a party has.

This important change makes the rules again consistent with Minnesota Statute §260C.163 which does not distinguish between party or participant status of the child.

Rule 30.10 (e) Protective Care Findings and Order

We support the amendment that the protective care order be explicit in requiring the terms of parental and sibling visitation pending further proceedings.

Rule 30.12 Notification When Child Returned Home

We support the amendment that if the child is returned home, the county attorney shall immediately file with the court and serve upon all parties a notice stating the date the child was returned home. Children's attorneys will know where to find their client.

Rule 37.02, subd. 3 – Case Plans - Content

Under the statute, the child has a right to participate in the development of the case plan. The amended rule requires a statement about whether the parent, legal custodian, and child participated in the development of the case plan. We fully support having such a statement about the child's participation in the development of the case plan.

Rule 37.02, subd. 2 – timing of filing

The case plan must be filed with the court within 30 days of the filing of the petition alleging the child to be in need of protection services. It would be helpful if the provision made clear that the parties also get a copy of the plan.

Rule 37.03 Child in Voluntary Placement: Out-of-Home Placement Plan (Not due solely to child's disability), subd. 1 (b)

States that the plan should include a statement about whether the child's guardian ad litem has been consulted in the plan's preparation. Guardians ad litem are not routinely appointed in voluntary placements.

Rule 38.01, Reports to the court

Agree that there be a statement certifying the content of the report to be true. Having the report five days in advance of the hearing will be an improvement over getting the reports in court the day of the hearing.

We believe that having the identifying and baseline placement information will help judges and parties to account for what is happening to the children in these proceedings. We also agree with the sections that the report should include efforts to place siblings together and sibling contacts when they are not placed together. We also believe that the court's review of agency efforts to finalize adoption is important in ensuring permanency.

Rule 38.02, subd. 1 (d)

The provision for independent living plan should also include whether the child participated in developing the plan. We know from experience that the child is more inclined to follow a plan that he or she has had input in.

Rule 38.04 – Objections to Agency's Report

The timing of the objections is unclear. If the agency's report and recommendations is served not later than five days, when does the party objecting have to submit a written objection? We agree with the amendment that allows objections to agency's report to also be stated on the record.

For many children in the foster care system, allegations are stated as facts in written reports to the court and children, on their own, have no way of correcting the record. One example occurred recently – a child who was playing with matches was branded a fire setter, even though it was a one time incident, was relatively minor, and the child did not intend to burn anything. Allowing the objections is one way to correct the record. We do not believe a sworn statement objecting is necessary but may be allowed.

Rule 38.02, subd. 2 – Reports between Disposition Review hearings –

This sounds like the "Special Action Request" that is currently used in one county and is an improvement over that practice. We agree that any change of disposition should be by a sworn statement pending a hearing. Having the report in advance of any action by the court is critically important so that the parties can request a hearing and attorneys confer with their client. Proof of service is also important to ensure that all the parties received the report. Since disposition review hearings occur every 90 days, these interim orders should be used only on an emergency basis and two days actual notice is the minimum amount of time that should be allowed in these situations.

Rule 38.05, Reports to the Court by Child's Guardian ad Litem

We agree that the guardian ad litem's report should be in writing. We also agree with allowing objections on the record. We do not believe a sworn statement objecting is necessary but may be allowed. The timing and service on the parties of the report is an improvement.

Rule 41 – Disposition

We agree that it is helpful for the judge to have the list of issues to look for in the disposition review under 41.05, subd. 2 (a) and (b), including whether the child has siblings in out-of-home placement, whether the child and siblings are placed together, and whether there is visitation between siblings, and the efforts used by the agency to place the child with a relative or foster parent who has committed to providing the child a legal permanent home.

Rule 42.05, subd. 2 (b) Transfer of Permanent Legal and Physical Custody

We agree with the amendment stating that the court may maintain jurisdiction over the responsible social services agency and parties, and may order further in-court hearings. The provision is in the statute and having it in the rules helps the court to ensure that the provisions in the order for transfer of permanent legal and physical custody, including services for the child, have in fact been carried out.

Rule 43.03 – Further Proceedings
Subd. 1 - Review when Plan is Adoption

We agree with the specificity under this section including the section under long-term foster care. This section is very important in terms of court review and court supervision of the juvenile protection process. We believe that in-court reviews assists in ensuring that children do achieve permanency through adoption.