STATE OF MINNESOTA

IN SUPREME COURT

C1-01-927

ORDER FOR HEARING AND ESTABLISHING DEADLINE FOR SUBMITTING COMMENTS REGARDING PROPOSED AMENDMENTS TO THE *RULES OF JUVENILE PROTECTION PROCEDURE* AND RULES OF ADOPTION PROCEDURE

The Advisory Committee on the Rules of Juvenile Protection Procedure filed with this Court on February 6, 2009, a report recommending proposed amendments to the Rules of Juvenile Protection Procedure and Rules of Adoption Procedure. A copy of the report is annexed to this order.

NOW, THEREFORE, IT IS HEREBY ORDERED that a hearing be held before this Court on Wednesday, April 15, 2009, at 2:00 p.m., in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, to consider the Committee's recommendations.

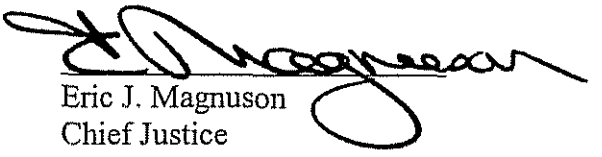
IT IS FURTHER ORDERED that:

1. All persons desiring to provide written statements in support of or opposition to the proposed changes, but who do not wish to make an oral presentation at the hearing, shall submit 12 copies of such statement in writing addressed to Frederick K. Grittner, Clerk of the Appellate Courts, 305 Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King, Jr. Boulevard, St. Paul, Minnesota 55155, no later than Friday, April 3, 2009; and

2. All persons desiring to make an oral presentation at the hearing shall submit a written request to make an oral presentation along with 12 copies of the statement to be presented addressed to Frederick K. Grittner, Clerk of the Appellate Courts, 305 Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King, Jr. Boulevard, St. Paul, Minnesota 55155, no later than Friday, April 3, 2009.

Dated: February 12, 2009

BY THE COURT:



Eric J. Magnuson
Chief Justice

Minnesota Supreme Court File No: C1-01-927

REPORT AND PROPOSED RULES AMENDMENTS SUBMITTED BY JUVENILE PROTECTION RULES COMMITTEE TO MINNESOTA SUPREME COURT

February 6, 2009

MINNESOTA JUDICIAL BRANCH
STATE COURT ADMINISTRATOR'S OFFICE
COURT SERVICES DIVISION
105 MINNESOTA JUDICIAL CENTER
25 REV. DR. MARTIN LUTHER KING JR. BLVD.
ST. PAUL, MN 55155
651-297-7587

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COMMITTEE MEMBERSHIP

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Sharon Benson, Attorney, Benson Law Office, St. Cloud
Gayle Borchert, Assistant Stearns County Attorney
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Hon. Janet Barke Cain, District Court Judge, Carver County
Gail Clapp, Juvenile Court Operations Manager, Hennepin County
Heidi Drobnick, Attorney, Swanson, Drobnick, & Tousey, Woodbury
Teresa Fredrickson, Court Administrator, Kandiyohi and Meeker Counties
Julie Friedrich, Guardian Ad Litem and Attorney, Woodbury
Shari Larson, Attorney, Larson Law Office, McGregor
Shireen Lee, 6th District GAL Program Coordinator, Carlton and St. Louis Counties
Jessica Maher, Attorney, Walling, Berg, & Debele, Minneapolis
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Rhonda Morehead, Child Protection Worker, Waseca County
Erin O'Brien, Assistant Freeborn County Attorney
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Hon. John Solien, District Court Judge, Aitkin County
Hon. Mark Starr, District Court Judge, St. Louis County
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Mary Potter, Children's Services Supervisor, Yellow Medicine Family Services
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Andrew Small, Attorney, BlueDog, Paulson & Small, P.L.L.P. Minneapolis
Shannon Smith, Director, ICWA Law Center, Minneapolis
Hon. John Solien, District Court Judge, Aitkin County
Hon. Robert Walker, District Court Judge, Martin County

INTRODUCTION

COMMITTEE PURPOSE AND CHARGE

The Rules of Juvenile Protection Procedure were promulgated by the Minnesota Supreme Court on December 29, 1999, and became effective March 1, 2000. The Rules of Adoption Procedure were promulgated on September 30, 2004, and became effective January 1, 2005. The Rules of Guardian Ad Litem Procedure were promulgated on August 27, 1997, and became effective on January 1, 1999.

Recognizing the need for a standing committee to review these three sets of rules on an ongoing basis, on May 31, 2001, the Supreme Court established the Advisory Committee on the Rules of Juvenile Protection Procedure. The Committee was directed to:

1. Review case law relating to the three sets of rules;
2. Review federal and state statutes relating to the three sets of rules;
3. Review case management best practices relating to the three sets of rules;
4. Review implementation of, and consider requests for revisions to, the three sets of rules; and
5. Annually submit to the Supreme Court a report recommending any necessary revision of the three sets of rules.

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

COMMITTEE PROCEDURES

At the conclusion of the 2007 rules-making session the Committee determined that subcommittees comprised of subject matter experts were necessary to address procedural rules related to expediting appeals and the Indian Child Welfare Act (ICWA). Those subcommittees met during the first half of 2008 and submitted their reports to the full Committee in August 2008 and September 2008, respectively. A summary of the work of those subcommittee is set forth in the next section of this report.

The Subcommittees submitted their reports to the Committee, and the Committee met from August 2008 through January 2009 to address the subcommittee reports and other procedural issues raised since the Committee's last report to the Court. Some issues considered by the Committee were technical in nature, such as correcting internal numbering schemes; some resulted from recent federal or state statutory amendments; and others were requests for clarification raised by judges, social workers, court administrators, GALs, and attorneys.

In December 2008, a draft of the Committee's proposed amendments was distributed to the public for comment. The Committee reviewed and considered the public comments, and then revised and refined the proposed amendments which are set forth in Section II of this Report. The Committee achieved consensus regarding the majority of the proposed amendments.

SUBCOMMITTEES: PURPOSES AND PROCEDURES

Indian Child Welfare Act (ICWA) Subcommittee

The purpose of the Indian Child Welfare Act (ICWA) Subcommittee was to recommend to the full Juvenile Protection Rules Committee revisions to the Rules of Juvenile Protection Procedure ("the Rules") that will ensure consistent application of the ICWA, the Minnesota Indian Families Preservation Act (MIFPA), and related federal and state laws and case law.

The Subcommittee met monthly from January through July 2008, and one meeting in October 2008, during which time the members reviewed federal and state statutes and case law in an effort to identify gaps in the Rules and inconsistencies between the statutes and the Rules. The members also reviewed other sources of ICWA practices and procedures, including the *Bureau of Indian Affairs Guidelines for State Courts – Indian Child Custody Proceedings* ("*BIA Guidelines"*), the 2007 *Tribal/State Agreement*, and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

After identifying numerous ICWA-related gaps and inconsistencies in the Rules, the members began to draft proposed amendments. Throughout this process, the Subcommittee members solicited feedback from their respective "constituent groups" about the proposed amendments.

The Subcommittee members were not unanimous in their thoughts about whether to recommend each of the proposed amendments. Through the process of thoughtful and respectful deliberations, the members achieved consensus regarding most of the proposed amendments set forth in this report. Where a majority consensus could not be reached, the Subcommittee members agreed to present the issue to the full uvenile Protection Rules Committee.

Expedited Appeals Subcommittee

The purpose of the Expedited Appeals Subcommittee was to recommend to the full Juvenile Protection Rules Committee revisions to the Juvenile Protection Rules to ensure that Minnesota is in conformity with federal and state child permanency timelines, especially as they relate to ensuring that adoptions are finalized within 24 months of a child's removal from home.

The federal Child and Family Services Review (CFSR) (for background information, see Appendix D) establishes several adoption-related standards for children, including the standard that adoptions be finalized within 24 months (730 days) of the child's removal from home. This 24-month maximum timeframe encompasses the 365-day (12-month) CHIPS process, the TPR process (typically at least 90 days), the post-trial motion process, the TPR appellate process if any, and the adoption process. Based upon the federal timeline, once the 365-day CHIPS process is complete, the TPR process, the post-trial motion process, appellate process, and adoption process must be completed within the next 365 days.

In order to meet the CFSR standard regarding timely adoptions, the nationally recommended best practice is to allow from 215 to 240 days from conclusion of a TPR trial to issuance of the final appellate decision (see Appendix B for an "At-a-Glance" overview of nationally recommended

best practices and timelines such as those recommended by the American Bar Association (ABA) or the National Council of Juvenile and Family Court Judges (NCJFCJ)).

The current rules meet the federal 365-day CHIPS permanency timeline, and the CFSR report indicates that Minnesota is meeting this timeline in actual practice. However, if CHIPS case proceeds to TPR and the TPR is appealed, the current rules permit 337-days from conclusion of a TPR trial to issuance of a Court of Appeals decision and make meeting the 24-month (730-day) federal standard for finalizing an adoption practically impossible (*see* Appendix A for an "At-a-Glance" overview of Minnesota's existing Rules, practices, and timelines related to the TPR and appellate process). Data from the Minnesota Court Information System (MNCIS) shows that in actual practice the average amount of time used is 358 days[1] (see Appendix C, which details Minnesota's steps and timelines regarding the process from completion of a TPR trial through issuance of a Supreme Court decision). And if the Supreme Court accepts review of a Court of Appeals decision, the current rules and Supreme Court procedures provide for 522-days from conclusion of a TPR trial to issuance of a Supreme Court decision (data not available on average actual time) delaying the *start* of adopt proceedings well beyond the federal standard for *finalizing* adoptions (*see* Appendix C, detailing process and timelines from end of TRP trial through issuance of Supreme Court decision).

Under the current rules, the social service agency can only meet the federal 730-day adoption standard by finalizing an adopting within 28 days of a Court of Appeals decision (365-day CHIPS process plus 337 days to Court of Appeals decision = 702 days). And if the case proceeds to the Supreme Court, the current rules extend the appellate process 157 days beyond the 720-day federal adoption standard, making compliance impossible. (365-day CHIPS process plus 552-day appellate process = 887 days).

The Subcommittee met monthly from January through May 2008, during which time the members reviewed Minnesota's existing TPR and appellate rules; data regarding timeframes for Minnesota's existing TPR and appellate practices; appellate rules, practices, procedures, and timelines from other states; and national best practices and timelines related to appellate procedures.

The Subcommittee members also solicited feedback from their respective "constituent groups" about three options for expediting Minnesota's appellate process: (1) keep the existing appellate process, but recommend amendments to expedite the process; (2) discontinue use of the existing appellate rules as they relate to CHIPS cases and draft new rules specific to the needs of children and families in CHIPS cases; or (3) expedite the existing appellate process by adopting an existing model (e.g., Iowa, ABA, NCJFCJ). The Subcommittee members were not unanimous in their thoughts about how to proceed – nine members voted to draft new rules specific to the CHIPS process, including the possibility of using an existing model as a starting point, and four members voted to keep the existing Rules but propose amendments to the post-trial motion and appellate procedures that would expedite the process.

[1] Information received from subcommittee members Peter Gorman and Cindy Lehr indicate a slightly shorter actual process time than that shown by MNCIS data.

OVERVIEW OF RECOMMENDATIONS

Proposed Amendments to Juvenile Protection Rules – ICWA Procedures

1. The Committee recommends revisions to the rules that will ensure consistent application of the Indian Child Welfare Act (ICWA), the Minnesota Indian Family Preservation Act (MIFPA), and related federal and state laws and case law.

Proposed Amendments to Juvenile Protection Rules – Expedited Appeals Procedures

2. In an effort to expedite the process so as to conform to federal standards, the Committee recommends amendments to the existing TPR, post-trial motion, and appellate procedures. The proposed amendments decrease the maximum time from conclusion of a TPR trial to issuance of a Court of Appeals decision from 337 to 255 days (a reduction of 82 days), and decrease the maximum time from conclusion of a TPR trial to issuance of a Supreme Court decision from 522 to 425 days (a reduction of 97 days). See Appendix A for an "at-a-glance" summary of the existing timelines and proposed revised timelines. Even with the proposed amendments, however, Minnesota would not achieve the goal of fully complying with the federal Child and Family Services Review (CFSR) standard that adoptions be completed within 24-months of the child's removal from home. Under the proposed amendments, if a case takes the maximum amount of time permitted under the rules to go through the CHIPS, TPR trial, and Court of Appeals process, it would total 620 days (365-day CHIPS process plus 255-day appellate process), leaving only 110 days to finalize the adoption. If a case takes the maximum amount of time permitted under the rules to go through the CHIPS, TPR trial, Court of Appeals, and Supreme Court process, it would total 790 (365-day CHIPS process plus 425-day appellate process) days thus exceeding by 60 days the time for finalizing an adoption.

Proposed Amendments to Juvenile Protection Rules – Due to Recent Statutory Revisions

3. The Committee recommends revisions to Rules 42, 43, and 44 consistent with recent changes to Minnesota statutes dealing with permanency, voluntary placements, and voluntary foster care for treatment placements.

Proposed Amendments to Juvenile Protection Rules – from 2007 Rules Committee

4. The few recommendations of the 2007 Rules Committee are incorporated into this Report. Included are recommendations dealing with the timing of orders. The Court Operations Subcommittee of the Minnesota Judicial Council reviewed the various sets of procedural rules (i.e., Civil, Criminal, Juvenile, etc.) and determined that the existing patchwork of timelines for making judicial decisions and issuing orders is not consistent with effective governance of the judiciary. In an effort to enhance adherence to such timelines, thus increasing effectiveness, the Judicial Council asked the Supreme Court to implement more

uniform timelines for judicial decision-making across all rules. The Supreme Court subsequently asked the various Rules Committees to review their respective rules and recommend amendments consistent with the following parameters for issuing orders: urgent–3 days; quickly–15 days; intermediate–30 days; final–90 days. In making their request, the Supreme Court and Judicial Council recognized that some of the timelines for issuing orders are set by statute (such as many of those in CHIPS/TPR cases). The Committee reviewed the existing Juvenile Protection Rules dealing with the timing of issuance of orders and was able to conform the rules to the proposed timing structure with only limited exceptions. Consistent with the request of the Supreme Court and Judicial Council, the Committee recommends that the following rules be amended as noted below.

Proposed Amendments to Adoption Rules

5. The Committee recommends amendments to the Rules of Adoption Procedure consistent with recent statutory amendments.

Recommendations to Judicial Council

6. *Definition of Qualified Expert Witness:* The Committee recommends that the Judicial Council Legislative Advisory Workgroup (LAW) should propose to the Legislature an amendment to Minnesota Statutes Chapter 260C to add the definition of "Qualified Expert Witness" consistent with the definition in Minnesota Administrative Rule 9560.0221, subp. 3(g).

7. *Court Interpreters:* Minnesota Statutes § 546.43, subd. 1, provides "*In a civil action in which a handicapped person is a litigant or witness, the presiding judicial officer shall appoint a qualified interpreter to serve throughout the proceedings*." "Handicapped" is defined to mean handicapped in communication. Juvenile Protection Rule 3.05 provides that "*The statutes, 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*."

   Given the current budget constraints, and because of the ambiguous nature of the existing statute, judges and court administrators have raised questions regarding the appropriateness of appointment of interpreters under certain circumstances in CHIPS cases and about the "type" of interpreter to be appointed. The Committee determined the following issues should be referred to the Judicial Council for direction and guidance:
   a. Should the rules be amended to clarify whether appointment of an interpreter is or is not appropriate for:
      - Participants during court hearings (e.g., child who is the subject of the petition, noncustodial parents, foster parents with a right to be heard under the rules, etc.);
      - Relatives who are attending court hearings as possible resources for the family, but who are not parties or participants; and

- GALs, social workers, and attorneys when meeting with parents and/or children outside of court hearings (e.g., in hallways prior to court, during home or office visits).

b. If an interpreter should be appointed but is not available, should the hearing be continued?

c. Under what circumstances should GALs and court-appointed attorneys for parents and children be required to pay for costs of interpreters?

8. *Payment of Fees for Expert Witnesses:* Judges and court administrators have raised the issue of whether the court has authority to grant a public defender's request to pay for expert witness services in CHIPS/TPR cases. For example, the request of a parent for a doctor of their choosing to examine the child upon allegations of serious physical harm to the child. Another example occurs in cases of egregious harm in which the CHIPS process is bypassed and the case proceeds directly to TPR. In these "bypass" cases, there is a rebuttable presumption that the parent is palpably unfit. One way for the parent to rebut the presumption is to call an expert witness to offer evidence regarding the parent's fitness. If the statutes and/or rules do not allow the court to order the county or state to pay for an expert witness, the parent may be unable to rebut the presumption. Some judges have granted such requests and ordered either the county or the state to pay for such expenses, and others have rejected such requests. County attorneys have objected when judges have signed orders requiring the county to pay for such expenses.

   The Committee reviewed Minnesota Statutes § 611.21 (public defender expenses in criminal cases), § 260C.331 (witness expenses in CHIPS/TPR), and § 563.01 (In Forma Pauperis proceedings) and determined that there is no statute expressly related to CHIPS/TPR cases specifying who (i.e., the parent or the county or the state) is responsible for paying for expert services requested by the parent or child. The Committee decided to refer to the Judicial Council the issue of whether the rules or statutes or Judicial Council policy should be amended to clarify whether the court does or does not have authority to order the county or state to pay for such expert services expenses for parents and/or children.

9. *Filing Fees:* Minnesota Statutes § 357.021 specifies the fees that must be charged and collected in various case types and provides in subdivision 1a(a) as follows: "Every person, including the state of Minnesota and all bodies politic and corporate, who shall transact any business in the district court, shall pay to the court administrator of said court the sundry fees prescribed in subdivision 2." In subdivision 1(c)(5) it states: "No fee is required under this section from the public authority or the party the public authority represents in an action for . . . court relief under chapter 260." Subdivision 2(1) states: "The fees to be charged and collected by the court administrator shall be as follows: "In every civil action or proceeding in said court, . . . the plaintiff, petitioner, or other moving party shall pay, when the first paper is filed for that party in said action, a fee of . . . . . The defendant or other adverse or intervening party, or any one or more of several defendants or other adverse or intervening parties appearing separately from the others, shall pay, when the first paper is filed for that party in said action, a fee of . . . . "

The Committee discussed the issue of filing fees charged in CHIPS and TPR cases. The Committee agreed that the statute is unclear and ambiguous about whether filing fees are or are not required to be charged in such cases. Anecdotal information established that in some counties court administrators charge filing fees because they consider the cases to be "civil" case types, while other court administrators do not charge filing fees because they do not consider the cases to be "civil" cases, and still others charge filing fees only for some of those filing papers, such as motions to intervene field by grandparents or general members of the public, but not motions to intervene by children. Some charge filing fees for GALs and others do not.

Because of the nature of the issue, and the uncertainty regarding whether filing fees should or should not be charged, the Committee decided to refer the issue to the Judicial Council for direction and guidance.

Recommendation for Public Hearing Regarding Proposed Amendments

10. Given the nature of the proposed amendments contained in this report, the Committee recommends that, in addition to soliciting written comments, the Court should hold a public hearing regarding the proposed amendments.

Recommendations Regarding the Future Work of the Committee

11. *GAL and ADR Subcommittees:* The Committee recommends that it be permitted to establish two subcommittees in 2009 dealing with GAL procedures and ADR procedures.

12. *Design of an Appellate Process Specifically for CHIPS Cases:* As noted above in recommendation 2, even with the proposed amendments recommended in this report, Minnesota will not achieve the goal of fully complying with the federal CFSR standards. The Committee recommends that the Minnesota Supreme Court appoint a Subcommittee to design an appellate process for child protection cases that better fits the federal timelines, the permanency needs of children, the due process needs of families, and the practice needs of attorneys and judges. The Committee also recommends that once any new appellate process is implemented, use of the existing Rules of Civil Appellate Procedure as they relate to CHIPS cases should be discontinued. The Committee also recommends that any newly drafted procedures regarding the CHIPS appellate process should be set forth in the Rules of Juvenile Protection Procedure rather than in the Rules of Civil Appellate Procedure, and that the Rules of Civil Appellate Procedure should refer readers to the Rules of Juvenile Protection Procedure.

13. *Review to Reduce Redundancy and Increase User-Friendliness:* The Committee recommends that, commencing in 2009, the Minnesota Supreme Court should authorize the Committee to conduct a complete review of the existing Rules of Juvenile Protection Procedure in an effort to expedite the overall child protection process (not just the appellate process) and to make the rules less redundant and easier to use.

RULE 2. DEFINITIONS

In an effort to ensure that the Rules are consistently understood and applied, the Committee recommends that Rule 2.01 should be amended to include additional definitions.

Rule 2.01. Definitions.

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

(a) **"Adjudicated father"** means an individual determined by a court, or pursuant to a recognition of parentage under Minnesota Statutes § 257.75 to be the biological father of the child.

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

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

(d) **"Child custody proceeding,"** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(1), includes:

(1) "foster care placement" which means any action removing an Indian child from the child's parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(2) "termination of parental rights" which means any action resulting in the termination of the parent-child relationship;

(3) "preadoptive placement"' which means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(4) "adoptive placement" which means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(e ~~d~~) **"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; or

(2) returned home before an emergency protective care hearing pursuant to Rule 30 with court ordered conditions of release.

(f) **"Extended family member,"** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(2), shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

(g ~~e~~) **"Foster care"** means the 24-hour-a-day substitute care for a child placed away from the child's parents or guardian and for whom a responsible social services agency has placement and care responsibilities under Minnesota Statutes § 260C.007, subd. 18.

(h ~~f~~) **"Independent living plan"** is a plan for a child age sixteen (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).

(i ~~g~~) **"Indian child"** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(4), and modified by 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.

(j ~~h~~) **"Indian custodian"** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(6), and Minnesota Statutes § 260.755, subd. 10, means an Indian person who has legal custody of an Indian child under 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.

(k) **"Indian child's tribe,"** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(5), means:

(1) the Indian tribe in which an Indian child is a member or eligible for membership; or

(2) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.

(l ~~i~~) **"Indian tribe"** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(8), and Minnesota Statutes § 260.755, subd. 12, means an 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.

(m ~~j~~) **"Juvenile protection case records"** means all records of the juvenile court regarding a particular case or controversy, including all records filed with the court, and the official transcript. Juvenile protection case records do not include ~~all records maintained by the court, and all~~ reporter's notes and tapes, electronic recordings, and unofficial transcripts of hearings and trials. See also "records" defined in subdivision (x ~~t~~).

(n ~~k~~) **"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. 6, including habitual truant and runaway matters;

(2) neglected and in foster care matters as defined in Minnesota Statutes § 260C.007, subd. 24;

(3) review of foster care matters as defined in Minnesota Statutes § 260C.141, subd. 2;

(4) review of out-of-home placement matters as defined in Minnesota Statutes § 260C.212;

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

(6) 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.

(o ~~l~~) **"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.

(p ~~m~~) **"Parent"** as adapted from Minnesota Statutes § 260C.007, subd. 25, 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. 22,

but it does not include an unmarried father whose paternity has not been acknowledged or established.

(q ~~n~~) **"Person"** as defined in Minnesota Statutes § 260C.007, subd. 26, includes any individual, association, corporation, partnership, and the state or any of its political subdivisions, departments, or agencies.

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

(s ~~p~~) **"Protective care"** means the right of the responsible 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 social services agency or child-placing agency to provide the care, food, lodging, training, education, supervision, and treatment the child needs.

(t ~~q~~) **"Protective supervision"** as referenced in Minnesota Statutes § 260C.201, subd. 1(a)(1), means the right and duty of the responsible 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.

(u) "**Qualified Expert Witness**," as defined in Minnesota Administrative Rule 9560.0221, subp. 3(g), means:

(1) a member of an Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs of family organization and child rearing;

(2) a lay expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe; or

(3) a professional person having substantial education and experience in the area of the professional person's specialty, along with substantial knowledge of prevailing social and cultural standards and child-rearing practices within the Indian community.

(v ~~r~~) **"Reasonable efforts to prevent placement"** as defined in Minnesota Statutes § 260.012(d) means: (1) the agency has made reasonable efforts to prevent the placement of the child in foster care; or (2) given the particular circumstances of the child and family at the time of the child's removal, there are no service or efforts available which could allow the child to safely remain in the home. "Reasonable efforts" are made upon the exercise of due diligence by the responsible social services agency to use culturally appropriate and available services to meet the needs of the child and the child's family.

(w ~~s~~) **"Reasonable efforts to finalize a permanent plan for the child"** as defined in Minnesota Statutes § 260.012(e) means due diligence by the responsible social services agency: (1) to reunify the child with the parent or guardian from whom the child was removed; (2) to assess a noncustodial parent's ability to provide day-to-day care for the child and, where appropriate, provide services necessary to enable the noncustodial parent to safely provide the care, as required by Minnesota Statutes § 260C.212, subd. 4; (3) to conduct a relative search as required under Minnesota Statutes § 260C.212, subd. 5; and (4) when the child cannot return to the parent or guardian from whom the child was removed, to plan for and finalize a safe and legally permanent alternative home for the child, preferably through adoption or transfer of permanent legal and physical custody of the child. "Reasonable efforts" are made upon the exercise of due diligence by the responsible social services agency to use culturally appropriate and available services to meet the needs of the child and the child's family.

(x ~~t~~) **"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 (m ~~j~~).

(y ~~u~~) **"Relative"** as defined in Minnesota Statutes § 260C.007, subd. 27, 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. 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, as provided in the Indian Child Welfare Act of 1978, 25 U.S.C. § 1903.

(z ~~v~~) **"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.

(aa) **"Reservation,"** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(10), means Indian country as defined in 18 U.S.C. § 1151 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.

(bb ~~w~~) **"Shelter care facility"** as adapted from Minnesota Statutes § 260C.007, subd. 30, means a physically unrestricting ~~unresricting~~ 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.

(cc ~~x~~) **"Trial Home Visit"** as defined in Minnesota Statutes § 260C.201, subd. 1(a)(3) means the child is returned to the care of the parent or legal custodian from whom the child was removed for a period not to exceed six months, with agency authority and responsibilities set forth in the statute.

(dd) **"Tribal Court"** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(12), means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(ee) **"Voluntary Foster Care"** means placement of a child in foster care based on a written agreement between the responsible social services agency or child placing agency and the child's parent, guardian, or legal custodian. The voluntary foster care agreement gives the agency legal responsibility for the placement of the child. The voluntary foster care agreement is based on both the agency's and the parent's, guardian's, or legal custodian's assessment that placement is necessary and in the child's best interests. See also, Minnesota Statutes § 260C.212, subd. 8, and § 260D.002, subd. 5.

(ff) **"Voluntary Foster Care of an Indian Child**" as defined in Minnesota Statutes § 260.755, subd. 22, means a decision in which there has been participation by a local social services agency or private child-placing agency resulting in the temporary placement of an Indian child away from the home of the child's parent or Indian custodian in a foster home, institution, or the home of a guardian, and the parent or Indian custodian may have the child returned upon demand.

RULE 3. APPLICABILITY OF OTHER RULES AND STATUTES

ICWA Proposed Amendments

The existing Rules of Juvenile Protection Procedure are silent about whether the Rules of General Practice for the District Courts do or do not apply. Rule 10 of the General Rules deals with full faith and credit of tribal court orders. The comment to Rule 10 states:

> *"Rule 10 is a new rule intended to provide a starting point for enforcing tribal court orders and judgments where recognition is mandated by state or federal law (Rule 10.01), and to establish factors for determining the effect of these adjudications where federal or state statutory law does not do so (Rule 10.02)."*
>
> *"The rule applies to all tribal court orders and judgments and does not distinguish between tribal courts located in Minnesota and those sitting in other states. The only limitation on the universe of determinations is that they be from tribal courts of a federally-recognized Indian tribe. These courts are defined in 25 U.S.C. § 450b(e), and a list is published by the Department of the Interior, Bureau of Indian Affairs. See, e.g., 70 Fed. Reg. 71194 (Nov. 25, 2005)."*

To ensure that full faith and credit is applied to tribal court orders, the Committee recommends that Rule 3 should be amended to state that Rule 10 of the General Rules of Practice for the District Courts applies to juvenile protection matters.

Rule 3. Applicability of Other Rules and Statutes

Rule 3.06. Rules of General Practice for District Courts

Rule 10 of the Minnesota Rules of General Practice for District Courts applies to juvenile protection matters.

2008 Advisory Committee Comment

Consistent with 25 U.S.C. § 1911(d), Rule 10 of the Rules of General Practice for District Courts addresses recognition of tribal court orders, judgments, and other judicial acts.

RULE 4. TIME; TIMELINE

Expedited Appeals Proposed Amendments

Pretrial hearings are intended to serve as settlement conferences in order to avoid the frequent statewide practice of settling on the day of trial. In the event settlement is not reached, pretrial hearings are also intended to narrow the scope of issues to be addressed at trial and to identify the witnesses and exhibits to be introduced. Under the existing rules, pretrial hearings are discretionary. In an effort to increase settlements and avoid lengthy trials, the Committee recommends that Rule 4.03 should be amended to require pretrial hearings at least 10 days prior to trial in all CHIPS and TPR and other permanency proceedings.

In addition, in an effort to avoid continuances and multiple adjournments of trials, an area identified as needing improvement in the CFSR report (see report pages 6-7 and Appendix D), and in order to expedite the trial process, the Committee recommends that Rule 4.03 should be amended to provide that a trial in a CHIPS, TPR, or other permanency matter shall be completed within 30 days of the commencement of the testimony.

Rule 4.03. 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 pursuant to Rule 30.01, the court shall hold an emergency protective care hearing within seventy-two (72) hours of the child's removal.

(b) **Admit/Deny Hearing.** Pursuant to Rule 34.02, subd. 1, 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. Pursuant to Rule 34.02, subd. 2, 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.~~

(1) **Parent's, Indian Custodian's or Tribe's Identity Known**. In matters governed by the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., the admit/deny hearing on a petition requesting the foster care placement of an Indian child, the permanent placement of an Indian child, or the termination of parental rights to an Indian child shall not be held until at least ten (10) days after receipt of the notice required under Rule 32.06, 25 U.S.C. § 1912 (a), and Minnesota Statutes § 260.761, subd. 3. The parent, Indian custodian, or tribe shall, upon request, be granted up to twenty (20) additional days from receipt of the notice to prepare for the admit/deny hearing.

(2) **Parent's, Indian Custodian's, or Tribe's Identity Unknown**. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, the notice required under Rule 32.06, 25 U.S.C. § 1912 (a), and Minnesota Statutes § 260.761, subd. 3, shall be sent to the Secretary of the Interior who shall have fifteen (15) days to provide the requisite notice to the parent or Indian custodian and the tribe. The admit/deny hearing shall be held at least twenty-five (25) days after receipt of the notice by the Secretary. The parent, Indian custodian, or tribe shall, upon request, be granted up to twenty (20) additional days from receipt of the notice to prepare for the admit/deny hearing.

(c) **Pretrial Hearing ~~Conference~~.** Pursuant to Rule 36.01, the court shall convene a pretrial hearing which shall take place at least ten (10) days prior to trial ~~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.** Pursuant to Rule 39.02, when the statutory grounds set forth in the petition are denied, a trial regarding a child in need of protection or services matter shall ~~be~~ commence~~d~~ within sixty (60) days from ~~of~~ the date of the emergency protective care hearing or the admit/deny hearing, whichever is earlier, and testimony shall be concluded within thirty (30) days from the date of commencement of the trial.

(e) **Findings/Adjudication.** Pursuant to Rule 39.05, subd. 1~~–2~~, within fifteen (15) days of the conclusion of the testimony, during which time the court may require written arguments to be filed and served, the court shall issue its findings and order regarding whether one or more ~~the~~ statutory grounds set forth in the petition have ~~or have not~~ been proved. The court may extend the period for issuing an order 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.~~ concerning adjudication within fifteen (15) days of the date that the testimony is concluded. If written argument is to be submitted, such argument shall 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.~~

(f) **Disposition.** Pursuant to Rule 41.02, when 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.** Pursuant to Rule 41.06, when the disposition is an award of legal custody to the 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.

(h) **Review of Protective Supervision.** Pursuant to Rule 41.06, 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. In the case of a child who is alleged or found to be ~~has been adjudicated~~ in need of protection or services, the court in its first order shall set the date or deadline for the permanent placement determination hearing and the permanency progress review hearing required for a child who is under age eight (8) at the time the petition is filed alleging the child to be in need of protection or services. Not later than when the court sets the date or deadline for the permanent placement determination hearing and the permanency progress review hearing, the court shall notify the parties and participants of the following requirements of Minnesota Statutes § 260C.201, subd. 11 and subd. 11(a):

(a) **Requirement of Six (6) Month Hearing for Child Under Eight (8) Years of Age.** For a child who is under eight (8) years of age at the time a child in need of protection or services petition is filed concerning the child, the court shall conduct a permanency progress review hearing not later than six (6) months after the child is placed in foster care or in the home of a noncustodial parent to review the progress of the case, the parent's progress on the out-of-home placement plan, and the provision of services.

(b) **Requirement of Twelve (12) Month Hearing.** Regardless of the age of the child at the time a child in need of protection or services petition is filed concerning the child, the court shall conduct a permanent placement determination hearing not later than twelve (12) months after the child is placed in foster care or in the home of a noncustodial parent to determine the permanent status of the child.

Subd. 3. ~~(c)~~ **Permanent Placement Petition and Trial for Child Under Eight (8) Years of Age** ~~Matters~~**.** ~~A trial regarding a permanent placement matter not involving a termination of parental rights matter shall commence on or before sixty (60) days after the admit/deny hearing or ninety (90) days after the filing of the petition, whichever is earlier.~~ 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, if the responsible social services agency demonstrates at the permanency progress review hearing required under Rule 42.01 that the parent is not complying with the case plan or out-of-home placement 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 permanency plan shall be filed in juvenile court within thirty (30) days of the hearing under this paragraph. 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, and testimony shall be concluded within thirty (30) days from the date of commencement of the trial. Within fifteen (15) days of the conclusion of the testimony, during which time the court may require written arguments to be filed and served, the court shall issue its findings and order regarding whether the statutory grounds set forth in the petition have or have not been proved. The court may extend the period for issuing an order 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.

Subd. 4 ~~3~~**. Termination of Parental Rights** ~~Matters~~ **and Other Permanent Placement Matters at 12 Months.**

(a) **Admit/Deny Hearing.** Pursuant to Rule 34.02, an admit/deny hearing shall be held not less than ten (10) days after service of the petition.

(b) **Pretrial Hearing.** Pursuant to Rule 36.01, the court shall convene a pretrial hearing which shall take place at least ten (10) days prior to trial ~~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~~.

(c) **Trial.** Pursuant to Rule 39.02, subd. 1(c), a trial regarding a termination of parental rights or other permanent placement matter shall ~~a trial shall be~~ commence~~d~~ within sixty (60) ~~ninety (90)~~ days of the first scheduled admit/deny hearing ~~filing of the petition,~~ and testimony shall be concluded within thirty (30) days from the date of commencement of the trial.

(d) **Findings/Adjudication.** Pursuant to Rule 39.05, within fifteen (15) days of the conclusion of the testimony, during which time the court may require written arguments to be filed and served, the court shall issue its findings and order regarding whether the statutory grounds set forth in the petition have or have not been proved. The court may extend the period for issuing an order 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 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 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.~~

(e) **Review.** Pursuant to Rule 42.08, subd. 5, ~~43.03,~~ 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 (amended 2003 and 2008)

The timeline set forth in Rule 4.03 is intended as an overall guide for juvenile protection matters and is based upon the requirements of Minnesota Statutes § 260C.176; § 260C.201, 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, 42 U.S.C. § § 601, 603, 622, 629, 653, 675, 670-679, and 1320. Specific time requirements are set forth in each individual rule.

Rule 4.03, 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 Hearing ~~Conference~~
63	Trial
79	Findings/Adjudication
79-88	Disposition Hearing
168-178	Disposition Review Hearing
180	Permanency Progress Review Hearing
258-268	Disposition Review Hearing
335	Permanency Petition Filed
348-358	Disposition Review Hearing
365	Admit/Deny Hearing on Permanency Petition ~~Permanent Placement Determination Hearing~~
365+	Post-Permanency Review Hearings (if appropriate)

Rule 4.04. 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. 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 6. SCHEDULING ORDER

Proposed Amendment from 2007 Committee

Pursuant to the request of the Supreme Court and Judicial Council, the Committee recommends that Rule 6.02 should be amended to conform to the suggested timing structure for issuing court orders.

Rule 6.02. Order

Subd. 1. When Issued. The court shall issue a scheduling order at the admit/deny hearing held pursuant to Rule 34 or within fifteen (15) ~~five (5)~~ days of the admit/deny hearing.

RULE 7. REFEREES AND JUDGES

Proposed Amendment from 2007 Committee
Pursuant to the request of the Supreme Court and Judicial Council, the Committee recommends that Rule 7.06 should be amended to conform to the suggested timing structure for issuing court orders.

Rule 7.06. 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 fifteen (15) ~~ten (10)~~ days of the transmittal of the findings and proposed order.

RULE 8. ACCESSIBILITY OF JUVENILE PROTECTION CASE RECORDS

Expedited Appeals Proposed Amendments
Under the existing rules, county court administration staff are required to redact nonpublic information from each CHIPS and TPR file before it is submitted to the Clerk of Appellate Courts. Files must be redacted and submitted within 10 days of the request by the Clerk of Appellate Courts.

In many counties, the county attorney files one petition for each child, rather than one petition for multiple children, which means that court administration staff in those counties must redact multiple files. The Committee conducted a survey of court administration staff which shows that the redacting process typically takes a minimum of two days, and often three or four days, per file – a process that takes staff away from all of their other work for significant periods of time.

The Committee asked the Clerk of Appellate Courts to keep track of how often parties or members of the public requested access to CHIPS and TPR files once the files were submitted to the appellate courts. The data shows that during the six months from February through July 2008 no requests for access to the files by either parties or the public were received by the Clerk's office.

In an effort to expedite the appellate process and conserve court administration resources, the Committee recommends that Rule 8.01 should be amended to provide that CHIPS and TPR files need not be redacted prior to submission to the Clerk of Appellate Courts, and to include a process that would allow for redaction of the files if access is requested by parties or members of the public during a pending appeal.

Other Proposed Amendments

Rule 8.04(a) precludes access to transcripts, stenographic notes, and records of testimony that was closed to the public. That means, however, that transcripts, stenographic notes, and records of testimony that was open to the public are accessible to the public. Concern has been expressed about releasing "raw" or "unofficial" stenographic notes and electronic recordings to the public. The Committee strongly encourages that only the official transcript should be released to the public so as to avoid "competing" transcripts.

In an effort to preclude release of raw stenographic notes and unofficial transcripts, the Committee recommends that Rule 8.04 should be amended to provide access only to the official transcript. The Committee also recommends that the definition of "juvenile protection records" in Rule 2.01 should be amended to define "juvenile protection case records" to now include only the official transcript and not stenographic notes and recordings as was previously the case, and to make only the official transcript accessible to public except for portions of the transcript where the hearing may have been closed to the public.

Rule 8.01. Presumption of Access to Records

Except as otherwise provided in this Rule, all juvenile protection case records relating to juvenile protection matters, as those terms are defined in Rule 2.01, are presumed to be accessible to any party and any member of the public for inspection, copying, or release. Records or information to which access is restricted under Rule 8.04 shall not be redacted prior to transmission to the clerk of appellate courts. If a party or a member of the public requests access to the juvenile protection case record during the appeal, the portion of the case record requested shall be returned to the trial court to be redacted pursuant to Rule 8.04 before access shall be allowed. The Minnesota Court of Appeals or the Minnesota Supreme Court shall deny access to the case records during the appeal if providing access would unduly delay the conclusion of the appeal. ~~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 the court file, or any record in such file, shall be accessible to the public.

* * * * *

Rule 8.04. 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.

(a) ~~transcripts, stenographic notes, and recordings of~~ official transcript 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 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.

RULE 10. ORDERS

Expedited Appeals Proposed Amendments

To expedite the receipt of transcripts, the Committee recommends that Rule 10.01 should be amended to require that each order issued following a hearing shall include the name and contact information of the court reporter so that the person may be easily identified and contacted if a transcript of the hearing is required.

To expedite the processing of TPR and other permanency orders, the Committee recommends that Rule 10.03 should be amended to provide that such orders shall be served by court administration staff within three days, rather than five days, of the date of delivery by the judicial officer. Court administration representatives on the Committee indicated that in most cases such orders are filed and served the same day they are received, so decreasing the timeframe to three days would not be a burden.

Proposed Amendment from 2007 Committee

Pursuant to the request of the Supreme Court and Judicial Council, the Committee recommends that Rule 7.06 should be amended to conform to the suggested timing structure for issuing court orders.

Rule 10.01. 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 fifteen (15) ~~ten (10)~~ days of the conclusion of the hearing. Each order issued following a hearing shall include the name and contact information of the court reporter. Failure to include the court reporter contact

information does not extend the timeline for appeal. 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.

2008 Advisory Committee Comment

To easily identify court reporters for the purpose of timely requesting a transcript for purposes of appeal, Rule 10.01 requires each order issued follow a hearing to include the name and contact information of the court reporter.

* * * * *

Rule 10.03. Method and Timing of Service; Persons to be Served

Service of court orders shall be made by the court administrator upon each party, county attorney, and such other persons as the court may direct, and may be made by delivery at the hearing, by U.S. mail, or as otherwise directed by the court. 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. Service of the order by the court administrator shall ~~must~~ be accomplished within five (5) days of the date the judicial officer delivers the order to the court administrator. In a termination of parental rights matter or other permanency matter, service by the court administrator of the findings and order terminating parental rights or establishing other permanency for the child shall be accomplished within three (3) days of the date the judicial officer delivers the order to the court administrator.

RULE 15. MOTIONS

ICWA Proposed Amendments

The existing Rules of Juvenile Protection Procedure do not specify the procedures for transferring jurisdiction to tribal court, so the Committee drafted proposed procedures. In doing so, the Committee identified other rules that are impacted by such procedures. Consistent with the proposed rules regarding transfer of jurisdiction to tribal court, the Committee recommends that Rule 15.02 should be amended to specify the procedures for serving and responding to motions to transfer jurisdiction to tribal court.

Other Recommendations

The existing rules are silent about the procedures for requesting and scheduling motion hearing. The Committee recommends the addition of Rule 15.06, which includes those procedures.

Proposed Amendment from 2007 Committee

Pursuant to the request of the Supreme Court and Judicial Council, the Committee recommends that Rule 15.07 should be amended to conform to the suggested timing structure for issuing court orders.

Rule 15.02. Service and Notice of Motions

Subd. 1. Upon Whom.

(a) **Generally.** 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. If service of the petition was by publication and the address of the person remains unknown, service of a motion shall be deemed sufficient if it is mailed to the person's last known address. The moving party shall serve only the notice of the hearing and not the motion upon all participants.

(b) **Motion to Transfer Jurisdiction to Tribal Court.** In addition to providing service as required in subdivision 1(a), a motion to transfer jurisdiction to an Indian child's tribal court under Rule 48.01, or a response to such motion, shall also be served upon the child's parents and any Indian child age twelve (12) or older regardless of party status.

2008 Advisory Committee Comment

Service of Motion to Transfer Jurisdiction to Tribal Court on Child Age 12 or Older. The ICWA permits the district court to deny a request to transfer to tribal court when there is "good cause" to deny the transfer. 25 U.S.C. § 1911(b). While "good cause" to deny the transfer is not defined in the ICWA, it is addressed in the *Bureau of Indian Affairs Guidelines for State Courts: Indian Child Custody Proceedings* (*BIA Guidelines*), which provides that "Good cause not to transfer this proceeding may exist if any of the following circumstances exists . . . [t]he Indian child is over twelve years of age and objects to the transfer." *BIA Guidelines* C.3 and commentary, Fed. Reg. Vol. 44, page 67591 (Nov. 26, 1979). Requiring service of the motion to transfer jurisdiction to tribal court upon a child age twelve (12) or older permits the child to be aware of the request to transfer and to raise an objection.

* * * * *

Rule 15.06. Obtaining Hearing Date; Notice to Parties

Upon request of a party who intends to file a notice of motion and motion, the court administrator shall schedule a hearing which shall take place within fifteen (15) days of the request. A party obtaining a date and time for a hearing on a motion shall file and serve the notice of motion and motion pursuant to Rule 15.02, subd. 3.

Rule 15.07 ~~15.06~~. Timing of Decision

Orders regarding motions shall be filed with the court administrator within fifteen (15) ~~ten (10)~~ days of the conclusion of the hearing. Orders shall be served by the court administrator pursuant to Rule 10.03.

RULE 21. PARTIES

ICWA Proposed Amendments

To assure full compliance with the ICWA, the Committee recommends that Rule 21.01 should be amended to state that both parents of an Indian child are parties to a juvenile protection matter. The Committee also recommends that Rule 21.01 should be amended to clarify that the tribe is the child's tribe.

Proposed Amendments from 2007 Committee

First, the Committee discussed the party/participant status of persons recommended by the social services agency to receive permanent custody of the child. Rule 22.01(f) dealing with "participants" currently provides that "relatives or other persons providing care for the child and other relatives who request notice" are participants in juvenile protection matters. However, Minnesota Statutes § 260C.163, subd. 2, provides that such relatives are parties if the responsible social services agency recommends them as permanent legal and physical custodians of the child: "If, in a proceeding involving a child in need of protection or services, the responsible social services agency recommends transfer of permanent legal and physical custody to a relative, the relative has a right to participate as a party, and thereafter shall receive notice of any hearing in the proceedings." Consistent with Minnesota Statutes § 260C.163, the Committee recommends that Rule 21.01 should be amended to add Subdivision 4 to provide that relatives are parties to child in need of protection or services proceedings if the responsible social services agency recommends them as permanent legal and physical custodians.

Second, the Committee discussed the party/participant status of the social services agency when someone other than the agency files a Termination of Parental Rights or other permanency petition. Minnesota Statutes § 260C.301, subd.3(a), provides as follows: "If a termination of parental rights petition has been filed by another party, the responsible social services agency shall be joined as a party to the petition." Rule 22.01(c) dealing with participants currently provides that when they are not the petitioner, the responsible social services agency is a participant to juvenile protection proceedings. Consistent with the statute, the Committee recommends that Rule 21.01, subd. 3, dealing with parties to TPR and other permanency proceedings should be amended to include the social services agency as a party when the agency is not the petitioner.

Rule 21.01. Party Status

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

(a) the child's guardian ad litem;

(b) the child's legal custodian;

(c) in the case of an Indian child, the child's parents as defined in Rule 2.01(p), the child's Indian custodian, and the Indian child's tribe through the tribal representative;

(d) the petitioner;

(e) any person who intervenes as a party pursuant to Rule 23;

(f) any person who is joined as a party pursuant to Rule 24; and

(g) any other person 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 Child 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.

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) the responsible social services agency when the agency is not the petitioner, and

(d ~~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.

Subd. 4. Relatives Recommended as Permanent Custodians. If, in a proceeding involving a child in need of protection or services, the responsible social services agency recommends transfer of permanent legal and physical custody to a relative, the relative has a right to participate as a party and shall receive notice of all hearings and copies of all orders.

RULE 25. RIGHT TO REPRESENTATION; APPOINTMENT OF COUNSEL

ICWA Proposed Amendments

Minnesota Statutes § 260C.163, subd. 3, provides for the appointment of counsel for each parent (regardless of physical custodial status and/or party or participant status) if the person qualifies financially and if the court determines that appointment of counsel is appropriate. The exception is in truancy cases where counsel for the parent(s) is required to be appointed only if out of home placement is being contemplated. Pursuant to the ICWA (25 U.S.C. § 1912(b)), the court is required to appoint counsel for any indigent parent (regardless of custodial status and/or party or participant status) and any Indian custodian who requests counsel.

Rules 25.01 and 25.02 mirror the federal and state statutes with respect to appointment of counsel for indigent parents. However, the existing rules do not provide for appointment of counsel for Indian custodians as required under the ICWA. Consistent with the ICWA, the Committee recommends that Rule 25.02, subd. 2(d), should be amended to require appointment of counsel for indigent Indian custodians.

Expedited Appeals Proposed Amendments

Continuity of counsel from the trial court level to the appellate level is important. While Rule 25.01 provides that parties and participants are entitled to counsel at both the trial court and appellate levels, the rules do not specify when counsel should be appointed on appeal. Except in the Fourth Judicial District where the county board pays for public defender fees at both the trial and appellate court levels, public defenders (who had been representing parents in CHIPS

and TPR cases until June 2008) do not represent parents on appeal, which means that if parents wish to appeal and/or be represented on appeal, the judge must appoint another attorney. Since July 2008, attorneys other than public defenders are representing parents, but it is unclear whether they will represent parents on appeal. Because of the time delay in appointing counsel on appeal, there have been cases where appellate counsel was not appointed until just days before the appeal must be filed or even after the appeal deadline passed. For that reason, the Committee recommends that appointment of appellate counsel for a child, parent, legal custodian, Indian custodian, or GAL shall be made within three days of the request for counsel and, where possible, the trial court attorney should be appointed as appellate counsel.

Rule 25.01. 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 (amended 2003)

Rule 25.01 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 counsel as provided in Rule 25.02.

Rule 25.02. 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 the child desires counsel but is financially unable to employ it, the court shall appoint counsel to represent the child who is ten (10) years of age or older and may appoint counsel to represent a child under age ten (10) in any case 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 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 shall ~~must~~ appoint a public defender or other counsel at public expense to represent the child.

(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. For purposes of appeal, appointment of counsel in a juvenile protection matter shall be made within three (3) days of the request for counsel. When possible, the trial court attorney should be appointed as appellate counsel.

Subd. 2. Parent, ~~or~~ Legal Custodian or Indian Custodian. Each parent or legal custodian or Indian 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 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. However, before any out-of-home placement, including foster care or inpatient treatment, can be ordered, the court shall ~~must~~ appoint a public defender or other counsel at public expense to represent the parent in accordance with subdivision 2(a).

(c) **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) **Timing.** The appointment of counsel for the parent, legal custodian, or Indian custodian shall occur as soon as practicable after the request is made. For purposes of appeal, appointment of counsel in a juvenile protection matter shall be made within three (3) days of the request for counsel. When possible, the trial court attorney should be appointed as appellate counsel.

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. For purposes of appeal, appointment of counsel in a juvenile protection matter shall be made within three (3) days of the request for counsel. When possible, the trial court attorney should be appointed as appellate counsel.

RULE 30. EMERGENCY PROTECTIVE CARE HEARING

ICWA Proposed Amendments

Rule 33 requires the CHIPS, TPR, or other permanency petition to state whether the child is or is not an Indian child, whether the child is a resident of or domiciled on an Indian reservation or a ward of tribal court, and whether the ICWA does or does not apply. The Rules, however, do not require the court to make any findings at the EPC Hearing (or the Admit/Deny Hearing, if that is the first hearing in the matter) about those issues. Such information is not always known to the petitioner at the time the petition is filed; however, if there is a possibility that the child is an Indian child, consistent with the Congressional purpose of the ICWA the court should treat the child and the proceedings as if the ICWA does apply unless or until there is a determination otherwise. For that reason, the Committee recommends that Rule 30.08 should be amended to require findings at the EPC Hearing regarding whether the child is an Indian child, whether the child is a resident of or domiciled on an Indian reservation or a ward of tribal court, the applicability of the ICWA, and actions the court may take depending upon its findings.

To ensure full compliance with the ICWA, the Committee also recommends that Rule 30.10 should be amended to require the court to direct the agency to serve notice of the pending proceeding upon the Indian child's parent and tribe if such notice has not already been served, and to require the court to make the require the testimony of a qualified expert witness if the child is proposed to be placed in foster care.

Proposed Amendment from 2007 Committee
Pursuant to the request of the Supreme Court and Judicial Council, the Committee recommends that Rule 30.10 should be amended to conform to the suggested timing structure for issuing court orders.

Rule 30.08. Protective Care Determinations

Subd. 1. Initial Findings.

(a) **Prima Facie Showing.** 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.

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

(1 ~~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:

(i ~~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

(ii ~~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.

(2 ~~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.

(3 ~~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.

Subd. 2. Indian Child Determination. The court shall determine whether the child is an Indian child through review of the petition and other documents and an on-the-record inquiry. If the court is unable to determine whether the child is an Indian child, the court shall direct the petitioner to make further inquiry and provide to the court and parties additional information regarding whether the child is an Indian child.

Subd. 3. Emergency Removal and Placement Authority For Indian Child Ward, Resident, or Domiciliary.

(a) **Finding.** If the district court finds from review of the petition or other information that an Indian child resides or is domiciled on an Indian reservation or that an Indian child is a ward of tribal court but is temporarily located off the reservation, the district court may

order emergency removal of the child from the child's parent or Indian custodian and emergency placement in foster care.

(b) **Required Actions for Wards of Tribal Court.** If the district court finds from review of the petition or other information that an Indian child is a ward of tribal court, the court shall order that the child be expeditiously returned to the jurisdiction of the Indian child's tribe and shall consult with the tribal court regarding the child's safe transition pursuant to Rule 48.02, subd. 1.

2008 Advisory Committee Comment

Child's Status as Indian Child Unknown. In cases where the application of the ICWA is unclear, such as when it is not yet known whether the child is or is not an Indian child, it is advisable to proceed pursuant to the requirements of the ICWA unless or until a determination is otherwise made in order to fulfill the Congressional purposes of the ICWA, to ensure that the child's Indian tribe is involved, and to avoid invalidation of the proceeding pursuant to 25 U.S.C. § 1914 and Rule 46.03.

Exclusive Jurisdiction. With respect to exclusive jurisdiction, the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1911(a), and the Minnesota Indian Family Preservation Act (MIFPA), Minn. Stat. § 260.771, subd. 1, provide:

> "An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child."

For a full discussion of "domicile" under the ICWA, see Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989).

* * * * *

Rule 30.10. Protective Care Findings and Order

Within three (3) days of ~~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 and 30.09 and which shall order:

(a) that the child:

(1) continue in protective care;

(2) return home with conditions ~~in place~~ to ensure ~~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) terms of parental and sibling visitation pending further proceedings; ~~and~~

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

(f) if the court knows or has reason to know that the child is an Indian child, notice of the proceedings shall be sent to the Indian child's parents or Indian custodian and Indian child's tribe consistent with 25 U.S.C. § 1912(a); Minnesota Statutes § 260.761, subd. 3; and Rule 32.06; and

(g) if the child is determined to be an Indian child and is proposed to be placed in foster care, testimony, pursuant to Rule 49, of a qualified expert witness.

2008 Advisory Committee Comment

See the 2008 Advisory Committee Comment following Rule 34.03 for information about the notice to be provided to the Indian child's parent, Indian custodian, and Indian tribe, including timing of the notice and time to respond.

Emergency Protective Care Placement Pending ICWA Notice. While both the ICWA and Minnesota law require notice to the Indian child's parent or Indian custodian and Indian child's tribe regarding the juvenile protection proceeding, 25 U.S.C. § 1922 provides that a state may take emergency action to protect an Indian child who is domiciled or resides on a reservation but is temporarily located off the reservation. While there is no such explicit provision in the ICWA regarding an Indian child who is not domiciled on or a resident of a reservation, by analogy there is general recognition that the state may take emergency action to protect an Indian child who is not domiciled on or resident of a reservation. It is not possible to send the ICWA notice and meet the timing requirements of 25 U.S.C. § 1912(a) before the emergency removal hearing. The ICWA notice that the court will direct be provided under Rule 30.10(f) is required under Rule 32.06 before the Admit/Deny Hearing may be held. The timing of the Admit/Deny Hearing in matters governed by the ICWA may be different due to the notice requirement of rule 32.06.

RULE 32. SUMMONS AND NOTICE

ICWA Proposed Amendments

To ensure that the petitioner, who is responsible for preparing and serving the ICWA notice, and other litigants are familiar with the required content of the ICWA notice, the Committee recommends that a comment should be added which specifies the content of the notice.

Proposed Amendments from 2007 Committee

The Committee recommends that Rule 32, subd. 3(d), should be amended to correct a reference to a rule number.

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

*** * * * ***

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

(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 statement of the time and place of the hearing;

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

(d) a statement explaining the right to representation pursuant to Rule 25 ~~61~~;

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

(f) a statement pursuant to Rule 18.01 that failure to appear may result in:

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

* * * * *

Rule 32.06. Petitioner's Notice Responsibility Under Indian Child Welfare Act

Pursuant to 25 U.S.C. § 1912(a), 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 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. 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. The original or a copy of each notice shall be filed with the court together with any return receipts or other proof of service.

2008 Advisory Committee Comments

See the 2008 Advisory Committee Comment following Rule 34.03 regarding the Notice to Indian Child's Parent, Indian Custodian, and Indian Tribe required under the ICWA.

The *Bureau of Indian Affairs Guidelines for State Courts: Indian Child Custody Proceedings* (*BIA Guidelines*) provides as follows regarding the content of the notice required to be provided under Rule 32.06 to the Indian child's parent or Indian custodian and the Indian child's tribe:

"Notice Requirements

a. In any involuntary child custody proceeding, the state court shall make inquiries to determine if the child involved is a member of an Indian tribe or if a parent of the child is a member of an Indian tribe and the child is eligible for membership in an Indian tribe.

b. In any involuntary Indian child custody proceeding, notice of the proceeding shall be sent to the parents and Indian custodians, if any, and to any tribes that may be the Indian child's tribe by registered mail with return receipt requested. The notice shall be written in clear and understandable language and include the following information:

i. The name of the Indian child.

ii. His or her tribal affiliation.

iii. A copy of the petition, complaint or other document by which the proceeding was initiated.

iv. The name of the petitioner and the name and address of the petitioner's attorney.

v. A statement of the right of the biological parents or Indian custodians and the Indian child's tribe to intervene in the proceeding.

vi. A statement that if the parents or Indian custodians are unable to afford counsel, counsel will be appointed to represent them.

vii. A statement of the right of the natural parents or Indian custodians and the Indian child's tribe to have, on request, twenty days (or such additional time as may be permitted under state law) to prepare for the proceedings.

viii. The location, mailing address and telephone number of the court.

ix. A statement of the right of the parents or Indian custodians or the Indian child's tribe to petition the court to transfer the proceeding to the Indian child's tribal court.

x. The potential legal consequences of an adjudication on future custodial rights of the parents or Indian custodians.

> xi. A statement in the notice to the tribe that since child custody proceedings are usually conducted on a confidential basis, tribal officials should keep confidential the information contained in the notice concerning the particular proceeding and not reveal it to anyone who does not need the information in order to exercise the tribe's right under the Act."
>
> *BIA Guidelines* B.5, Fed. Reg. Vol. 44, p. 67591 (Nov. 26, 1979).

RULE 33. PETITION

ICWA Proposed Amendments

To meet the requirements of the ICWA, including notification of the Indian child and the child's parents, Indian custodian and Indian tribe, it is critical for the court and litigants to know at the earliest possible time whether the child who is the subject of the petition is or is not an Indian child. It is also critical to know the identity of the child's Indian custodian and Indian tribe. For that reason, the Committee recommends that Rule 33.02 regarding the content of the petition should be amended to state whether the child is or is not an Indian child; the name and contact information for the Indian child's parents, Indian custodian, and Indian tribe; whether the child is a resident of or domiciled on an Indian reservation or a ward of tribal court; and whether the ICWA does or does not apply.

Throughout these amendments the Committee uses the phrase "if the child is believed to be an Indian child" to reflect that the ICWA protections should be available and applied to the child and family from the beginning of a proceeding even if at that time there is only a belief, but not proof, that the child is an Indian child, and until or unless a determination is otherwise made.

Rule 33.02. 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, and, if the child is believed to be an Indian child, the name of the child's and parent's tribe;

(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, and, if the child is believed to be an Indian child, the name and post office address of the child's Indian custodian, if any, and the Indian custodian's tribal affiliation;

(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;

(h) the names and address of the parties identified in Rule 21, as well as a statement designating them as parties;

(i) the names and addresses of the participants identified in Rule 22, as well as a statement designating them as participants;

(j) if the child is believed to be an Indian child, a statement regarding:

(1) ~~of~~ the specific actions that have been taken to prevent the child's removal from, and to safely return the child to, the custody of the parents or Indian custodian; ~~and~~

(2) whether the residence of the child is believed to be on an Indian reservation and, if so, the name of the reservation;

(3) whether the child is a ward of a tribal court and, if so, the name of the tribe; and

(4) whether the child's tribe has exclusive jurisdiction pursuant to 25 U.S.C. § 1911(a).

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.

2008 Advisory Committee Comment

For a quote from the ICWA that addresses "exclusive jurisdiction," see the 2008 Advisory Committee Comment following Rule 30.08.

RULE 34. ADMIT/DENY HEARING

ICWA Proposed Amendments

The ICWA provides that "no foster care placement or termination of parental rights proceeding shall be held until at least 10 days after receipt of notice by the parent or Indian custodian and the tribe or Secretary; provided that the parent or Indian custodian or the tribe shall, upon request, be granted up to 20 additional days to prepare for such proceeding." 25 U.S.C. § 1912(a). In an effort to ensure that the timing requirements of the ICWA are met, the Committee recommends that Rule 34.02 regarding the timing of the Admit/Deny Hearing should be amended consistent with the ICWA.

Rule 33 requires the CHIPS, TPR, or other permanency petition to state whether the child is or is not an Indian child, whether the child is a resident of or domiciled on an Indian reservation or a ward of tribal court, and whether the ICWA does or does not apply. The Rules, however, do not require the court to make any findings at the Admit/Deny Hearing, if that is the first hearing in the matter, about those issues. Such information is not always known to the petitioner at the time the petition is filed; however, if there is a possibility that the child is an Indian child, consistent with the Congressional purpose of the ICWA the court should treat the child and the proceedings as if the ICWA does apply unless or until there is a determination otherwise. For that reason, the Committee recommends that Rule 34.03 should be amended to require findings

at the Admit/Deny Hearing regarding whether the child is an Indian child, whether the child is a resident of or domiciled on an Indian reservation or a ward of tribal court, the applicability of the ICWA, and actions the court may take depending upon its findings.

Rule 34.02. 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.

(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 of the summons and petition is complete upon the party.

(c) **Permanent Placement Matters.** In a permanent placement matter the admit/deny hearing shall be held not less than ten (10) days after service of the summons and petition is complete upon the party.

(d) **Indian Child Welfare Act Matters.**

(1) **Parent's, Indian Custodian's or Tribe's Identity Known**. In matters governed by the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., the admit/deny hearing on a petition requesting the foster care placement of an Indian child, the permanent placement of an Indian child, or the termination of parental rights to an Indian child shall not be held until at least ten (10) days after receipt of the notice required under Rule 32.06, 25 U.S.C. § 1912 (a), and Minnesota Statutes § 260.761, subd. 3. The parent, Indian custodian, or tribe shall, upon request, be granted up to twenty (20) additional days from receipt of the notice to prepare for the admit/deny hearing.

(2) **Parent's, Indian Custodian's, or Tribe's Identity Unknown**. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, the notice required under Rule 32.06, 25 U.S.C. § 1912 (a), and Minnesota Statutes § 260.761, subd. 3, shall be sent to the Secretary of the Interior who shall have fifteen (15) days to provide the requisite notice to the parent or Indian custodian and the tribe. The admit/deny hearing shall be held at least twenty-five (25) days after receipt of the notice by the Secretary. The parent, Indian custodian, or tribe shall, upon request, be granted up to twenty (20) additional days from receipt of the notice to prepare for the admit/deny hearing.

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 three (3) days and no later than twenty (20) days after the parties have been served with the summons and petition.

(b) **Child's Behavior.** In matters where the sole allegation is that the child's behavior is the basis for the petition and the child is not in placement, an admit/deny hearing shall be commenced within a reasonable time after service of the summons and petition 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. Hearing Procedure

Subd. 1. Initial Procedure. At the commencement of the hearing the court shall on the record:

(a) verify the name, date of birth, ~~age,~~ race, gender, 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, parent, and Indian custodian have 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;

(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;

(i) if the Admit/Deny Hearing is the first hearing in the juvenile protection matter and if the court knows or has reason to know that the child is an Indian child, determine whether notice has been sent pursuant to 25 U.S.C. § 1912(a), Minnesota Statutes § 260.761, subd. 3; and Rule 32.06; and

(j) if the district court finds from review of the petition or other information that an Indian child is a ward of tribal court, pursuant to Rule 48.02, subd. 1, adjourn the hearing to consult with the tribal court regarding the safe and expeditious return of the child to the jurisdiction of the tribe and dismiss the juvenile protection matter.

2008 Advisory Committee Comment

Notice to Indian Child's Parent, Indian Custodian, and Indian Tribe Required Under ICWA. For a juvenile protection matter involving an Indian child, the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1912(a), Minnesota Statutes § 260.761, subd. 3, and Rule 32.06 require that notice of the proceeding and of the right to intervene in the proceeding shall be given by registered mail with return receipt requested to the Indian child's parent or Indian custodian and the Indian child's tribe by the person seeking foster care placement or termination of parental rights. Minnesota Statutes § 260.761, subd. 2, also requires notice to the Indian child's tribe whenever the agency's involvement with the Indian child could lead to out-of-home placement and requires agency involvement longer than thirty (30) days. This requirement supports the practice of early involvement of the child's Indian tribe in planning for the child's safety and services for the family.

Timing of ICWA Notice. The ICWA, 25 U.S.C. § 1912(a), provides that 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 Indian child's parent or Indian custodian and the Indian child's tribe, provided that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty (20) additional days from receipt of the notice to prepare for such proceeding.

Emergency Protective Care Placement Pending ICWA Notice. See 2008 Advisory Committee Comment to Rule 30.10.

RULE 36. PRETRIAL HEARING

Expedited Appeals Proposed Amendments

Pretrial hearings are intended to serve as settlement conferences early in the trial preparation process in order to avoid settlement on the day of trial, which not only wastes court calendar time, but also requires attorneys and parties to spend hours preparing for often complex and challenging cases only to have all of that work negated due to settlement on the day of trial. In the event settlement is not able to be achieved, pretrial hearings are also intended to specify the issues to be addressed at trial and to identify the witnesses and exhibits to be introduced so as to narrow the specific statutory grounds and facts in contention.

Under the existing Rules, pretrial hearings are discretionary. In an effort to decrease the duration of trials so as to avoid continuances, multiple lengthy adjournments, and lengthy transcripts, the Committee recommends that Rule 36.01 should be amended to require pretrial hearings in all cases at least 10 days prior to trial.

The existing Rules are silent about the filing of proposed findings of fact. In an effort to The Committee also recommends that Rule 36.02 should be amended to Committee members noted that some judges require the pretrial filing of proposed findings and orders in an effort to narrow the issues to be addressed at trial. Those proposed findings then serve as a guide for attorneys during trial to keep them focused on only the relevant facts and issues. In order to decrease the length of trials, the Committee recommends that Rule 36.02 regarding the purpose a pretrial hearing should be amended to include determination of the need for pretrial filing of proposed findings consistent with the statutory grounds to be proved.

The existing Rules are silent about whether proposed findings should be submitted and, if so, the timing of submission of such proposed findings. The Committee recommends that Rule 36.02 should be amended to require the court to determine the need for, and the date for submission of, proposed findings. Depending upon the practice in each court, proposed findings could be requested as part of the pretrial proceedings or as part of the post-trial arguments.

Rule 36.01. Timing

The court shall ~~may~~ convene a pretrial hearing ~~on its own motion or upon the motion of any party. Any pretrial hearing shall take place~~ at least ten (10) days prior to trial.

Rule 36.02. Purpose

The purposes of a pretrial hearing 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. If counsel is appointed at the pretrial hearing, the hearing 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;

(k) determine the need for, and date for submission of, proposed findings consistent with the statutory grounds to be proved; and

(l ~~k~~) determine any other relevant issues.

Rule 36.03. Pretrial Order

The pretrial order shall be filed within ten (10) days of the hearing and shall include the information specified in Rule 36.02 and shall specify all factual allegations and statutory grounds admitted and denied.

RULE 37. CASE PLANS AND OUT-OF-HOME PLACEMENT PLANS

ICWA Proposed Amendments

Minnesota Statutes 260C.212, subd. 1(b), defines case plans and out-of-home placement plans as written documents prepared by the responsible social services agency jointly with the parent and in consultation with the child's guardian ad litem, foster parent, tribe and, if appropriate, the child. To fulfill the Congressional purpose of the ICWA, the Committee recommends that the statute and Rules 37.02 and 37.03 should be amended to also include consultation with the child's Indian custodian, if any.

Rule 37.02. Child in Court-Ordered Foster Care: Out-of-Home Placement Plan

*** * * * ***

Subd. 3. Content. The out-of-home placement plan shall include a statement about whether the parent, legal custodian, or Indian 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 or disagrees with the services recommended in the plan by the responsible social services agency, the agency shall state in the plan the attempts made to engage the parent, legal custodian, and child in case planning and note such refusal or disagreement. 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, legal custodian, or Indian custodian; ~~and~~ child, if appropriate; the child's tribe, if the child is an Indian child; and foster parents have received a copy of the plan. When the child is in foster care due solely or in part to the child's emotional disturbance, the child's mental health treatment provider shall also be consulted in preparation of the plan and the agency shall document such consultation in the plan filed with the court.

Rule 37.03. Child in Voluntary Foster Care: Out-of-Home Placement Plan

Subd. 1. Child in Voluntary Foster For Reasons Other than for Treatment ~~Care Not Due Solely to Child's Disability~~**.**

(a) **Timing.** The out-of-home placement plan required under Minnesota Statutes § 260C.212, subd. 1, shall 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, or Indian 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, or Indian 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. When a child is in foster care due solely or in part to the child's emotional disturbance, the child's mental health treatment provider shall also be consulted in preparation of the plan and the agency shall document such consultation in the plan filed with the court.

~~**Subd. 2. Child in Voluntary Foster Care Due Solely to Child's Disability.**~~

~~(a) **Timing.** The out-of-home placement plan required under Minnesota Statutes § 260C.212, subd. 1, shall 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 44.~~

~~(b) **Content.** The plan shall include a statement about whether the parent, legal custodian or Indian 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, or Indian 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. When a child is in foster care due solely to the child's emotional disturbance, the child's mental health treatment provider shall also be consulted in preparation of the plan and the agency shall document such consultation with the plan filed with the court.~~

Subd. 2 ~~3~~. Procedure for Approving Out-of-Home Placement Plan for Child in Voluntary Foster Care. The court shall consider the appropriateness of the case plan or 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 39. TRIAL

ICWA Proposed Amendments

Rule 39.04 is intended to specify the standard of proof for CHIPS, TPR, and other permanent placement matters. The Rule, however, goes beyond that intent and covers topics addressed elsewhere in the Rules. For that reason, the Committee recommends that Rule 39.04 should be amended to state just the standard of proof in juvenile protection proceedings, including the standard of proof in TPR proceedings involving an Indian child.

Expedited Appeals Proposed Amendments

In July 2006, Minnesota Statutes § 260C.212, subd. 11, was amended to establish a revised timeline and procedures for Permanency Progress Review Hearings and Permanent Placement Determination Hearings. Pursuant to the revised statute, an Admit/Deny Hearing on a TPR or other permanency petition must be commenced within 12 months of a child's removal from home. If the parent denies the petition, a trial must be commenced within 60 days of the Admit/Deny Hearing. In the case of a child who is under age 8, if at the conclusion of a Permanency Progress Review Hearing the court determines that a permanency petition must be filed, such petition must be filed within 30 days of the hearing, and a trial must be commenced within 30 days if the petition is for transfer of legal and physical custody or within 90 days if the petition is for TPR. The statutes and rules are silent about the timeframe for completing such trials. With respect to trials, the CFSR preliminary report identified continuances and multiple adjournments as an area needing improvement.

The Committee recommends that Rule 39.02 should be amended to conform to the revised statutory timelines regarding commencement of trials. In addition, in an effort to avoid continuances and expedite the process, the Committee recommends that the rule should be amended to require that testimony in any trial shall be concluded within 30 days of the commencement of the trial.

The Committee also recommends that Rule 39.05 regarding the time for issuing an order following a trial should be amended to provide that the order shall be issued within 15 days of

the conclusion of the testimony, rather than conclusion of the trial, during which time the court may require written arguments to be simultaneously filed and served. The court may extend the time for issuing the order by 15 days if the court finds that an extension is required and in the best interest of the child.

The Committee also recommends that Rule 39.05 should be amended to require that each order issued following a trial shall include the name and contact information of the court reporter so that the person may be easily identified and contacted if a transcript of the trial is required.

Rule 39.02. 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, and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and wherever possible should be over consecutive days.

(b) **Trial Following Permanency Progress Review Hearing for Child Under Age 8 ~~Permanent Placement Matters~~.** ~~A trial regarding a permanent placement matter not involving a termination of parental rights matter shall commence on or before sixty (60) days after the admit/deny hearing or ninety (90) days after the filing of the petition, whichever is earlier. 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, if the responsible social services agency demonstrates at the permanency progress review hearing required under Rule 42 that the parent is not complying with the case plan or out-of-home placement 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 permanency plan shall be filed in juvenile court within thirty (30) days of the hearing under this paragraph.~~ A trial required by Rule 42.03~~, subd. 1(c)(2) or (3),~~ following a Permanency Progress Review Hearing ~~on the petition~~ shall be commenced ~~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 of the filing of the petition in the case of a petition for termination of parental rights.

(c) **Termination of Parental Rights and Other Permanent Placement Matters.** Unless otherwise provided by these rules, a trial regarding a termination of parental rights matter or other permanent placement matter shall commence within sixty (60) ~~ninety (90)~~ days of the first scheduled admit/deny hearing, ~~from the date of the filing of the petition,~~ and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and wherever possible should be over consecutive days.

(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, not to exceed thirty days (30), to provide for continuous testimony over consecutive days, until the trial is completed 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 or adjourn 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. Failure to conduct a pretrial shall not constitute good cause.

~~**(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 39.04. Standard of Proof

Subd. 1. Generally. ~~To be proved at trial, the statutory grounds set forth in the~~ In child in need of protection or services matters, the standard of proof is ~~petition must be proved by~~ clear and convincing evidence pursuant to Minnesota Statutes § 260C.163, subd. 1(a), and the Indian Child Welfare Act, 25 U.S.C. § 1912(e).

Subd. 2. Termination of Parental Rights and Other Permanent Placement Matters.

(a) **Non-Indian Child.** In a termination of parental rights or other permanency matter involving a non-Indian child, the standard of proof is clear and convincing evidence pursuant to Minnesota Statutes § 260C.317, subd. 1.

(b) **Indian Child.** In a termination of parental rights matter involving an Indian child, the standard of proof is beyond a reasonable doubt pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1912(f).

~~**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.~~

Rule 39.05. Decision

Subd. 1. Generally. Within fifteen (15) days of the conclusion of the testimony ~~trial~~, during which time the court may require written arguments to be simultaneously filed and served, the court shall ~~make a finding and~~ issue its findings and ~~an~~ order regarding whether one or more ~~the~~ statutory grounds set forth in the petition have ~~or have not~~ been proved. The court may extend the ~~this~~ period for issuing an order 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 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.~~ The court shall dismiss the petition if the statutory grounds have not been proved. If the court finds ~~makes a finding~~ that one or more ~~the~~ statutory grounds set forth in the petition have been proved, the court shall either enter or withhold adjudication pursuant to Rule 40 and schedule the matter for further proceedings pursuant to Rule 41 ~~40~~. The findings and order shall be filed with the court administrator who shall proceed pursuant to Rule 10.

Subd. 3. Termination of Parental Rights and Other Permanency 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. 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.~~ If the court finds that the statutory grounds set forth in the petition are not proved, the court shall either dismiss the petition or determine that the child is in need of protection or services. ~~and.~~ If the court determines that the child is in need of protection or services, the court shall either enter or withhold adjudication pursuant to Rule 40 and schedule further proceedings pursuant to Rule 41 ~~40~~. If the court finds that one or more ~~the~~ statutory grounds set forth in the termination of parental rights petition are proved, the court may terminate parental rights. If the court finds that any other permanency petition is proved, the court may order relief consistent with that petition. The findings and order shall be filed with the court administrator who shall proceed pursuant to Rule 10.

(b) **Particularized Findings.** In addition to making the findings in subdivision (a), the court shall also make findings regarding the following as appropriate ~~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 the following~~:

(1) **Non-Indian Child ~~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 reasonable efforts to prevent placement and for rehabilitation and reunification are not required as provided under Minnesota Statutes § 260.012(a).

(2) **~~Active Efforts —~~ Indian Child.** In any termination of parental rights proceeding involving an Indian child, the court shall make specific findings regarding the following:

(i) *Active Efforts.* 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.

(ii) *Serious Emotional or Physical Damage.* Based upon the testimony, pursuant to Rule 49, of at least one qualified expert witness, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(3) **Best Interests of the Child.** Before ordering termination of parental rights, the court shall make a specific finding that termination is in the best interests of the child and shall analyze:

(i) the child's interests in preserving the parent-child relationship;

(ii) the parent's interests in preserving the parent-child relationship; and

(iii) any competing interests of the child.

(4) **Best interests of an Indian Child.** In proceedings involving an Indian child, the best interests of the child shall be determined consistent with the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq.

(5) **Child's Interests Paramount.** Where the interests of parent and child conflict, the interests of the child are paramount.

RULE 41. DISPOSITION

ICWA Proposed Amendments

With respect to a CHIPS disposition ordering a child into foster care, the existing Rules are silent about the ICWA requirement of testimony from a Qualified Expert Witness (QEW) in support of a foster care placement. To ensure that the requirements of the ICWA are met, the Committee recommends that Rule 41.05 be amended to include the QEW testimony requirement.

Proposed Amendment from 2007 Committee

Consistent with Minnesota Statutes § 260C.201, subd. 1(a)(3), Rule 41.06, subd. 2(b), addresses the procedures for when the disposition directs that the child's legal custody is with the agency and the child is on a trial home visit and requires the conduct a hearing to determine whether the trial home visit continues to be necessary. However, neither the statute nor the rule addresses how often the matter should be reviewed in court during the pendency of the trial home visit.

Consistent with the frequency of review hearings for other dispositions, the Committee recommends that Rule 41.06, subd. 2(b), should be amended to provide for in-court review at least every 90 days when trial home visit has been ordered. The Committee notes, however, that in order to provide increased support toward reunification efforts, the best practice is to hold disposition review hearings more frequently than every 90 days.

Rule 41.05. 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 or out-of-home placement plan considered by the court and why such dispositions or services are not appropriate in the instant case;

(c) if the disposition is transfer of legal custody to a responsible social services agency, a statement about whether the proposed placement meets the child's needs and is in the child's best interests and reviewing the agency's use of the factors set out below in making the child's foster care placement:

(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) 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 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.

(e) In the case of an Indian child, the foster care placement of the child shall be ordered only upon the testimony, pursuant to Rule 49, of at least one qualified expert witness 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.

Rule 41.06. Hearings to Review Disposition

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Subd. 2. Procedure in Reviewing Disposition.

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(b) **Legal Custody to Agency with Trial Home Visit.** When the disposition is a trial home visit:

(1) the responsible social services agency shall advise the court and parties within three (3) days of the date a trial home visit is terminated by the responsible social services agency without a court order;

(2) the responsible social services agency shall prepare a report for the court when the trial home visit is terminated, whether by the agency or court order, which describes the child's circumstances during the trial home visit and recommends appropriate orders, if any, for the court to enter to provide for the child's safety and stability. In the event a trial home visit is terminated by the agency by removing the child to foster care without prior court order or authorization, the court shall conduct a hearing within ten (10) days of receiving notice of the termination of the trial home visit by the agency and shall order disposition under this subdivision or conduct a permanency hearing under Rule 42. The time period for the hearing may be extended by the court for good cause shown and if it is in the best interests of the child as long as the total time the child spends in foster care without a permanent placement determination hearing does not exceed twelve (12) months;

(3) ~~the court shall conduct a hearing~~ while the child is in trial home placement the matter shall be reviewed in court at least every ninety (90) days to determine whether the trial home visit continues to be necessary. At least five (5) business days prior to the hearing, the responsible social services agency shall file with the court and serve upon the parties a report describing the services provided to the child and parent and the parent's progress on the case plan; and

(c) **Protective Supervision in Home of Parent.** When the disposition is protective supervision of the child in the home of a custodial parent, the court shall conduct a review hearing at least every six (6) months. When the disposition is protective supervision of the child in the home of a noncustodial parent, the court shall conduct a review hearing at least every ninety (90) days. At the hearing, the court shall 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.

2007 Advisory Committee Comment

To ensure that each child's developmental needs are timely met, federal and state statutes have established a 12-month permanent placement determination timeline. A trial home visit is a tool designed to support reunification efforts, while simultaneously ensuring the child's safety. Consistent with Rule 41.06, which requires 90-day review hearings for other types of dispositions, Rule 41.06, subd. 2(b), provides that in cases where a trial home visit has been ordered the disposition review hearing must occur at least every 90 days. However, to better support reunification efforts, the best practice is to hold such disposition review hearings more often than every 90 days and to establish the hearing frequency and date in court.

RULE 42. PERMANENT PLACEMENT AND TERMINATION OF PARENTAL RIGHTS MATTERS AND POST-PERMANENCY REVIEW REQUIREMENTS

ICWA Proposed Amendments

To ensure that the requirements of the ICWA are met, the Committee recommends that Rule 42.08 should be amended to clarify the requirement of the testimony of a qualified expert witness before parental rights to an Indian child may be terminated. Consistent with the ICWA, the proposed revisions to Rule 42.08 also include the procedures for voluntary termination of parental rights in matters involving an Indian child.

Expedited Appeals Proposed Amendments

In another section of this report the Committee recommends that Rule 39.05 dealing with court orders should be amended to reflect the timing requirements for issuing permanent placement orders. In an effort to avoid duplication, the Committee also recommends that Rule 42.05 be amended to delete those timing provisions.

Other Proposed Amendments

Under the existing Rules, the requirements for permanency progress review hearings, permanent placement determination hearings, and post-permanency hearings are scattered throughout several different rules. The Committee recommends that Rule 42 should be amended so as to incorporate into one rule all of those requirements. Consistent with recent amendment to Minnesota Statutes 260C, the proposed revisions also set out legal requirements for required findings and content of permanency orders, including orders for guardianship and legal custody after termination of parental rights. Consistent with federal and state statutes, the proposed revisions also establish procedures for: voluntary termination of parental rights, including matters governed by the Indian Child Welfare Act; and procedures for cases starting as a juvenile protection matter, but which convert to voluntary foster care for treatment under Minnesota Statutes 260D.

Proposed Amendments from 2007 Committee

Rule 43.03, subd. 1, currently provides that once the court has terminated parental rights (TPR), a post-TPR review hearing must be held at least every 90 days to review the progress towards finalization of the adoption. The rule identifies who is to receive notice of the post-TPR review hearings. Consistent with recent federal and state statutory amendments, the Committee recommends that the rule should be amended to provide that notice of each hearing and a right to be heard must be provided to the county attorney, the child, any pre-adoptive parent, and any relative caretaker.

Rule 43.03, subd. 1, also currently provides that in advance of the post-TPR review hearing the responsible social services agency is to "submit" a report addressing certain issues. The Rule does not specify when the report should be submitted. Rule 38, which is the general rule for reports to the court, is more specific and requires social workers to "file" and "serve" their reports "not later than five (5) business days prior to the hearing." Consistent with Rule 38, the Committee recommends that Rule 43.03 should be amended to require filing and service of social services reports not later than five days before the post-TPR review hearing.

Rule 42.01. Timing ~~and Purpose~~

Subd. 1. Timing of Required Permanency Proceedings for Child in Need of Protection or Services Matters. In the case of a child who ~~has been~~ is alleged or found to be in need of protection or services, ordered into foster care or the home of a noncustodial parent, and where reasonable efforts for reunification are required, the ~~court in its~~ first order placing the child in foster care or the home of a noncustodial parent shall set the date or deadline for:

(a) the admit/deny hearing commencing ~~the~~ permanent placement determination ~~hearing~~ proceedings; and

(b) the permanency progress review hearing required for a child who is under age eight (8) at the time the petition alleging the child to be in need of protection or services is filed.

Subd. 2. Timing of Hearing for Child on a Trial Home Visit. When the child has been ordered on a trial home visit which continues at the time the court is required to commence permanent placement determination proceedings under Rule 42.01, within twelve (12) months of the date a child is placed in foster care the court shall hold a hearing pursuant to Rule 42.13 to determine the continued status of the child.

~~Rule 42.02.~~ **Subd. 3. Calculating Time Period**

The child shall be considered placed ~~out of the care of the parent~~ in foster care or the home of a noncustodial parent at the earlier of:

(a) the date of the child's placement in foster care or in the care of a noncustodial parent ~~was ordered~~ by ~~the~~ court order; or

(b) sixty (60) days after the date on which the child has been voluntarily placed in foster care as a result of a voluntary placement agreement between the parents and the responsible social services agency.

~~Rule 42.03.~~ **Subd. 4. Accumulation of Out-of-Home Placement Time**

The time period requiring the court to commence permanent placement determination proceedings ~~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 during which a child is placed in foster care or in the home of a noncustodial parent are accumulated; ~~and~~

(b) if a child has been placed in foster care within the previous five years under one or more previous petitions, the lengths of all prior time periods during which the child was placed in foster care within the previous five years are accumulated. If a child under this clause has been in foster care 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; and

(c) time spent on a trial home visit under Minnesota Statutes § 260C.201, subd. 1(a)(3), counts toward the requirement that the court commence permanency proceedings under this rule. However, if the child is on a trial home visit at the time the court is required to commence permanency proceedings, the court may conduct the hearing under Rule 42.13. If a trial home visit is ordered or continued at the time set for the court to commence permanency proceedings or if the child is ordered returned to the parent's home as a trial home visit at the conclusion of permanency proceedings under this rule, and the child is subsequently returned to foster care, the court shall re-commence proceedings to determine an appropriate permanent order for the child not later than thirty (30) days after the child returns to foster care.

Subd. 5. Notification of Timing. Not later than when the court sets the date or deadline for the admit/deny hearing commencing the permanent placement determination ~~hearing~~ proceedings and the permanency progress review hearing, the court shall notify the parties and participants of the following requirements ~~of Minnesota Statutes § 260C.201, subd. 11 and subd. 11a~~:

(a) **Requirement of Six (6) Month Hearing for Child Under Eight (8) Years of Age.** For a child who is under eight (8) years of age at the time a petition is filed alleging the child to be in need of protection or services, the court shall conduct a hearing to review the progress of the case, the parent's progress on the case plan or out-of-home placement plan, and the provision of services not later than six (6) months after the child is placed in foster care or in the home of a noncustodial parent. At the hearing required under this paragraph, the court may conduct a permanency progress review hearing for any sibling of the child, regardless of age, when the sibling is also in foster care or in the home of a noncustodial parent.

(b) **Requirement of Twelve (12) Month Hearing.** The court shall ~~conduct~~ commence ~~a~~ permanent placement determination ~~hearing~~ proceedings to determine the permanent status of the child, regardless of age, not later than twelve (12) months after the child is placed in foster care or in the home of a noncustodial parent.

Subd. 6. Timing for Cases Where Reasonable Efforts For Reunification Are Not Required. When the court finds that the petition states a prima facie case that one or more of the five circumstances under Minnesota Statutes § 260.012 and Rule 30.09, subd. 3, exist where reasonable efforts for reunification are not required, the court shall order that an admit/deny hearing under Rule 34 be conducted within thirty (30) days and a trial be conducted within ninety (90) days of its prima facie finding. Unless a permanency or termination of parental rights petition under Rule 33 has already been filed, the county attorney requesting the prima

facie determination shall file a permanency or termination of parental rights petition that permits the completion of service by the court at least ten (10) days prior to the admit/deny hearing.

Rule 42.02 ~~Subd. 2~~**. Purpose of Permanent Placement Determination Proceeding and Permanency Progress Review Hearing**

Subd. 1. ~~**(a)**~~ **Any Child in Foster Care or in Home of a Noncustodial Parent.** The purpose of ~~the~~ permanent placement determination ~~hearing~~ proceedings is to determine the permanent status of a child, including a review of the progress of the case and the parent's progress on the case plan or out-of-home placement plan, the services provided by the responsible social services agency, and whether or not the conditions that led to the child's placement in foster care or in the home of a noncustodial parent have been corrected so that the child can return to the care of the parent or custodian from whom the child was removed. The court shall determine whether the child shall be returned home or, if not, order permanent placement of the child consistent with the child's best interests and the pleadings and proof presented to the court.

Subd. 2. ~~(b)~~ **Permanency Progress Review: Child Under Eight (8) Years of Age.** The purpose of the permanency progress review hearing is to review the progress of the case, the parent's progress on the case plan or out-of-home placement plan, and the provision of services by the responsible social services agency. The court shall determine whether the parents or legal custodian have maintained regular contact with the child, the parents are complying with the court-ordered case plan or out-of-home placement plan, and the child would benefit from continuing this relationship.

Subd. 3. ~~(c)~~ **Matters Where Reasonable Efforts for Reunification Are Not Required**.

The purpose of holding the trial on the petition within ninety (90) days of the prima facie determination permitted under Rule 30.09, subd. 3, and Minnesota Statutes § 260.012 in cases where reasonable efforts for reunification are not required is to ensure timely decision by the court that either:

(a) there is sufficient evidentiary basis for an order for termination of parental rights or permanent placement of the child away from the parent and for finding the order for termination of parental rights or permanent placement away from the parent is in the child's best interests; or

(b) there is insufficient evidentiary basis for the order or that the order is not in the best interests of the child.

~~**Rule 42.02. Calculating Time Period**~~

~~The child shall be considered placed out of the care of the parent at the earlier of:~~

~~(a) the date of the child's placement in foster care or in the care of a noncustodial parent was ordered by the court; or~~

~~(b) sixty (60) days after the date on which the child has been voluntarily placed in foster care as a result of a voluntary placement agreement between the parents and the responsible social services agency.~~

~~**Rule 42.03. Accumulation 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 during which a child is placed in foster care or in the home of a noncustodial parent are accumulated; and~~

~~(b) if a child has been placed in foster care within the previous five years under one or more previous petitions, the lengths of all prior time periods during which the child was placed in foster care within the previous five years are accumulated. If a child under this clause has been in foster care 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 <u>42.03</u> ~~42.04~~. Procedures for <u>Permanency</u> ~~Permanent~~ Progress Review Hearing ~~and Permanent Placement Determination Hearing~~

~~**Subd. 1. Permanency Progress Review Hearing: Child Under Eight (8) Years of Age.**~~ The following procedures govern a permanency progress review hearing required within six (6) months of placement 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 <u>and may also apply to any sibling of the child, regardless of age, when the sibling is in foster care</u>.

(a) **Written Report.** Not later than ten (10) days prior to the hearing, the county attorney <u>shall</u> ~~must~~ file with the court and serve upon the parties a written report prepared by the responsible social services agency describing the progress of the case and the case plan or out-of-home placement plan including the services provided to the parents.

(b) **Court Determination.**

(1) **Regular Contact Maintained <u>and</u> ~~or~~ Parent ~~Not~~ Complying.** If the court determines that parent or legal custodian has maintained regular contact with the child, the parent is complying with the court-ordered case plan or out-of-home placement plan, and the child would benefit from continuing this relationship, the court may either:

(i) return the child home, if the conditions which led to the out-of-home placement have been sufficiently mitigated and it is safe and in the child's best interests to return home; or

(ii) continue the matter up to a total of six (6) additional months.

(2) **Regular Contact Not Maintained or Parent Not Complying.** If the court determines that the parent or legal custodian has not maintained regular contact with the child as outlined in the visitation plan required under the case plan or out-of-home placement plan or the parent is not complying with the case plan or out-of-home placement plan, the court may order the responsible social services agency to develop a plan for permanent placement of the child away from the parent and to file a petition to support an order for the permanent placement plan. A trial on the petition shall be held as provided in subdivision 1(c).

(c) **Responsible Agency's or County Attorney's Duties.** Following the review under this subdivision:

(1) if the court has either returned the child home or continued the matter up to a total of six (6) additional months, the agency shall continue to provide services to support

the child's return home or to continue to make reasonable efforts to achieve reunification of the child and the parent as ordered by the court under an approved case plan;

(2) if the court orders the agency to develop a plan for the transfer of permanent legal and physical custody of the child to a relative, a petition supporting the plan shall be filed with the court within thirty (30) days of the hearing required under this subdivision and a trial on the petition shall be held within thirty (30) days of the filing of the petition; or

(3) if the court orders the agency to file a termination of parental rights petition, unless the county attorney can show cause why a termination of parental rights petition should not be filed, a petition for termination of parental rights shall be filed with the court within thirty (30) days of the hearing required under this subdivision and a trial on the petition shall be held within ninety (90) days of the filing of the petition.

~~Subd. 2.~~ **Rule 42.04. Procedures for Permanent Placement Determination Proceedings for a Child Eight (8) Years of Age or Older or a Child Under Age Eight (8) for Whom Permanency Has Not Been Ordered; Admit/Deny Hearing Required at Month 12**

The following procedures govern permanent placement determination proceedings for a child eight (8) years of age or older, or a child under age eight (8) for whom permanency has not been ordered, who has not been returned home within twelve (12) months of an order placing the child in foster care or in the home of a noncustodial parent.

(a) **Admit/Deny Hearing on Permanency Petition.** The court shall commence and complete an admit/deny hearing pursuant to Rule 34 on the permanency petition, termination of parental rights petition, or petition for alternative permanent placement relief under Rule 33.01 ~~pursuant to Rule 34~~ not later than twelve (12) months after the child is placed in foster care or in the care of a noncustodial parent.

(b) **Petition ~~or Motion~~.** Unless the responsible social services agency recommends return of the child to the custodial parent or files a petition and motion pursuant to Rule ~~42.06~~ 42.14, not later than thirty (30) days prior to the admit/deny hearing required in paragraph (a) ~~subd. 2(a)~~ the responsible social services agency shall file with the court a petition required under Rule 33.01 to establish the basis for the juvenile court to order permanent placement of the child according to Rules 42.06 to 42.12 ~~42.05~~.

(c) **Trial.** The court shall commence and complete any trial on the permanency petition within the time specified in Rule 39.

Rule 42.05. Permanent Placement Findings and Order

~~**Subd. 1. Timing.** Within fifteen (15) days of the close of the permanent placement determination 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.~~

Subd. 1. Findings. Except in the case of an order terminating parental rights governed by Rule 42.08, an order permanently placing the child out of the home of the parent or guardian shall include the following findings:

(a) how the child's best interests are served by the order;

(b) the nature and extent of the responsible social services agency's reasonable efforts, or in the case of an Indian child active efforts, to reunify the child with the parent or guardian where reasonable efforts are required;

(c) the parent's efforts and ability to use services to correct the conditions which led to the out-of-home placement; and

(d) that the conditions which led to the out-of-home placement have not been corrected so that the child can safely return home.

Subd. 2. Order. At the conclusion of the permanent placement determination proceedings the court shall order one of the following permanency dispositions:

(a) Return the child home pursuant to Rule 42.06;

(b) Transfer permanent legal and physical custody to a relative pursuant to Rule 42.07;

(c) Terminate parental rights pursuant to Rule 42.08;

(d) Guardianship and legal custody to the Commissioner of Human Services upon consent by the child's parent to adopt pursuant to Rule 42.09;

(e) Long term foster care pursuant to Rule 42.11; or

(f) Foster care for a specified period of time pursuant to Rule 42.12.

~~**Subd. 2. Order.**~~

Rule 42.06. 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. The court may order:

(a ~~i~~) the child returned on a trial home visit pursuant to Rule 41.05, subd. 2(a)(3);

(b ~~ii~~) the child placed under the protective supervision of the responsible social services agency under Rule 41.05, subd. 2(a)(1); or

(c ~~iii~~) monitoring of the parent's continued ability to maintain the child safely in the home under Rule 41.05, subd. 2(a)(6).

~~(b)~~ **Rule 42.07. Transfer of Permanent Legal and Physical Custody to a Relative**

Subd. 1. Order. The court may order transfer of permanent legal and physical custody to a fit and willing relative pursuant to Minnesota Statutes § 260C.201, subd. 11(d).

Subd. 2. Jurisdiction Terminated Unless Retained. 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.

Subd. 3. Further Hearings If Jurisdiction Retained. If ~~The~~ the court ~~may maintain~~ retains 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~~ the court may order further in-court hearings at such intervals as it determines to be in the best interests of the child pursuant to subdivision 7.

Subd. 4. Order and Further Proceedings in Family Court. 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 for modification of the order transferring permanent legal and physical custody to a relative shall be brought in the family court of the county where the original order was filed. The review shall be pursuant to Minnesota Statutes § 518.18 and § 518.185. Notice of any family court proceedings shall be provided by the court administrator to the responsible social services agency which shall be a party to the family court proceeding pursuant to Minnesota Statutes § 260C.201, subd. 11(j).

Subd. 5. Voluntary Transfer of Custody. A parent or legal custodian may voluntarily agree to transfer permanent legal and physical custody of the child to a fit and willing relative by either filing a petition to transfer permanent legal and physical custody pursuant to Rule 33.01 and establishing that such transfer is in the child's best interests under Minnesota Statutes § 260C.201, subd. 11, or by entering an admission to such a petition filed by another party and stating, under oath, that the parent or legal custodian believes such a transfer is in the child's best interests and establishes good cause for the transfer on the record before the court.

Subd. 6. Order Requirements. In addition to the findings required under Rule 42.06, ~~The~~ the order transferring permanent legal and physical custody shall address parental and sibling visitation and ongoing services to be delivered to the child while the juvenile court has jurisdiction, and shall state whether the transfer was voluntary or involuntary. The order shall state whether a child support order exists or if the issue is reserved for future determination.

Subd. 7. ~~Rule 42.22.~~ **Review for a Child Who is with a Relative Who Has Permanent Legal and Physical Custody**

When the court orders transfer of permanent legal and physical custody to a relative under this Rule, the court may retain jurisdiction over the responsible social services agency, the parents or guardian of the child, the child, and the permanent legal and physical custodian. The court may conduct reviews at such frequency as the court determines will serve the child's best interests for the purpose of ensuring:

(a) appropriate services are delivered to the child and the permanent legal and physical custodian; or

(b) conditions ordered by the court relating to the care and custody of the child are met.

~~Subd. 5.~~ **Rule 42.08. Involuntary and Voluntary Termination of Parental Rights Proceedings**

Subd. 1. Involuntary Termination of Parental Rights Proceedings. Upon petition pursuant to Minnesota Statutes § 260C.301, subd. 1(b), and after an admit/deny hearing under Rule 34 or a trial under Rule 39, as appropriate, the court may issue an order granting or denying a petition to involuntarily terminate parental rights which shall include the following:

(a) a statement of the facts upon which the court bases its order;

(b) findings regarding how the order is in the best interests of the child;

(c) findings regarding the responsible social services agency's reasonable, or, in the case of an Indian child, active efforts to reunify the child and the parent or that reasonable efforts for reunification are not required under Minnesota Statutes § 260.012;

(d) if the child is an Indian child, findings regarding the testimony, pursuant to Rule 49, of at least one qualified expert witness;

(e) if termination of parental rights is ordered, the specific statutory grounds under Minnesota Statutes § 260C.301, subd. 1(b), upon which the court issued its order and the facts supporting those grounds; and

(f) the effective date of the order.

Subd. 2. Voluntary Termination of Parental Rights Proceedings.

(a) **Petition and Consent.** Upon petition pursuant to Minnesota Statutes § 260C.301, subd. 1(a), and voluntary consent of the parent, the court shall conduct a hearing regarding the voluntary termination of the person's parental rights.

(b) **Oath.** At the hearing, the parent shall be placed under oath for the purpose of:

(1) asking that the petition be granted; and

(2) establishing 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.

(c) **Hearing.** During the hearing, the court shall:

(1) advise the parent of the right to representation by counsel pursuant to Rule 25;

(2) determine whether the parent fully understands the consequences of termination of parental rights and the alternatives to termination;

(3) inquire as to the true voluntary nature of the parent's consent; and

(4) obtain a waiver of the right to trial on the involuntary petition when the parent is voluntarily consenting to termination of parental rights after an involuntary termination of parental rights petition has been filed.

(d) 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.

Subd. 3. Voluntary Termination of Parental Rights in Matters Governed by the Indian Child Welfare Act

When the child is an Indian child and the matter is governed by the Indian Child Welfare Act, 25 U.S.C. § 1913, the following procedures apply to a voluntary termination of parental rights by an Indian parent.

(a) **Procedures for Consent.** The consent to terminate parental rights by the parent shall not be valid unless:

(1) executed in writing;

(2) recorded before the judge; and

(3) 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 translated into a language that the parent or Indian custodian understood.

(b) **Timing of Consent.** Any consent to termination of parental rights given prior to, or within ten days after, the birth of the Indian child shall not be valid.

(c) **Parent's Right to Withdraw Consent.** Any consent to termination of parental rights by a parent of an Indian child may be withdrawn by the parent at any time prior to the time the final order terminating the parent's rights.

Subd. 4. Notice to Parents Whose Rights Have Been Terminated ~~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.

2008 Advisory Committee Comment

See the 2008 Advisory Committee Comment to Rule 49.03 regarding qualified expert witness.

Subd. 5. Review When Child is Under the Guardianship of the Commissioner of Human Services.

~~**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 county attorney, responsible social services agency, the child's guardian ad litem, the child, the child's attorney, and the child's foster parent, pre-adoptive parent, and relative caregiver ~~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, not later than five (5) business days before the hearing the responsible social services agency shall file with the court and serve upon the parties ~~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, subp. 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.

(f) 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.

(g) ~~If the~~ When an 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, shall ~~must~~ be scheduled.

Rule 42.09. Guardianship and Legal Custody to the Commissioner of Human Services Upon Consent by the Child's Parent to Adopt Under Minn. Stat. § 260C.201, subd. 11(d)

Subd. 1. Procedures. Without terminating parental rights, ~~The~~ the court may award guardianship and legal custody to the Commissioner of Human Services under the following procedures ~~and conditions~~:

(a ~~1~~) *Voluntary Consent and Identified Prospective Adoptive Home.* When there is an identified prospective adoptive home agreed to by the responsible social services agency that has agreed to adopt the child and the court accepts the parent's voluntary consent to adopt under Minnesota Statutes § 259.24.

(b) *Copies of Consent and Order to Commissioner***.** The court shall forward to the Commissioner of Human Services one copy of the consent to adopt, together with a certified copy of the order transferring guardianship and legal custody to the Commissioner.

Subd. 2. ~~(b)~~ **When Consent is Irrevocable.** ~~except that such consent~~ Consent to adoption executed by a parent under Minnesota Statute § 260C.201, subd. 11(d)(5), is irrevocable upon acceptance by the court unless fraud is established and an order issues permitting revocation. In a matter governed by the Indian Child Welfare Act, 25 U.S.C. § 1913, a consent to adopt given by the parent of an Indian child is revocable at any time prior to finalization of the adoption~~;~~.

Subd. 3. ~~(2)~~ **Ninety (90) Day Review.** ~~the~~ The matter shall be ~~is~~ reviewed in court at least every ninety (90) days under the requirements of Rule 42.08, subd. 5, ~~43.03~~ as if a termination of parental rights had occurred.~~; and~~

~~(3) **Copies of Consent and Order to Commissioner**. 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.~~

Rule 42.10. Order for Guardianship and Legal Custody When Parental Rights Are Terminated or When Parent Consents to Adoption

Subd. 1. Procedures. In addition to the findings and order for termination of parental rights requirements of Rule 42.08, or when the parent consents to adoption of the child under Rule 42.09, the court shall order guardianship and legal custody according to the following requirements:

(a) **Order When Parental Rights of Both Parents Terminated.** When an order terminates the rights of the only known living parent of the child, the rights of both parents of the child, or where the rights of the other parent of the child were previously terminated, the court shall issue an order transferring guardianship and legal custody to:

(1) the Commissioner of Human Services;

(2) a licensed child placing agency; or

(3) an individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

(b) **Order When Parental Rights of Both Parents Not Terminated.** When the rights of both known, living parents are not terminated at the same time, the order terminating the rights of one parent, but not both parents, shall not award guardianship and legal custody to a person or entity until and unless the rights of both parents are terminated or the child is free for adoption due to consent of a parent to adoption under Minnesota Statutes § 260C.201, subd. 11, or § 259.24. The order may continue legal custody of the child with the responsible social services agency.

(c) Order When Parents Rights are Terminated in Separate Orders. When the court issues separate orders terminating parental rights to a child or an order freeing a child for adoption due to consent by a parent to adoption under Minnesota Statutes § 260C.201, subd. 11(d), or § 259.24, the second order terminating parental rights or freeing the child for adoption shall reference by filing date and jurisdiction the previous order and shall award guardianship and legal custody to:

(1) the Commissioner of Human Services;

(2) a licensed child placing agency; or

(3) an individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

Subd. 2. Conditions – Limits on When Commissioner of Human Services May Become Guardian or Legal Custodian.

(a) **Limits on Appointment of Commissioner of Human Services When no Appointment under Probate Code.** The court may transfer guardianship and legal custody to the Commissioner of Human Services if, upon petition to the juvenile court by a reputable person, including but not limited to an agency of the Commissioner of Human Services, and upon trial the court finds:

(1) that both parents or the only known legal parent are or is deceased;

(2) no appointment has been made or petition for appointment filed under Minnesota Statutes § 524.5- 102 to 524.5-317; and

(3) there is no individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

(b) Responsible Social Services Agency Has Permanency Planning Responsibility. The court shall order transfer of guardianship and legal custody of a child to the Commissioner of Human Services only when the responsible county social services agency had legal responsibility for planning for the permanent placement of the child and the child was in foster care under the legal responsibility of the responsible county social services agency at the time the court orders guardianship and legal custody transferred to the commissioner.

Subd. 3. Certified Copy of Orders. The court administrator shall forward one certified copy of the findings and order terminating parental rights and awarding guardianship and legal custody to the Commissioner of Human Services, the agency to which guardianship is transferred, or the individual to whom guardianship is transferred. The court also shall issue a separate order for guardianship and legal custody and provide a certified copy to the guardian.

Subd. 4. Copy of Order Terminating Guardianship. If the court issues an order terminating guardianship with the Commissioner of Human Services, an agency, or an individual by other than an order for adoption, the court administrator shall send a copy of the order terminating the guardianship to the former guardian.

2008 Advisory Committee Comment

Rule 42.10, subd. 2, reflects requirements of Minnesota Statutes § 260C.325, subds. 1(b) and 3. Rule 42.10, subd. 3, requires the court to issue a separate order regarding the award of guardianship to enable the guardian to demonstrate legal decision-making authority for the child without disclosing all of the findings contained in the order terminating parental rights.

~~(e)~~ **Rule 42.11. Long-term Foster Care**

Subd. 1. ~~(1)~~ **Requirements for Compelling Reasons Why Permanent Legal and Physical Custody and Adoption is Not in the Child's Best Interests.** The court may ~~only~~ order long term foster care only if it approves the responsible social services agency's 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(d)(3), 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.~~

Subd. 2. ~~(3)~~ **Disruption.** Pursuant to Rule 42.15, if ~~If~~ the long-term foster care placement disrupts, the responsible social services agency shall return the matter to court within ten (10) days of the disruption for review of the ~~permanent status of the child~~ matter.

Subd. 3 ~~2~~**. Long-Term Foster Care For State Wards**

(a) **Limits on Circumstances When Long-term Foster Care Ordered.** The responsible social services agency may make a determination of compelling reasons for a child who is a ward of the Commissioner of Human Services to be in long-term foster care when the agency has made exhaustive efforts to recruit, identify, and place the child in an adoptive home, and the child continues in foster care for at least twenty-four (24) months after the court has issued the order terminating parental rights. If the court approves the agency's determination of compelling reasons, the court may order the child placed in long-term foster care.

~~(b) **Required Annual Review.** As long as the child continues in foster care, at least every twelve (12) months the court shall conduct a permanency review hearing to determine the future status of the child using the review requirements of Minnesota Statutes § 260C.201, subd. 11(g).~~

(b) **Jurisdiction through Child's Minority.** In a case where long-term foster care is the permanent disposition, the court shall retain jurisdiction through the child's minority, unless the court extends jurisdiction to age nineteen (19).

Subd. 4 ~~3~~. Annual Review When Child is Ordered into Long-Term Foster Care

(a) **Review of Appropriateness of Order for Long-term Foster Care.** When a child has been ordered into long-term foster care ~~after termination of parental rights~~, the court shall ~~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~~

(b) **Reasonable Efforts.** The court shall also review ~~to ensure~~ the reasonable efforts of the agency to:

(1) ~~(a)~~ identify a specific long-term foster home or other legally permanent home for the child, if one has not already been identified;

(2) ~~(b)~~ support continued placement of the child in the identified home, if one has been identified;

(3) ~~(c)~~ ensure appropriate services are provided to the child during the period of long-term foster care; and

(4) ~~(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(c)(8).

(c) **Additional Requirements for Youth Age 16 or Older.** When the child is age sixteen (16) or older, the court shall review the agency's reasonable efforts to implement the independent living plan required under Minnesota Statutes § 260C.212, subd. 1(c)(8), and the provision of services to the child related to the well-being of the child as the child prepares to leave foster care. The court's review shall include the actual plans related to each item in the plan necessary to the child's future safety and well-being when the child is no longer in foster care. The court shall make findings regarding progress toward or accomplishment of the following goals:

(1) the child has obtained a high school diploma or its equivalent;

(2) the child has completed a driver's education course or has demonstrated the ability to use public transportation in the child's community;

(3) the child is employed or enrolled in postsecondary education;

(4) the child has applied for and obtained postsecondary education financial aid for which the child is eligible;

(5) the child has health care coverage and health care providers to meet the child's physical and mental health needs;

(6) the child has applied for and obtained disability income assistance for which the child is eligible;

(7) the child has obtained affordable housing with necessary supports, which does not include a homeless shelter;

(8) the child has saved sufficient funds to pay for the first month's rent and a damage deposit;

(9) the child has an alternative affordable housing plan, which does not include a homeless shelter, if the original housing plan is unworkable;

(10) the child, if male, has registered for the Selective Service; and

(11) the child has a permanent connection to a caring adult.

(d) **Agency Responsibility for Notice When Child is Seventeen (17).** When the child is age seventeen (17), the responsible social services agency shall establish for the court that it has given the notice required under Minnesota Administrative Rules, part 9560.0060, regarding the right to continued access to services for children in foster care past age eighteen (18), including the right to appeal a denial of social services under Minnesota Statutes § 256.245. If the agency is unable to establish that the notice, including the right to appeal a denial of social services, has been given, the court shall order the agency to give it.

~~(h)~~ **Subd. 5. Modifying an Order for Long-term Foster Care for a Child Who is Not a State Ward**

(a ~~1~~) **Modification by Parent.** A parent may seek modification of an order for long-term foster care only 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 for the child and that removal of the child from the child's permanent placement and the return to the parent's care would be in the best interest of the child.

(b ~~2~~) **Modification by Agency.** The responsible social services agency may ask the court to vacate an order for long-term foster care upon a prima facie showing that there is a factual basis for the court to order another permanent placement under this ~~Rule~~ rule and that ~~such an option~~ the placement is in the child's best interests. If the agency's request is to terminate parental rights, the county attorney shall file a petition under Rule 33 and the court shall proceed under Rule 34. If the agency's request is transfer of permanent legal and physical custody to a relative, the county attorney may file a motion under Rule 15 to modify the permanency order establishing long-term foster care for the child. If a party entitled to notice of the motion opposes the transfer of permanent legal and physical custody to a fit and willing relative, the responsible social services agency and county attorney shall establish:

(1 ~~a~~) that the relative is fit and willing; and

(2 ~~b~~) that the transfer is in the best interest of the child.

Subd. 6. ~~(3)~~ **Order.** Upon a hearing or trial where the court determines that there is a factual basis for vacating the order for long-term foster care and that another permanent order regarding the placement of the child is in the child's best interests, the court may vacate the order for long-term foster care and enter a different order for permanent placement that is in the child's best interests.

Subd. 7. ~~(4)~~ **Further Reasonable Efforts Not Required.** The court shall not require further reasonable efforts to reunify the child with the parent or guardian as a basis for vacating

the order for long-term foster care and ordering a different permanent placement in the child's best interests.

Subd. 8. ~~(5)~~ **Jurisdiction.** The court shall retain jurisdiction through the child's minority in a case where long-term foster care is the permanent disposition, unless the court extends jurisdiction to age nineteen (19).

~~(f)~~ **Rule 42.12. Foster Care for a Specified Period of Time**

~~(1)~~ **Subd. 1. Requirements for Compelling Reasons Why Permanent Legal and Physical Custody and Adoption is Not in the Child's Best Interests.** The court may order foster care for a specified period of time only if it approves the responsible social services agency's 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(d)(4), are met.

~~(2)~~ **Subd. 2. Periodic Review.** If the court orders foster care for a specified period of time, the court shall order in-court review hearings at intervals as will serve the child's best interests not to exceed a total of twelve (12) months after the date the order is entered for foster care for a specified period of time pursuant to subdivision 3.

~~(g)~~ **Subd. 3. Continued Reviews of ~~for Long-term Foster Care and for~~ Foster Care for a Specified Period of Time**

~~(1) Annual Review.~~ ~~Court reviews of an order for long-term foster care must be conducted at least every twelve (12) months and must review the child's case plan or out-of-home placement plan and make findings as to the reasonable efforts of the agency to finalize the permanent plan for the child, including the agency's efforts to:~~

~~(a) ensure that long-term foster care continues to be the most appropriate legal arrangement for meeting the child's need for permanency and stability or, if not, to identify and attempt to finalize another permanent placement option available under Minnesota Statutes chapter 260C that would better serve the child's needs and best interests;~~

~~(b) 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;~~

~~(c) support continued placement of the child in the identified home, if one has been identified;~~

~~(d) ensure appropriate services are provided to address the physical health, mental health, and education needs of the child during the period of long-term foster care and also ensure appropriate services or assistance to maintain relationships with appropriate family members and the child's community; and~~

~~(e) plan for the child's independence upon the child's leaving long-term foster care as required under Minnesota Statutes § 260C.212, subd. 1.~~

~~(2)~~ If it is necessary for a child who has been ordered into foster care for a specified period of time to be in foster care longer than one year, then not later than twelve (12) months after the time the child was ordered into foster care for a specified period of time the matter shall ~~must~~ be returned to court for a review of the appropriateness of continuing the child in foster care and of the responsible social services agency's reasonable efforts to finalize a permanent

plan for the child. If it is the child's best interests to continue the order for foster care for a specified period of time past a total of twelve (12) months, the court shall set objectives for the child's continuation in foster care, specify any further amount of time the child may be in foster care, and review the plan for the safe return of the child to the parent.

Rule 42.13. Hearing for Child on Trial Home Visit at Time for Commencement of Permanency Proceedings

Subd. 1. Hearing. When the child has been ordered on a trial home visit which continues at the time the court is required to commence permanent placement determination proceedings under Rule 42.01, the court shall hold a hearing to determine the continued status of the child on the trial home visit and shall review:

(a) the child's progress during the trial home visit;

(b) the parent's progress during the trial home visit;

(c) the agency's reasonable efforts to finalize the child's safety and permanent return to the care of the parent.

Subd. 2. Required Findings. The court shall make findings regarding the reasonableness of the agency's efforts to finalize the child's return home as the permanent order in the best interests of the child and may continue the trial home visit for a period not to exceed a total of six (6) months. If the court finds that the responsible social services agency has not made reasonable efforts to finalize the child's return home as the permanent order in the best interests of the child, the court may order other or additional efforts to support the child remaining in the care of the parent.

Subd. 3. Procedure When Child Returns to Foster Care. If an order for a trial home visit is continued at or after a hearing under subdivision 1 and the child is subsequently returned to foster care, the court shall commence proceedings to determine an appropriate permanent order for the child not later than thirty (30) days after the child returns to foster care.

Rule 42.14. Terminating Jurisdiction When Child is Continued in Voluntary Foster Care for Treatment under Minnesota Statutes § 260D

Subd. 1. Voluntary Placement as Prerequisite to Review. If a child has been ordered into foster care under Rules 30 or 41 and Minnesota Statutes § 260C.178 or § 260C.201, subd. 1, and the conditions that led to the court's order have been corrected so that the child could safely return home except for the child's need to continue in foster care for treatment due to the child's disability, the child's parent and the agency may enter into a voluntary foster care agreement under Minnesota Statutes § 260D.

Subd. 2. Motion and Petition to Terminate Jurisdiction. When the agency and the parent agree to voluntary placement of the child for treatment, the agency shall file a motion to terminate jurisdiction under Minnesota Statutes § 260C.193, subd. 6, which also terminates the order for foster care under Rules 30 or 41 and Minnesota Statutes § 260C.178 or 260C.201, subd. 1, together with the petition required under Rule 43.04. subd. 2, and Minnesota Statutes § 260D.107(b), for permanency review and the court's approval of the voluntary arrangement.

Subd. 3. Timing of Motion and Petition. The motion and petition shall be filed no later than the time the agency is required to file a petition for permanent placement under Minnesota Statutes § 260C.201, subd. 11, but may be filed as soon as the agency and the parent agree that the child should remain in foster care under a voluntary foster care agreement, because the child needs treatment and voluntary foster care is in the child's best interest.

Subd. 4. Service. The court shall serve the motion and the petition filed under subdivision 2 together with a notice of hearing by U.S. mail.

Subd. 5. Continuous Agency Authority for Foster Care. The parent and agency may execute the voluntary foster care agreement at or before the permanency review hearing required under Rule 43.04, subd. 3, and Minnesota Statutes § 260D .

Subd. 6. Permanency Review Hearing Required Under Rule 43.04 . When the court grants the agency's motion to terminate jurisdiction under this rule, the court shall proceed on the Petition for Permanency Review regarding a Child in Voluntary Placement for Treatment and to conduct the Permanency Review hearing required under Rule 43.04. subd. 3.

2008 Advisory Committee Comment

Rule 42.14, subd. 5, reflects the requirement under Minnesota Statutes § 260D.09(e) that, in order for the agency to have continuous legal authority to place the child, the parent and the agency shall execute a voluntary foster care agreement for the child's continuation in foster care for treatment prior to the termination of the order for foster care under Rules 30 or 41 and Minnesota Statutes § 260C.178 or § 260C.201, subd. 1.

Rule 42.15. Review of Child Who Experiences Disruption of a Permanent Placement

Subd. 1. Review Required When Child Removed from Permanent Placement Within One (1) Year. If a child is removed from a permanent placement disposition ordered under Rule 42 and Minnesota Statutes § 260C.201, subd. 1, within one year after the placement was made:

(a) the child shall be returned to the foster home where the child was placed immediately preceding the permanent placement; or

(b) the court shall conduct a hearing within ten (10) days after the child is removed from the permanent placement to determine where the child is to be placed.

Subd. 2. Further Planning for Child. The court shall also review what further planning is appropriate to meet the child's need for safety and stability and to address the well-being of the child, including the child's physical and mental health and educational needs.

2008 Advisory Committee Comment

Rule 42.15, subd. 2, delineates what orders are to be reviewed under Minnesota Statute § 260C.212, subd. 6.

RULE 43. REVIEW OF CHILDREN IN VOLUNTARY FOSTER CARE FOR TREATMENT ~~TERMINATION OF PARENTAL RIGHTS MATTERS~~

Other Proposed Amendments
Consistent with Minnesota Statutes Chapter 260D dealing with review of voluntary foster care placements, the Committee recommends the following proposed rule regarding these types of cases. The Rule would become the new Rule 43. The current content of Rule 43 dealing with TPR will move to Rule 42 dealing with permanent placement.

Rule 43.01. Generally

Subd. 1. Scope of Rule. This rule governs review of all voluntary foster care for treatment placements made pursuant to Minnesota Statutes § 260D.01.

Subd. 2. Jurisdiction. The court assumes jurisdiction to review the voluntary foster care placement of a child pursuant to Minnesota Statutes § 260D.01 upon filing of a report pursuant to Minnesota Statutes § 260D.06.

Subd. 3. Court File Required. Upon the filing of a report under this rule, the court administrator shall open a voluntary foster care for treatment file.

Rule 43.02. Report by Agency

Subd. 1. Content and Timing of Report. The responsible social services agency shall forward a written report to the court within 165 days of the date of the voluntary foster care agreement. The written report shall contain or have attached:

(a) a statement of facts that necessitate the child's foster care placement;

(b) the child's name, date of birth, race, gender, and current address;

(c) the name, race, date of birth, residence, and post office address of the child's parents or legal custodian;

(d) 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;

(e) the name and address of the child's foster parents or chief administrator of the facility in which the child is placed;

(f) a copy of the out-of-home placement plan required under subdivision 5 and Minnesota Statutes § 260C.212, subd. 1;

(g) a written summary of the proceedings of the administrative review required under Minnesota Statutes § 260C.212, subd. 7, and § 260D.103;

(h) a statement that the parent, representative of the foster care facility, and the child have been notified of their right to request a hearing; and

(i) any other information the agency, parent or legal custodian, child, or foster parent or other residential facility wants the court to consider.

Subd. 2. Additional Report Requirements for Child Who is Emotionally Disturbed. In the case of a child in placement due to emotional disturbance, the written report shall include, as an attachment, the child's individual treatment plan developed by the child's treatment

professional, as provided in Minnesota Statutes § 245.4871, subd. 21, or the child's individual interagency intervention plan, as provided in Minnesota Statutes § 125A.023, subd. 3(c).

Subd. 3. Additional Report Requirements for Child Who Has a Developmental Disability. In the case of a child in placement due to developmental disability or a related condition, the written report shall include, as an attachment, the child's individual service plan as provided in Minnesota Statutes § 256B.092, subd. 1b; the child's individual program plan as provided in Minnesota Administrative Rules 9525.0004, subpart 11; the child's waiver care plan; or the child's individual interagency intervention plan as provided in Minnesota Statutes § 125A.023, subd. 3(c).

Subd. 4. Report Requirement to Include Information about Child's Disagreement. If, at the time required for the report under this rule, a child age twelve (12) or older disagrees about the foster care facility or services provided under the out-of-home placement plan required under Minnesota Statutes § 260C.212, subd. 1, the agency shall include in the report information regarding the child's disagreement and, to the extent possible, the basis for the child's disagreement.

Subd. 5. Content of Case Plan. The out-of-home placement plan required under Minnesota Statutes § 260C.212, subd. 1, shall include a statement about whether the parent, legal custodian or Indian 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, or Indian 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. When a child is in foster care due solely to the child's emotional disturbance, the child's mental health treatment provider shall also be consulted in preparation of the plan and the agency shall document such consultation with the plan filed with the court.

Rule 43.03. Court Review and Determinations Based on Court Report

Subd. 1. Determinations Based on Report. After receiving the report required under Rule 43.02 and Minnesota Statutes § 260D.06, subd. 2, the court has jurisdiction to make the following determinations and shall do so within ten (10) days of receiving the report, whether a hearing is requested:

(a) whether the voluntary foster care arrangement is in the child's best interests;

(b) whether the parent and agency are appropriately planning for the child; and

(c) in the case of a child age twelve (12) or older who disagrees with the foster care facility or services provided under the out-of-home placement plan, whether it is appropriate to appoint counsel and a guardian ad litem for the child using standards and procedures under Minnesota Statutes § 260C.163.

Subd. 2. No Court Hearing Required. Unless requested by a parent, representative of the foster care facility, or the child, no in-court hearing is required in order for the court to make findings and issue an order under subdivision 3.

Subd. 3. Order

(a) **Content.** If the court finds that the voluntary foster care arrangement 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 individualized findings shall be based on the responsible social services agency's written report and other materials submitted to the court. The court may make this determination notwithstanding the child's disagreement, if any, reported under Rule 43.02, subd. 1(c).

(b) **Service.** The court shall serve a copy of the order upon the county attorney, the responsible social services agency, the parent, the parent's attorney, the child if age twelve (12) or older, the child's attorney, the foster parent or foster care facility, and the child's guardian ad litem, if one is appointed.

(c) **Required Notice of Permanency Review.** The court shall also serve the parent, the child if age twelve (12) or older, and the foster parent or representative of the foster care facility notice of the permanency review hearing required under Rule 43.04 and Minnesota Statutes § 260D.07(f).

(d) **Procedure When Voluntary Foster Care Not in Child's Best Interests.** If the court finds that continuing the voluntary foster care for treatment arrangement is not in the child's best interests or that the agency or the parent are not appropriately planning for the child, the court shall:

(1) notify the agency, the parent, the foster parent or foster care facility, the child if age twelve (12) or older, and the county attorney of the court's determinations and the basis for the court's determinations; and

(2) set the matter for hearing within ten (10) days and appoint a guardian ad litem for the child under Minnesota Statutes § 260C.163, subd. 5.

Rule 43.04. Required Permanency Review Hearing

Subd. 1. Required Agency Action. When the court finds that the voluntary arrangement is in the child's best interests and that the agency and parent are appropriately planning for the child pursuant to the report submitted under Rule 43.02 and Minnesota Statutes § 260D.06, and the child continues in voluntary foster care for treatment as defined in Minnesota Statutes § 260D.002, subd. 5, for thirteen (13) months from the date of the voluntary foster care agreement, or has been in placement for fifteen (15) of the last twenty-two (22) months, and the agency determines there are compelling reasons to continue the voluntary foster care arrangement, the agency shall request judicial approval of its determination.

Subd. 2. Petition. When the agency requests the court's approval of its determination that there are compelling reasons to continue the voluntary foster care arrangement, the agency shall file a "Petition for Permanency Review Regarding a Child in Voluntary Foster Care for Treatment."

(a) **Drafted and Approved by County Attorney.** The "Petition for Permanency Review Regarding a Child in Voluntary Foster Care for Treatment" shall be drafted or approved by the county attorney.

(b) **Oath and Content.** The petition shall be under oath and include:

(1) the date of the voluntary foster care agreement;

(2) whether the voluntary foster care placement is due to the child's developmental disability or emotional disturbance;

(3) the plan for the ongoing care of the child and the parent's participation in the plan;

(4) a description of the parent's visitation and contact with the child;

(5) either:

(i) the date of the court finding that the voluntary foster care placement was in the best interests of the child, if required under Minnesota Statutes § 260D.105, or

(ii) the date the agency filed the motion under Rule 42.14 and Minnesota Statutes § 260D.09(b);

(6) the agency's reasonable efforts to finalize the permanency plan for the child, including returning the child to the care of the child's family;

(7) the length of time, including cumulated time, the child has been in foster care;

(8) a citation to Minnesota Statutes § 260D as the basis for the petition; and

(9) a statement of what findings are requested from the court.

(c) **Out-of-Home Placement Plan.** An updated copy of the out-of-home placement plan required under Minnesota Statutes § 260C.212, subd. 1, shall be filed with the petition.

(d) **Manner of Service.** The court shall serve the petition together with a notice of hearing by U.S. mail on the county attorney, the responsible social services agency, the parent, the parent's attorney, the child if age twelve (12) or older, the child's attorney, the foster parent or foster care facility, and the child's guardian ad litem, if one is appointed.

Subd. 3. Hearing Regarding Petition for Child in Voluntary Foster Care for Treatment.

(a) **Timing.** The court shall conduct a permanency review hearing on the petition:

(1) no later than fourteen (14) months after the date of the voluntary foster care agreement; or

(2) within thirty (30) days of the filing of the petition when the child has been in placement fifteen (15) of the last twenty-two (22) months; or

(3) within fifteen (15) days of a motion to terminate jurisdiction and to dismiss an order for foster care under Minnesota Statutes § 260C.201, subd. 1, as provided in Minnesota Statutes § 260D.09(b) and Rule 42.14.

(b) **Conduct of Hearing; Inquiries of Parents and Others.** At the permanency review hearing, the court shall:

(1) inquire of the parent whether the parent has reviewed the "Petition for Permanency Review Regarding a Child in Voluntary Foster Care for Treatment," whether the petition is accurate, and whether the parent agrees to the continued voluntary foster care arrangement as being in the child's best interests;

(2) inquire of the parent whether the parent is satisfied with the agency's reasonable efforts to finalize the permanent plan for the child, including whether there are services available and accessible to the parent that might allow the child to safely be with the child's family;

(3) inquire of the parent whether the parent consents to the court entering an order that:

(i) approves the agency's reasonable efforts to finalize the permanent plan for the child, which includes ongoing future planning for the safety, health, and best interests of the child; and

(ii) approves the agency's determination that there are compelling reasons why the continued voluntary foster care arrangement is in the child's best interests; and

(4) inquire of the child's guardian ad litem and any other party whether the guardian or the party agrees that:

(i) the court should approve the responsible agency's reasonable efforts to finalize the permanent plan for the child, which includes ongoing and future planning for the safety, health, and best interests of the child; and

(ii) the court should approve of the responsible agency's determination that there are compelling reasons why the continued voluntary foster care arrangement is in the child's best interests.

(c) **Conduct of Hearing. Actions of the Court based on Consent of Parent.** At the permanency review hearing, the court may take the following actions based on the contents of the sworn petition and the consent of the parent:

(1) approve the agency's compelling reasons that the voluntary foster care arrangement is in the best interests of the child; and

(2) find that the agency has made reasonable efforts to finalize a plan for the permanent plan for the child.

(d) **Objection by Child.** A child age twelve (12) or older may object to the agency's request that the court approve its compelling reasons for the continued voluntary arrangement and may be heard on the reasons for the objection. After hearing from the child, and notwithstanding the child's objection, the court may approve the agency's compelling reasons and the voluntary arrangement.

(e) **Findings and Order Approving Voluntary Arrangement.** When the court approves the responsible social services agency's compelling reasons for the child to continue in voluntary foster care for treatment, and finds that the agency has made reasonable efforts to finalize a permanent plan for the child, the court shall issue an order approving the continued voluntary foster care for treatment arrangement, and continuing the matter under the court's jurisdiction for the purpose of reviewing the child's placement every twelve (12) months while the child is in foster care.

(f) **Voluntary Arrangement Not in Child's Best Interests.** If the court does not approve the voluntary arrangement after hearing from the child or the child's guardian ad litem, the court shall dismiss the petition. The agency shall either:

(1) return the child to the care of the parent; or

(2) when there is a legal basis, file a petition under Minnesota Statutes § 260C.141 requesting appropriate relief under Minnesota Statutes § 260C.201, subd. 11, or § 260C.301.

(g) **Notice of Required Annual Review.** At the Permanency Review Hearing and in the Notice of Filing of the Order from the hearing, the court shall give notice to the parent, child if age twelve (12) or older, and the foster parent or foster care facility of the continued review requirements under Rule 43.05 and Minnesota Statutes § 260D.09.

2008 Advisory Committee Comment

When the timing requirements in Rule 43.04, subd. 1, are met or when otherwise appropriate and the agency determines there are not compelling reasons to continue the voluntary arrangement, Minnesota Statutes § 260D.10 permits the agency to terminate the voluntary foster care agreement and return the child home or to file a petition for the termination of parental rights when there are grounds to do so.

Under Minnesota Statutes § 260D.07(l), a finding that the court approves the continued voluntary placement means that the responsible social services agency has continued legal authority to place the child while the voluntary foster care agreement remains in effect. The parent or the agency may terminate a voluntary agreement as provided in Minnesota Statutes § 260D.301. Termination of a voluntary foster care placement of an Indian child by a parent is governed by Minnesota Statutes § 260.765, subd. 4.

Rule 43.05. Annual Review

Subd. 1. Required Annual Review.

(a) **Timing.** After the court conducts a permanency review hearing under Rule 43.04 and Minnesota Statutes § 260D.107, the matter shall be returned to the court for further review of the child's foster care placement at least every twelve (12) months while the child is in foster care.

(b) **Annual Report to the Court.** When the child continues in foster care, the responsible social services agency shall annually file a report that sets forth facts that address the required determinations the court shall make under subdivision 2. The agency's report shall be accompanied by proof of the agency's service of the report by U.S. Mail upon the parent, the child if age twelve (12) or older, the child's guardian ad litem, if one has been appointed, and counsel for any party and the child. The report shall be filed with the court at least thirty (30) days prior to the time required for annual review under this rule.

(c) **Timing of Hearing.** The court shall set a date for the annual review hearing not later than twelve (12) months after the Permanency Review Hearing and at least every twelve (12) months thereafter as requested in the report from the agency.

(d) **Service.** The court shall give notice by U.S. Mail of the date and time of the annual review to the agency, the county attorney, the parent, the child if age twelve (12) or older, the child's guardian ad litem, if one has been appointed, and the foster parent or foster care facility at least ten (10) days prior to the date set for the hearing.

Subd. 2. Conduct of Hearing.

(a) **Required Reasonable Efforts Determination.** At the annual review the court shall determine whether the agency made reasonable efforts to finalize the permanency plan for the child, which means the exercise of due diligence by the agency to:

(1) ensure that the agreement for voluntary foster care is the most appropriate legal arrangement to meet the child's safety, health, and best interests;

(2) engage and support the parent in continued involvement in planning and decision making for the needs of the child;

(3) strengthen the child's ties to the parent, relatives, and community;

(4) implement the out-of-home placement plan required under Minnesota Statutes § 260C.212, subd. 1, and

(5) ensure that the plan requires the provision of appropriate services to address the physical health, mental health, and educational needs of the child.

(b) Review for Youth Age 16 or Older. When a child is age sixteen (16) or older, the court shall also review the agency's reasonable efforts to implement the independent living plan required under Minnesota Statutes § 260C.212, subd. 1(c)(8), and the provision of services to the child related to the well-being of the child as the child prepares to leave foster care. The court's review shall include the findings and review required under Rule 42.11, subd. 3(c).

Subd. 3. Order. At the conclusion of the hearing or within five (5) days of the hearing, the court shall issue an order making findings required under subdivision 2(a) and (b), as appropriate.

~~Rule 43.01. 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.~~

~~Rule 43.02. 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. 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, 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, subp. 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.**~~

~~(a) **Limits on Circumstances When Long-term Foster Care Ordered.** The responsible social services agency may make a determination of compelling reasons for a child to be in long-term foster care when the agency has made exhaustive efforts to recruit, identify, and place the child in an adoptive home, and the child continues in foster care for at least twenty-four (24) months after the court has issued the order terminating parental rights. If the court approves the agency's determination of compelling reasons, the court may order the child placed in long-term foster care.~~

~~(b) **Required Annual Review.** As long as the child continues in foster care, at least every twelve (12) months the court shall conduct a permanency review hearing to determine the~~

future status of the child using the review requirements of Minnesota Statutes § 260C.201, subd. 11(g).

(c) **Jurisdiction Through Child's Minority.** In a case where long-term foster care is the permanent disposition, the court shall retain jurisdiction through the child's minority, unless the court extends jurisdiction to age nineteen (19).

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. 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 translated 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. REVIEW OF VOLUNTARY PLACEMENT MATTERS

Other Proposed Amendments
Consistent with Minnesota Statutes § 260D promulgated in 2008 dealing with voluntary placement matters, the Committee recommends the following amendments to Rule 44.

Rule 44.01. Generally

Subd. 1. Scope of Review. This rule governs review of all placements made pursuant to Minnesota Statutes § 260C.212, subd~~s~~. 8 ~~or 9~~.

Subd. 2. Jurisdiction. The court assumes jurisdiction to review a voluntary foster care 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. ~~The court assumes jurisdiction to review voluntary foster care placement of a child pursuant to Minnesota Statutes § 260C.212, subd. 9 (child in voluntary placement due solely to developmental disability or emotional disturbance), upon the filing of a report or petition pursuant to the requirements of Minnesota Statutes § 260C.141, subd. 2a~~.

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. Petition and Hearing

~~**Subd. 1. Child in Placement Due to Developmental Disability or Emotional Disturbance.**~~

~~(a) **Court Report, Hearing, and Judicial Determinations.**~~

~~(1) **Court Report.** In the case of a child in voluntary foster care 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. 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 foster care 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.

In the case of a child in placement due solely to an emotional disturbance, the written report shall include as an attachment the child's individual treatment plan developed by the child's treatment professional, as provided in Minnesota Statutes § 245.4871, subd. 21, or the child's individual interagency intervention plan, as provided in Minnesota Statutes § 125A.023, subd. 3(c).
In the case of a child in placement due solely to a developmental disability, the written report shall include as an attachment the child's individual service plan, as provided in Minnesota Statutes § 256B.092, subd. 1b, the child's individual program plan, as provided in Minnesota Rules part 9525.0004, subp. 11, the child's waiver care plan, or the child's individual interagency intervention plan, as provided in Minnesota Statutes § 125A.023, subd. 3(c).

(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 in foster care 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 of the child in foster care 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 hearing required under subdivision 1(b).

(iii) If the court finds continuing the placement of the child in foster care 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) **Permanency Hearing.**

(1) **Required Permanency Hearing When Child in Placement 13 Months.** In the case of a voluntary foster care placement agreement pursuant to Minnesota Statutes § 260C.212, subd. 9, where the child is in foster care due solely to the child's disability as defined in Minnesota Statutes § 260C.007, subd. 12 or 16, the provisions of Minnesota Statutes § 260C.201, subd. 11, and Rule 42 do not apply. When a child is in foster care due solely to the child's developmental disability or emotional disturbance and the child continues in foster care for thirteen (13) consecutive months from the date of the 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 in foster care.

(2) **Conduct of Permanency Hearing.** At the permanency hearing, the court, upon review of the petition and after inquiring of the parties, shall determine:

(i) the need for an order permanently placing the child away from the parent; and

(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.

(c) **Petition Alleging Child is in Need of Protection or Service; Hearing; Adjudication Prohibited.**

(1) **Petition or Motion.** A petition alleging the child to be in need of protection or services filed under (b)(1) shall state 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. A motion by the responsible social services agency under Rule 42.06 may also be filed in the juvenile protection file when the matter was commenced by a petition alleging the child to be in need of protection or services due to conditions in the home of the parent or legal custodian which led to the foster care placement of the child and those conditions have been corrected such that the child could safely return home except for the continued need for foster care placement due solely to the child's emotional disturbance or developmental disability.

(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, and without requiring any party to admit or deny the petition or respond to the motion by the responsible social services agency, the court may:~~

~~(i) find that there are compelling reasons that the voluntary foster care arrangement is in the best interests of the child;~~

~~(ii) approve continued voluntary placement in foster care;~~

~~(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 in foster care as a continued voluntary arrangement every 12 months as long as the child remains in foster care.~~

~~(3) **Disagreements with Voluntary Placement.** 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.~~

~~(4) **Adjudication and Transfer of Custody Prohibited.** No adjudication that the child is in need of protection or services shall be made or be entered and no transfer of legal custody under Minnesota Statutes § 260C.201, subd. 1, shall be ordered as a result of permanency hearings conducted under this rule. If a motion by the responsible social services agency under Rule 42.06 is granted for compelling reasons and the court finds that continued foster care is necessary due solely to the child's emotional disturbance or developmental disability, the court shall vacate the adjudication and the order transferring legal custody to the responsible social services agency.~~

~~(d) **Continued Review Required**. The matter must be returned to the court for further review every twelve (12) months from the date of the permanency hearing as long as the child remains in foster care. The court shall give notice to the parent or legal custodian of this continued review requirement by registered mail or on the record at the time of the permanency hearing. 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 sixteen (16), plan for the child's transition to an appropriate living arrangement and for appropriate services once the child reaches age eighteen (18).~~

~~(e) **Permanent Placement Away from the Parent by Court Order Prohibited When Court Approves Voluntary Arrangement.** When the court finds compelling reasons and approves the continued voluntary arrangement for placement of a child in foster care due solely to the child's developmental disability or emotional disturbance, the court must not order permanent placement for the child under Minnesota Statutes § 260C.201, subd. 11, and Rule 42.~~

Subd. 1 ~~2~~. Timing of Petition ~~Other Voluntary Placements.~~

~~**(a) Petition**. In the case of a child in voluntary foster care placement pursuant to Minnesota Statutes § 260C.212, subd. 8,~~ When the responsible social services agency expects the

child's need for voluntary foster care placement will not exceed a total of 180 days and the child's safety, health, and best interests do not require the court to order the child in foster care, a 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~~ out-of-home placement plan required pursuant to Minnesota Statutes § 260C.212, subd. 1, and the statutory basis for the petition pursuant to Minnesota Statutes § 260C.007, subd. 6~~; § 260C.201, subd. 11; or § 260C.301~~. A copy of the out-of-home placement plan shall be filed with the petition. Upon the filing of the petition, the court administrator serve the petition, together with out-of-home placement plan, upon the parties by U.S. Mail and shall schedule a hearing pursuant to subdivision 2.

~~(b)~~ **Subd. 2. Timing of Hearing.** When a petition is filed under subdivision 1, ~~The~~ the matter shall be set for hearing within twenty (20) days of service of the petition.

Subd. 3. Initial Hearing.

(a) **Agreement to Continue.** At the initial hearing following the filing of a petition under subdivision 1, if all parties agree to the findings under paragraph (b) of this subdivision, the matter may be continued without the requirement of the parent or legal custodian entering an admission or denial to the petition. The matter may be continued for up to a total of ninety (90) more days during which time the child may continue in foster care on a voluntary basis.

(b~~-c~~) **Findings.** ~~If~~ When 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

(4) the child will be returned home in the next ninety (90) days.

(c~~-d~~) **Approval of Placement.** If the court makes the findings required pursuant ~~to subdivision 2(c)~~ paragraph (b), the court shall approve the voluntary ~~placement~~ arrangement ~~without requiring any party to admit or deny the petition~~ and continue the matter for up to ninety (90) days to assure the child returns to the parent's home or that the matter is returned to court as required under subdivision 4(b).

~~(e)~~ **Subd. 4. Further Proceedings.**

(a~~-1~~) **Agency Report to Court Upon Child's Return Home.** The responsible 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. Upon receiving the report that the child has returned home, the court shall dismiss the petition.

(b) **Return to Court When Child Not Home.** If the child does not return home within the ninety (90) days approved by the court~~,~~:

(1) the matter shall be returned to court for:

(i) an emergency protective care hearing pursuant to Rule 30 if the petition filed under item (2) of this paragraph asks the court to order protective care, or

(ii) for an admit/deny hearing pursuant to Rule 34 if the petition does not ask the court to order protective care; and

(2) the responsible social services agency shall file a new petition alleging the child's need for protection or services and explaining why the child's foster care placement shall exceed the 180-day statutory maximum permitted for voluntary placements under Minnesota Statutes § 260C.212, subd. 8. The petition shall:

(i) state a prima facie basis for the court to order the child to continue in foster care under Rule 30 and Minnesota Statute § 260C.178; or

(ii) have sufficient facts to support a disposition of legal custody to the agency for continued foster care under Rule 41.

(c) **Trial.** If the petition is not admitted at the hearing scheduled under subdivision 3(a), the matter shall be set for trial.

~~(2)~~ **Subd. 5. Disagreement with Voluntary Placement.** If ~~the court or~~ any party ~~including~~ or the child~~,~~ disagrees with the voluntary placement or the sufficiency of the services offered by the responsible social services agency at the time of the initial hearing, 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 or 39~~ schedule a trial to determine what is in the best interests of the child. ~~If the court makes required findings pursuant to Rule 30, the court may order the child in protective care~~.

~~(f)~~ **Subd. 6. Calculating Time Period.** When a child is placed in foster care pursuant to a voluntary placement agreement pursuant to Minnesota Statutes § 260C.212, subd. 8, the time period the child is considered to be in foster care 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, 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(c), 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.~~

~~(b) 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.~~

~~(c) 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.~~

2008 Advisory Committee Comment

Rule 44.02, subds. 4(a) and (b), deal with the child's return home. A child may not continue in foster care on a voluntary basis longer than 180 days unless the child is in foster care treatment under Minnesota Statutes Chapter 260D. *See* Minnesota Statutes § 260C.212, subd. 8. The parent may agree that the child needs to continue in foster care longer than 180 days, in which case the parent may admit a petition alleging the child in need of protection or services which states the basis for the child's need to continue in foster care. In this case, the court has a legal basis to order the child to continue in foster care. If the parent does not agree, the agency shall return the child to the care of the parent unless

there is a basis for an order for emergency protective care under Rule 30 and Minnesota Statutes § 260C.178.

Rule 44.03. Procedures When Court-Ordered Foster Care, Permanent Placement, or Termination of Parental Rights Sought

Subd. 1. Applicable Rules When Other than Voluntary Review is Sought. When a child enters foster care pursuant to a voluntary placement agreement under Minnesota Statutes § 260C.212, subd. 8, and there is a sufficient evidentiary basis, the responsible social services agency may file a petition for termination of parental rights, a petition for permanent placement of the child away from the parent, or a petition alleging the child to be in need of protection or services stating sufficient facts to meet any definition of Minnesota Statutes § 260C.007(6). In this case the matter shall proceed under:

(a) Rule 30 if the petition requests an order for protective care under Rule 30.10 and Minnesota Statutes § 260C.178; or

(b) Rule 34, if an order for protective care is not requested.

Subd. 2. Timing of Hearing. When a petition is filed under subdivision 1, timing of the required hearing shall be pursuant to:

(a) Rule 30.01 if the petition requests an order for protective care under Rule 30.10 and Minnesota Statutes § 260C.178; or

(b) Rule 34.02 if an order for protective care is not requested.

RULE 45. POST-TRIAL MOTIONS

Expedited Appeals Proposed Amendments

The existing rules provide that post-trial motions are to be filed within 15 days of service of the notice of filing of order. The rules are silent about the timing of service for any responsive motions. Committee members responsible for preparing post-trial motions stated that preparation of a post-trial motion is not difficult and could be accomplished within 10 days. In an effort to expedite the process, the Committee recommends that Rule 45.01 should be amended to require post-trial motions to be filed and served within 10 days (rather than 15 days) of service of the notice of filing of order and responsive motions are to be filed and served within 5 days of the motion.

The existing rules do not establish a timeframe for hearing post-trial motions. In an effort to expedite the process, the Committee recommends that Rule 45.01 should be amended to provide that hearings on post-trial motions shall be commenced within 10 days of the filing of the motion.

The existing rules provide that a decision following a post-trial motion shall be issued within 15 days and permits an extension of 15 days. Throughout the rest of the rules, orders following a trial are the only orders that have 15 or more days to be issued. In an effort to expedite the process, and to make the rule consistent with the other rules, the Committee recommends that

Rule 45.05 should be amended to provide that orders following post-trial motions shall be issued within 10 days following the hearing.

Rule 45.01. Procedure and Timing

Subd. 1. Timing. All post-trial motions shall comply with Rule 15 and shall be filed with the court and served upon the parties within ten (10) ~~fifteen (15)~~ days of the service of notice by the court administrator of the filing of the court's order finding that the statutory grounds set forth in the petition are or are not proved. Any response to a post-trial motion shall comply with Rule 15 and shall be filed with the court and served upon the parties within five (5) days of service of the post-trial motion.

Subd. 2. 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. 3. 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 five (5) ~~ten (10)~~ days after such service in which to serve opposing affidavits pursuant to Rule 15. ~~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 so long as the time for issuing a decision is not extended beyond the time permitted in Rule 45.05.

Subd. 4. Hearing. If the trial court grants a hearing on a post-trial motion, the hearing shall take place within ten (10) days of the date the post-trial motion is filed.

* * * * *

Rule 45.05. Decision

The court shall rule on all post-trial motions within ten (10) ~~fifteen (15)~~ days of the conclusion of the hearing, which shall include the time for filing written arguments, if any. ~~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.~~ The findings and order shall be filed with the court administrator, who shall proceed pursuant to Rule 10.

RULE 46. RELIEF FROM ORDER

ICWA Proposed Amendments

The existing Rules of Juvenile Protection Procedure do not specify the procedures for invalidating an action under the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1914, so the Committee drafted proposed procedures. The Committee recommends that Rule 46.03 should be amended to specify the procedures for invalidating an action as permitted under the ICWA. The

Rule distinguishes between the filing of a motion in pending matters and the filing of a petition in matters where juvenile court jurisdiction has already terminated.

In drafting Rule 46.03 the Committee recognized that the ICWA does not establish a time limit for filing a petition to invalidate and, for that reason, the Rule does not contain a time limit. The few state courts that have considered inclusion of a timeline for filing a petition to invalidate are divided and there is no clear consensus. Likewise, the Committee is divided about whether to include a time limit for filing a petition in view of the fact that the ICWA is silent. Some believe that a time limit unduly restricts the ability to invalidate an action which never should have occurred and judges should decide on a case-by-case basis whether a petition to invalidate has been timely filed. In doing so, judges may wish to consider that the ICWA sets a two-year time limit for invalidating an adoption where consent was obtained by fraud or duress. Others believe that a time limit is necessary to achieve finality for children. The Committee is further divided on the issue of whether such a time limit is substantive or procedural, the former being beyond the reach of a procedural rule.

The ICWA also does not specify whether one may file a petition to invalidate a foster care placement proceeding as part of the termination of parental rights proceeding. For that reason, proposed Rule 46.03 does not include any guidance on this topic.

Finally, the ICWA is silent about whether an objection during the trial court proceeding is required to preserve an objection on appeal. For that reason, proposed Rule 46.03 is also silent about that issue.

Proposed Amendment from 2007 Committee
Pursuant to the request of the Supreme Court and Judicial Council, the Committee recommends that Rule 30.10 should be amended to conform to the suggested timing structure for issuing court orders.

Rule 46.03. Invalidation of Action Under ICWA ~~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 notice of motion and motion petition to invalidate such action upon a showing that such action violates the Indian Child Welfare Act, 25 U.S.C. §§ 1911–1913 1914. The form and content of the petition shall be in writing and shall be governed by Rule 33. A petition or motion to invalidate made pursuant to 25 U.S.C. § 1914 shall be processed by the Court as a motion. Upon the Court's receipt of a petition or motion to invalidate a proceeding that has been closed, court administration shall re-open the original file. The matter shall be assigned and scheduled for a hearing consistent with Rule 15.~~

~~**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.~~

Subd. 1. Petition or Motion. Pursuant to 25 U.S.C. § 1914, any Indian child who is the subject of any action for foster care placement or termination of parental rights, any parent or Indian custodian from whose custody an Indian child was removed, or the Indian child's tribe may seek to invalidate the action upon a showing that such action violates the Indian Child Welfare Act, 25 U.S.C. §§ 1911 – 1913.

(a) ***Motion.*** A motion to invalidate may be brought regarding a pending juvenile protection matter.

(b) ***Petition.*** A petition to invalidate may be brought regarding a juvenile protection matter in which juvenile court jurisdiction has been terminated.

Subd. 2. Form and Service. A motion or petition to invalidate shall be in writing pursuant to Rule 15.01 and shall be filed and served pursuant to Rule 15.02. Both a motion and a petition to invalidate shall be processed by the court as a motion. Upon receipt of a petition to invalidate a proceeding in which juvenile court jurisdiction has been terminated, the court administrator shall re-open the original juvenile protection file related to the petition.

Subd. 3. Hearing. Within thirty (30) days of the filing of a motion or petition to invalidate, the court shall hold an evidentiary hearing of sufficient length to address the issue raised in the motion or petition. A motion filed thirty (30) or more days prior to trial shall be heard prior to trial and the decision shall be issued prior to trial. A motion filed less than thirty (30) days prior to trial shall not delay commencement of the trial and the decision shall be issued as part of the trial decision.

Subd. 4. Findings and Order. Within fifteen (15) days of the conclusion of the hearing on the motion or petition to invalidate, the court shall issue findings of fact, conclusions of law, and an order regarding the petition or motion to invalidate.

2008 Advisory Committee Comment

Rule 46.03 establishes a procedure for filing a petition or motion to invalidate an action under the Indian Child Welfare Act (ICWA) at 25 U.S.C. § 1914. Section 1914 of the ICWA permits an Indian child, the Indian child's parent or Indian custodian, or the Indian child's tribe to petition the court to invalidate any action for foster care placement or termination of parental rights upon a showing that the action violated the ICWA § 1911 (dealing with exclusive jurisdiction and transfer to tribal court), § 1912 (dealing with notice to the Indian child's tribe regarding the district court proceedings, appointment of counsel, examination of reports, and testimony of a qualified expert witness), or § 1913 (dealing with voluntary consent to foster care placement and termination of parental rights). Section 14 of the ICWA is silent about the time for bringing a petition to invalidate, the relief available, and whether relief is available even if there was no objection below.

Time Limit for Filing Petition to Invalidate: Although there is no time limit contained in the ICWA § 1914, the Alaska Supreme Court has held that a challenge to an adoption under § 1914 shall be brought within a year. *In re Adoption of Erin G.*, 140 P.3d 886, 889 (Alaska 2006). In a slightly later case, it

suggested that the time limit in an ICWA challenge brought under 42 U.S.C. § 1983 would be two years. *Department of Health & Social Servs. v. Native Village of Curyung*, 151 P.3d 388, 411 (Alaska 2006). The authors of the Native American Rights Fund's "A Practical Guide To The Indian Child Welfare Act" (2007, at 160-62) do not cite any other cases, but they disagree that there should be time limits which vary from state to state. The authors of "The Indian Child Welfare Act Handbook," published in 2008 by the A.B.A. Section on Family Law, recommend using the two-year time limit contained in § 1913(d) (at 156).

Reach Of Relief Available: There are a number of cases which hold that § 1914 of the ICWA is not available to attack an ICWA violation occurring during the foster care placement proceeding (i.e., child in need of protection or services (CHIPS)) as part of the termination of parental rights proceeding. *Welfare of the Children of S.W., et.al., Parents*, 727 P.2d 144 (Minn. Ct. App. 2007); *Interest of J.D.B.*, 584 N.W.2d 577 (Iowa Ct. App. 1998); *Interest of J.W.*, 528 N.W.2d 657, 661 (Iowa Ct. App. 1995); *D.E.D. v. State*, 704 P.2d 774, 782 (Alaska 1985); *Matter of M.E.M.*, 679 P.2d 1241, 1243-44 (Mont. 1984).

Although these courts have rejected this sort of collateral attack, there is some suggestion in all four of these cases that a different decision might have resulted if the termination of parental rights judge had made extensive use of the evidence introduced in the foster care placement proceeding in which the violations occurred. The North Dakota Supreme Court appears to agree. *See B.R.T. v. Social Serv. Bd.*, 391 N.W.2d 594, 600 n.10 (N.D. 1986).

The Native American Rights Fund cites three cases which, it says, compel vacation of the adjudication for specific ICWA violations (at 162). *Interest of H.D.*, 729 P.2d 1234, 1240-41 (Kansas Ct. App. 1986); *Matter of L.A.M.*, 727 P.2d 1057, 1060 (Alaska 1986); *Matter of Morgan*, 364 N.W.2d 754, 758 (Mich. Ct. App. 1985). But none of these three cases invalidates a subsequent termination of parental rights because of ICWA violations occurring during the foster care placement proceeding.

In an American Bar Association treatise on the subject, the authors argue a broader role for § 1914, including collateral attack in federal court. *See* B.J. Jones, M. Tilden & K. Gaines-Stoner, *The Indian Child Welfare Act Handbook: A Legal Guide to the Custody and Adoption of Native American Children*, pp. 153-156 (2nd ed. 2008).

Necessity Of Objection During Trial Court Proceeding: Although it is not a § 1914 case, *Matter of L.A.M.*, 727 P.2d 1057, 1059 (Alaska 1986), specifically holds that objection during the trial court proceeding is not required to preserve an objection on appeal to a § 1912 violation. The Native American Rights Fund lists two cases which hold that an objection below is not necessary to seek relief under § 1914 (at 161). In re S.R.M., 153 P.3d 438 (Colo. Ct. App. 2006); In re S.M.H., 103 P.3d 976 (Kansas Ct. App. 2005).

RULE 47. APPEAL

Expedited Appeals Proposed Amendments

The existing rules provide that an appeal shall be taken within 30 days of the service of the notice of filing of order. In an effort to expedite the process, the Committee recommends that Rule 47.02 should be amended to require a notice of appeal to be filed and served within 20 days of service of the notice of filing of order.

The Committee learned that attorneys do not always know the names and contact information of court reporters for purposes of requesting transcripts, especially if the court reporter served on earlier hearings in the proceedings. Court reporters also indicated that they don't always timely receive notice of appeal. In an effort to expedite the process, the Committee recommends that Rule 47.02, subds. 3 and 5, should be amended to provide that when the Notice of Appeal is filed, it shall be provided to the court administrator and the court reporter and shall be accompanied by a copy of the request for transcript.

The Committee recommends that court orders following pretrials and trials should include the name and contact information of the court reporter for each hearing so that they could be readily identified in the event a transcript is needed.

The Committee recommends that Rule 47.02 should be amended to provide that the time for filing and serving respondent's brief should be within 20 days after service of the last appellant's brief or within 20 days (rather than 30 days) after delivery of a transcript ordered by respondent pursuant to Civil Appellate Procedure Rule 110.02, subdivision 1, whichever is later. The 30-day timeline for filing the appellant's brief and the 10-day timeline for filing a reply brief have not changed and continue to be governed by the Rules of Civil Appellate Procedure.

The Committee recommends that Rule 47.05 should be amended to provide that the estimated completion date for a transcript shall not exceed 30 days from the date the request for transcript is received.

The committee recommends that Rule 47.06 should be amended to provide that decisions by the court of appeals shall be issued within 45 days (rather than 60 days) of the date the case is deemed submitted.

The Committee recommends that Rule 47.07 be added to provide that Petitions for Further Review to the Supreme Court shall be filed and served within 15 days of the filing of the court of appeals decision, and any response shall be filed and served within 10 days of the service of the Petition.

Rule 47.01. Applicability of Rules of Civil Appellate Procedure

Except as provided in Rule 47.02, appeals of juvenile protection matters shall be in accordance with the Rules of Civil Appellate Procedure.

Rule 47.02. 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 adjudicating ~~adjudging~~ a child to be in need of protection or services, neglected and in foster care.

Subd. 2. Timing of Filing Notice of Appeal. Any appeal shall be taken within twenty (20) ~~thirty (30)~~ days of the service of notice by the court administrator of the filing of the court's order. In the event of the filing and service of a timely and proper post-trial motion under Rule 45, or for relief under Rule 46 if the motion is filed within the time specified in Rule 45.01, subd. 1, 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 service of notice by the court administrator of the filing of the order disposing of the last post-trial motion.

2004 Advisory Committee Comment—2006 Amendment

Minnesota Statutes § 260C.415 provides that an appeal shall be taken within 30 days of the filing of the appealable order and "as in other civil cases" under the Rules of Civil Appellate Procedure. The Committee recognizes that the timing provision of Rule 47.02, subd. 2, which provides that the appeal time begins to run from the court administrator's service of notice of the filing of the order, 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. The appeal time and procedures are governed by these rules, specifically established for juvenile protection proceedings, and not by the more general provisions of the appellate rules. *See In re Welfare of J.R., Jr.*, 655 N.W.2d 1 (Minn. 2003).

Subd. 3. Service and Filing of Notice of Appeal. Within the time allowed for an appeal, as provided in subdivision 2, the party 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.

A notice of appeal shall be accompanied by a copy of the request for transcript required by subdivision 5.

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. 5. Request for Transcript. At or before the time for serving the notice of appeal, the appellant shall serve on the court reporter a written request for a transcript. At the same time, the appellant shall also provide the court reporter with a signed Certificate as to Transcript, which the court reporter shall sign and file with the clerk of appellate courts, with a copy to the trial court, unrepresented parties, and counsel of record, within ten (10) days of the date the transcript was ordered.

Subd. 6 ~~5~~. 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. 7 ~~6~~. 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.

Subd. 8. Timing of Briefs. Rule 131.01 of the Rules of Civil Appellate Procedure applies to the timing of briefs, except that the respondent shall serve and file a brief and any appendix within twenty (20) days after service of the brief of the appellant; within twenty (20) days after service of the last appellant's brief, if there are multiple appellants; or within twenty (20) days after delivery of a transcript ordered by respondent pursuant to Civil Appellate Procedure Rule 110.02, subdivision 1, whichever is later.

Rule 47.03. Application for Stay of Trial Court Order

The service and filing of a notice of appeal does not stay the order of the juvenile court. The order of the juvenile court shall stand pending the determination of the appeal, but the juvenile court may in its discretion and upon application stay the order. If the juvenile court denies an application for stay pending appeal, upon motion, a stay may be granted by the court of appeals.

Rule 47.04. 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. 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 from the date the request for transcript is received.

Rule 47.06. Time for Rendering Decision~~s~~ by Minnesota Court of Appeals

All decisions regarding juvenile protection matters shall be issued by the appellate court within forty-five (45) ~~sixty (60)~~ days of the date the case is deemed submitted pursuant to the Rules of Civil Appellate Procedure.

Rule 47.07. Petition in Supreme Court for Review of Decisions of the Court of Appeals

Rule 117 of the Rules of Civil Appellate Procedure applies to petitions for review of decisions of the court of appeals in juvenile protection matters, except that any petition for further review shall be filed with the clerk of the appellate courts and served upon the parties within fifteen (15) days of the filing of the court of appeals' decision, and any response to such

petition shall be filed with the clerk of appellate courts and served upon the parties within ten (10) days of service of the petition.

RULE 48. TRANSFER OF JURISDICTION TO TRIBE

ICWA Proposed Amendments
The existing Rules do not establish procedures for transferring cases to tribal court. As a result, there is a statewide lack of uniformity and, often times, confusion about the process. The Committee recommends that Rule 48 be added to establish such procedures. The Committee recommends language regarding exclusive jurisdiction and Public Law 280, but has questions about the helpfulness of the language and recommends that the full Committee review it.

Rule 48.01. Transfer of Matter to Jurisdiction of Tribe

Subd. 1. Motion or Request to Transfer. An Indian child's parent, Indian custodian, or tribe may request transfer of the matter to the Indian child's tribe by:

(a) filing with the court and serving a motion or any other written document pursuant to Rule 15; or

(b) making an on-the-record request which shall be reflected in the court's findings.

Subd. 2. Notice of Request to Transfer Matter to Jurisdiction of Tribe.

(a) When a motion or other written document is filed pursuant to subdivision 2(a), the service and notice provisions of Rule 15.02, subd. 1, apply.

(b) When an on-the-record request is made pursuant to subdivision 2(b), the objection and continuance provisions of Rule 15.01, subd. 3, apply.

Subd. 3. Transfer Required Absent Objection by Parent or Good Cause Finding. Upon motion or request of an Indian child's parent, Indian custodian, or tribe pursuant to subdivision 2, the court shall issue an order transferring the juvenile protection matter to the jurisdiction of the Indian child's tribe absent objection by either parent pursuant to subdivision 4 or a finding of good cause to deny transfer pursuant to subdivision 6(b), and shall proceed pursuant to Rule 48.02. The order transferring jurisdiction to the Indian child's tribe shall order jurisdiction retained pursuant to subdivision 7 until the Indian child's tribe exercises jurisdiction.

Subd. 4. Objection to Transfer by Parent. A parent of an Indian child may object to transfer of a juvenile protection matter to the Indian child's tribe.

(a) **Form of Objection.** The parent's objection shall be in writing or stated on the record. The writing may be in any form sufficient for the court to determine that the parent objects to the request to transfer the matter to the Indian child's tribe.

(b) **Timing of Filing and Service.** Any written objection shall be filed with the court and served upon those who are served with the motion pursuant to Rule 15.02, subd. 1, either:

(1) within fifteen (15) days of service of the motion, written request, or on-the-record request to transfer the matter to the Indian child's tribe under subdivision 2; or

(2) at or before the time scheduled for hearing on a motion to deny transfer for good cause, if any, under subdivision 6.

(c) **Method of Filing and Service.** Service of any notice of objection shall be by U.S. Mail, facsimile, or personal service and shall be accomplished by the parent's attorney or by the court administrator when the parent is not represented by counsel. The court shall include a parent's on-the-record objection to the transfer as a finding in its order denying the motion to transfer.

(d) **No Hearing Required.** A hearing on an objection to transfer by parent is not required.

(e) **Decision and Order.** Upon objection by a parent, the court shall deny the request to transfer jurisdiction to the Indian child's tribe and issue its findings and order pursuant to Rule 10.01.

Subd. 5. Request to Deny Transfer by Child or Party Who is Not a Parent.

(a) **Child.** A child age twelve (12) or older, regardless of party status, may request that the matter not be transferred to the Indian child's tribe by filing with the court, within fifteen (15) days of receiving the request to transfer the matter to the tribe, a written document stating the child's request to deny transfer. The writing may be in any form. The child's attorney shall serve the written document and the notice of hearing required pursuant to subdivision 6. If the child is not represented by counsel, the court administrator shall serve the written request and notice of hearing. Service shall be pursuant to Rule 15.02, subd. 1.

(b) **Party Who is Not a Parent.** A party who is not a parent may request that the matter not be transferred to the Indian child's tribe by filing with the court and serving a notice of motion and motion pursuant to subdivision 6 and Rule 15 within fifteen (15) days of receiving the request to transfer the matter to the tribe. The party opposing transfer shall provide a written explanation of the reason for the opposition.

(c) **Establishment of Good Cause.** The child or party opposing transfer has the burden of establishing good cause not to transfer. The request to deny transfer shall be scheduled for hearing pursuant to subdivision 6.

Subd. 6. Hearing on Request to Deny Transfer to Tribal Court.

(a) **Hearing.** Within fifteen (15) days of the filing of a written request to deny transfer to the Indian child's tribe, the court shall conduct a hearing to determine whether good cause exists to deny the transfer to the tribe pursuant to 25 U.S.C. § 1911(b).

(b) **Decision.** The court shall make findings regarding the existence of good cause to deny transfer. If good cause to deny transfer is not found, the court shall order the matter transferred to tribal court and shall proceed pursuant to Rule 48.04. If good cause to deny transfer is found, the court may either deny the request to transfer or order the matter transferred to tribal court.

(c) **Order.** The court shall issue its findings and order pursuant to Rule 10.01.

Subd. 7. Retention of District Court Jurisdiction until Notice from the Indian Child's Tribe.

(a) **District Court Jurisdiction**. The district court shall retain jurisdiction over the matter by written order until the district court judge receives information from the tribal court that the tribe has exercised jurisdiction. Pending exercise of jurisdiction by the Indian child's tribe, the district court has continued authority to:

(1) approve or modify services to be provided to the child and the child's family pursuant to Rule 30.10; or

(2) approve or modify the case plan pursuant to Rules 41.05 and 41.06; and

(3) make other orders that ensure a smooth transition of the matter to the tribe.

(b) **Hearings in District Court Pending Dismissal.** The district court may conduct hearings as required by Minnesota Statutes § 260C and these Rules and shall conduct a review hearing at least every ninety (90) days until the Indian child's tribe exercises jurisdiction over the matter or the tribal court declines the transfer in response to the district court's order to transfer the matter to the tribe. Such hearings shall be for the purpose of reviewing the provision of services under the case plan or the provision of services to the child and family and to update the court regarding exercise of jurisdiction by the Indian child's tribe.

(c) **Exercise of Jurisdiction by Indian Child's Tribe.** The district court may accept and rely on any reasonable form of communication indicating the tribe has exercised jurisdiction. The district court shall acknowledge receipt of the communication and the exercise of jurisdiction by the tribe by forwarding to the tribal court of, or designated by, the Indian child's tribe an order terminating the district court's jurisdiction under paragraph (e).

(d) **Declination of Transfer by Tribal Court.** Upon declination by a tribal court, the district court shall proceed as if the matter was not transferred to tribal court.

(e) **Order Terminating District Court Jurisdiction.** After issuing the order transferring jurisdiction pursuant to Rule 48.01, subd. 1, and once the district court judge receives information that the tribe has exercised jurisdiction, the district court judge shall issue an order terminating jurisdiction which shall include provisions:

(1) stating the factual basis for the judge's determination that the Indian child's tribe has exercised jurisdiction;

(2) terminating jurisdiction over all parties, the Indian child's parent or Indian custodian, and the Indian child;

(3) terminating the responsible social services agency's legal responsibility for the Indian child's placement when the district court has ordered the child into protective care under Rule 30.10 and Minnesota Statute § 260C.178;

(4) terminating the responsible social services agency's legal custody of the child when the court has transferred legal custody to the responsible social services agency under Rule 41.05 and Minnesota Statute § 260C.201, subdivision 1;

(5) discharging the Commissioner of Human Services as guardian and terminating the order for legal custody to the commissioner when the court has ordered guardianship and legal custody to the commissioner; and

(6) discharging court appointed attorneys and the guardian ad litem for the child and for the parent, if any.

2008 Advisory Committee Comment

"Tribe," "Tribal Court," and "Tribal Social Services." Throughout the Indian Child Welfare Act (ICWA), the phrases "tribe," "tribal court," and "tribal social services" are used. In an effort to remain consistent with the ICWA, Rule 48 mirrors the use of those phrases.

Tribe's Method of Communicating Exercise of Jurisdiction. Rule 48.01, subd. 7(c), provides that "The district court may accept and rely on any

reasonable form of communication indicating the tribe has exercised jurisdiction." The information received may be in a written order or letter, a telephone call, a faxed or emailed message, a copy of a hearing notice setting the matter for hearing in tribal court, or any other form of communication between the tribe and the district court judge regarding the tribe's action in regard to the district court order transferring the matter to the Indian child's tribe.

Transfer of Jurisdiction After Termination of Parental Rights. The Indian Child Welfare Act (ICWA) does not preclude the transfer of matters to tribal court following termination of parental rights. Rule 48.04, subd. 7(e)(6), recognizes the practice of transferring cases to the tribe after termination of parental rights and requires certain orders when such a transfer is made, inter alia, discharging the Commissioner of Human Services as the guardian for the child.

Transfer to Tribe Other Than Indian Child's Tribe. The Indian Child Welfare Act (ICWA) provides for the transfer of jurisdiction from State court to the "the Indian child's tribe." 25 U.S.C. § 1911. Rule 48.01, subd. 7(c), recognizes that some Indian tribes are exercising jurisdiction over child custody proceedings by designating other tribes to act on their behalf to receive the transferred case.

"Good Cause" to Deny Transfer. Consistent with the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1911(b), Rule 48.01, subd. 1, mandates that transfer to the Indian child's tribe must occur upon motion absent objection by a parent or a finding of "good cause to deny transfer." "Good cause" is not defined in the ICWA. Good cause not to transfer a proceeding may exist if a child age twelve (12) or older objects to the transfer. *Bureau of Indian Affairs Guidelines for State Courts: Indian Child Custody Proceedings*, C.3(b)(i), 44 Fed Reg. at 67590 (Nov. 26, 1979). "Good cause" is discussed in the *Bureau of Indian Affairs Guidelines for State Courts: Indian Child Custody Proceedings*, C.3 Commentary, 44 Fed Reg. at 67590 (Nov. 26, 1979). *See also*, *In Re the Matter of the Welfare of the Child of: T.T.B. and G.W.*, 724 NW2d 300 (Minn. 2006), and *In the Matter of the Welfare of the Children of R.M.B. and R.E.R.*, 735 NW2d 348 (Minn. App. 2007, rev. denied). *See Bureau of Indian Affairs Guidelines*, 44 Fed. Reg. 67,584, 67,595 at C.3(b)(i)-(iv), (c), (d) (Nov. 26, 1979) (as modified).

Rule 48.02. Communication between District Court and Tribal Court Judges

Subd. 1. Child Ward of Tribal Court.

(a) When the child is a ward of tribal court, prior to directing the matter to tribal court, pursuant to subdivision 4 the district court judge shall communicate with a tribal court judge to:

(1) inform the tribal court judge that the district court has ordered the emergency removal of the ward; and

(2) inquire of the tribal court judge about any orders regarding the safe transition of the ward so that such orders can be enforced by the district court pursuant to the full faith and credit provisions of 25 U.S.C. § 1911(d) and Minnesota Rules of General Practice Rule 10.

(b) The district court judge may order the responsible social services agency and attorney for the parties to communicate with their respective tribal counterparts or to take any other reasonable steps to ensure that the ward's tribe is timely aware of the district court's order for emergency removal of the ward.

(c) Communication permitted under this rule shall facilitate expeditious return of the ward to the jurisdiction of the Indian child's tribe and consultation regarding the safe transition of the child.

Subd. 2. Child Domiciled or Residing on a Reservation.

(a) When the child resides or is domiciled on a reservation, prior to ordering transfer of the juvenile protection matter to tribal court, the district court judge shall, pursuant to subdivision 4, communicate with a tribal court judge to:

(1) inform the tribal court judge that the district court has ordered the emergency removal of an Indian child; and

(2) inquire of the tribal court judge about any requirements or conditions that should be put in place regarding the safe transition of the child to the jurisdiction of the child's tribe.

(b) The district court judge may order the responsible social services agency and attorneys for the parties to communicate with their respective tribal counterparts or to take any other reasonable steps to ensure that the Indian child's tribe is timely aware of the request to transfer the matter to the tribe.

(c) Communication permitted under this rule shall facilitate timely transfer of the matter to tribal court or return of the Indian child to the child's parent or Indian custodian.

Subd. 3. Child Not a Ward of Tribal Court, Not a Resident or Domiciliary of the Reservation.

(a) When a child is not a ward of tribal court, or does not reside on or is not domiciled on the reservation, prior to ordering transfer of the juvenile protection matter to tribal court the district court judge shall, pursuant to subdivision 4, communicate with a tribal court judge to:

(1) inquire whether the tribal court will accept the transfer and, if so, order the transfer absent objection by either parent pursuant to Rule 48.01, subd. 4, or a finding of good cause to deny the transfer pursuant to Rule 48.01, subd. 6(b), and proceed pursuant to Rule 48.01, subd. 7; and

(2) inquire of the child's tribe what district court orders should be made regarding the child's safe transition to the jurisdiction of the Indian child's tribe when 25 U.S.C. § 1911(b) applies.

(b) The district court judge may order the responsible social services agency and counsel for the parties to communicate with their respective tribal counterparts or to take any other reasonable steps to ensure that the Indian child's tribe is timely aware of the request to transfer the matter to the tribe.

(c) Communication permitted under this rule shall facilitate timely transfer of the matter to tribal court.

Subd. 4. Method of Communication; Inclusion of Parties; Recording

(a) **Method of Communication.** Communication between the district court judge and the tribal court judge may be in writing, by telephone, or by electronic means.

(b) **Inclusion of Parties.** The district court judge may allow the parties to participate in the communication with the tribal court judge. Participation may be in any form, including a hearing on-the-record or a telephonic communication.

(c) **Record of Communication.** Except as otherwise provided in paragraph (d), a record shall be made of a communication under this rule. If the parties or any party did not participate in the communication, the court shall promptly inform the parties of the communication and grant access to the record. The record may be a written or on-the-record summary of any telephone or verbal communication or a copy of any electronic communication.

(d) **Administrative Communication.** Communication between courts on administrative matters may occur without informing the parties and a record need not be made.

2008 Advisory Committee Comment

Rule 48.02, subd. 4, regarding communication between courts includes language similar to certain provisions in the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Minn. Stat. § 518D.110. Not all provisions in the "communication between courts" provisions of the UCCJEA are included in this Rule because the UCCJEA is not applicable when the case is governed by the ICWA. *See* Minn. Stat. § 518D.104(a). The purpose of requiring court-to-court communication is to facilitate expeditious return or transfer by timely and direct contact between judges. Nothing in this rule shall be construed to delay return or transfer of the matter to tribal court. Administrative matters may include schedules, calendars, court records, and similar matters. Communication may include receipt of a tribal court order.

Rule 48.03. Court Administrator's Duties

Upon receiving an order transferring a matter to tribal court, the court administrator shall file the order and serve it on all parties, participants, the Indian child's parents and the Indian child as directed by the court according to the requirements of Rule 10**.** The court administrator shall forward a certified copy of the complete court file by U.S. Mail, courier, hand-delivery, or any other means calculated to ensure timely receipt of the file by the tribal court.

RULE 49. QUALIFIED EXPERT WITNESS REQUIREMENT UNDER THE INDIAN CHILD WELFARE ACT

The existing Rules do not establish procedures for the testimony of a qualified expert witness. As a result, there is a statewide lack of uniformity and, often times, confusion about the process for obtaining such testimony. The Committee recommends that Rule 49 be added to establish such procedures.

Rule 49.01. Timing – Temporary Emergency Custody

Absent extraordinary circumstances, temporary emergency custody of an Indian child shall not be continued for more than ninety (90) days without a determination by the court, supported by the testimony of at least one qualified expert witness that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Rule 49.02. Foster Care Placement

In the case of an Indian child, foster care placement shall not be ordered in the absence of testimony of at least one qualified expert witness, as defined in Rule 2.01(u), that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Rule 49.03. Termination of Parental Rights

In the case of an Indian child, termination of parental rights shall not be ordered in the absence of testimony of at least one qualified expert witness that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

2008 Advisory Committee Comment

Minnesota law distinguishes between voluntary and involuntary termination of parental rights. The Indian Child Welfare Act (ICWA) does not distinguish between voluntary and involuntary termination of parental rights and, for that reason, Rule 49 simply restates the ICWA.

Rule 49 recognizes the unique requirements for and qualifications of the qualified expert witness whose testimony must be presented to the court before the court may order foster care placement or termination of parental rights under the ICWA. Rule 49.03 is a restatement of the *Bureau of Indian Affairs Guidelines for State Courts; Indian Child Custody Proceedings (BIA Guidelines)* regarding the timing of qualified expert testimony when there is an emergency removal of an Indian child. See *BIA Guidelines* B.7.d. Compliance with the requirement for a qualified expert witness is best achieved by timely notice to the child's tribe, ensuring that the county agency works with the child's tribe to discuss the need for placement, identifying extended family who can serve as placement resources and support for the family, ensuring that culturally appropriate services are delivered to the family, and requesting qualified expert witness testimony from the tribe or elsewhere. When the court has determined that the ICWA applies, but the child's tribe has not participated in planning for the child, or when the child's tribe does not support placement of the child in foster care or termination or parental rights, the requirements of this rule may be met by a person who meets the criteria of Rule 2.01(u)(2) or (3).

RULE 6. REFEREES AND JUDGES

Proposed Amendment from 2007 Committee
Pursuant to the request of the Supreme Court and Judicial Council, the Committee recommends that Rule 6.06 should be amended to conform to the suggested timing structure for issuing court orders.

Rule 6.06. 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 three (3) ~~ten (10)~~ days of the transmittal of the findings and proposed order.

RULE 10. ORDERS

Proposed Amendment from 2007 Committee
Pursuant to the request of the Supreme Court and Judicial Council, the Committee recommends that Rule 10.01 should be amended to conform to the suggested timing structure for issuing court orders.

In July 2005, Minnesota Statutes § 257.59, subd. 1(b), was amended to provide that the Commissioner of the Department of Human Services (DHS) will maintain records only for those children who are under its guardianship or under guardianship of a child-placing agency. Because children involved in stepparent adoptions are not under state guardianship, DHS will no longer maintain records relating to those children. Consistent with Minnesota Statutes § 257.59, subd. 1(b), the Committee recommends that Rule 10.03, subd. 2, should be amended so that copies of the Findings of Fact, Conclusions of Law, Order for Judgment, and Adoption Decree are sent to DHS only in the required adoption cases.

Rule 10.01. Written or Oral Orders

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 44.06, all orders shall be filed with the court administrator within fifteen (15) days of the conclusion of the hearing. An order shall remain in full force and effect until the occurrence of any 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 10.03. Delivery; Mailing

* * * * *

Subd. 2. Adoption Decree. The findings of fact, conclusions of law, order for judgment, and adoption decree issued pursuant to Rule 45 shall be delivered at the hearing or mailed by the court administrator to:

(a) each party;

(b) the Commissioner of Human Services for children who are:

(i) under guardianship of the Commissioner or a licensed child-placing agency according to Minnesota Statutes § 260C.201, subd. 11, or § 260C.317;

(ii) placed by the commissioner, commissioner's agent, or licensed child-placing agency after a consent to adopt according to Minnesota Statutes § 259.24 or under an agreement conferring authority to place for adoption according to Minnesota Statutes § 259.25; or

(iii) adopted after a direct adoptive placement approved by the district court under Minnesota Statutes § 259.47;

(c) the Secretary of the Interior and the child's tribal social services agency, if the child is an Indian child; and

(d) such other persons as the court may direct.

If a party is represented by counsel, delivery or service shall be upon such counsel. Filing and mailing of the adoption decree by the court administrator shall be accomplished within five (5) days of the date the judicial officer delivers the adoption decree to the court administrator. Upon request and payment of the applicable fee, the court administrator shall provide a certified copy of the adoption decree to persons entitled to receive a copy as permitted by statute or these rules.

RULE 29. DIRECT PLACEMENT ADOPTION

Proposed Amendment from 2007 Committee

Pursuant to the request of the Supreme Court and Judicial Council, the Committee recommends that Rule 29.04 should be amended to conform to the suggested timing structure for issuing court orders.

Rule 29.04. Decision and Order

Subd. 1. Non-Emergency Direct Placement. In a non-emergency situation, the court shall decide a motion for a preadoptive custody order within fifteen (15) ~~thirty (30)~~ days of the filing of the motion or by the anticipated placement date stated in the motion, whichever is earlier.

RULE 33. CONSENT TO ADOPTION

Effective July 1, 2007, Minnesota Statutes § 259.24, subdivision 3, dealing with consents was amended to provide, in pertinent part, as follows: "When the child to be adopted is over 14 years of age, the child's written consent to adoption by a particular person is also ~~shall be~~

necessary." Consistent with the statutory amendment, the Committee recommends that Rule 33.01(a) should be amended to require the child's consent.

Rule 33.01. Persons and Agencies Required to Consent

Written consent to an adoption is required by the following:

(a) the child to be adopted, if the child is fourteen (14) years of age or older, and the child's consent must be consent to adoption by a particular person;

(b) the adult to be adopted, whose consent shall be the only consent required;

(c) a registered putative father, if pursuant to Rule 32 he has:

(1) been notified under the Minnesota Fathers' Adoption Registry;

(2) timely filed an intent to claim parental rights form; and

(3) timely filed a paternity action;

(d) the child's parents or legal guardian, except:

(1) a parent not entitled to notice of the proceedings;

(2) a parent who has abandoned the child or a parent who has lost custody of the child through a divorce decree or a decree of dissolution and upon whom notice has been served as required under Rule 31; and

(3) a parent whose parental rights to the child have been terminated by a juvenile court order or through a decree in a prior adoption matter;

(e) if there is no parent or legal guardian qualified to consent to the adoption, the consent shall be given by the Commissioner of Human Services;

(f) the agency having authority to place the child for adoption, which shall have the exclusive right to consent to the adoption of such child; and

(g) the Commissioner of Human Services when the Commissioner is the legal guardian or legal custodian of the child, who shall have the exclusive right to consent to the adoption of such child.

RULE 34. COMMUNICATION OR CONTACT AGREEMENT

Proposed Amendment from 2007 Committee

Pursuant to the request of the Supreme Court and Judicial Council, the Committee recommends that Rule 34.04 should be amended to conform to the suggested timing structure for issuing court orders.

Rule 34.04. Timing

A communication or contact agreement order shall be issued by the court within fifteen (15) ~~thirty (30)~~ days of being submitted to the court or by the date the adoption decree is issued, whichever is earlier.

RULE 37. ADOPTION STUDY AND BACKGROUND STUDY

Effective July 1, 2007, Minnesota Statutes § 259.41, dealing with adoption home studies, was amended consistent with the background study and fingerprint requirements of the federal Adam Walsh Act. Consistent with the federal and state statutory amendments, the Committee recommends that Rule 37 dealing with adoption studies should be amended to include the background study requirements.

Rule 37.01. Adoption Study and Background Study Required; Exception

~~A written adoption study report shall be completed by an agency and filed with the court in all adoptions as provided in Minnesota Statutes § 259.41.~~ An approved adoption study, completed background study as required under Minnesota Statutes § 245C.33, and written adoption study report must be completed before the child is placed in a prospective adoptive home, except as allowed by Minnesota Statutes § 259.47, subd. 6. An approved adoption study, which includes the background study, shall be completed by a licensed child-placing agency and must be thorough and comprehensive. The study shall be paid for by the prospective adoptive parent, except as otherwise required under Minnesota Statutes § 259.67 or 259.73. A placement for adoption with an individual who is related to the child, as defined by Minnesota Statutes § 245A.02, subd. 13, is not subject to this rule except as required by Minnesota Statutes § 245C.33 and § 259.53, subd. 2(c). In the case of a licensed foster parent seeking to adopt a child who is in the foster parent's care, any portions of the foster care licensing process that duplicate requirements of the adoption study may be submitted in satisfaction of the relevant requirements of this rule.

Rule 37.02. Adoption Study Report

The adoption study is the basis for completion of a written report which must be in a format specified by the Commissioner of Human Services. An adoption study report must include at least one in-home visit with each prospective adoptive parent. At a minimum, the report must document ~~shall include~~ the following information about each prospective adoptive parent:

(a) a ~~copy of the~~ background study ~~check~~ pursuant to Minnesota Statutes § 259.41, subd. 3, and § 245C.33, including:

(i) an assessment of the data and information required in Minnesota Statutes § 245C.33, subdivision 4, to determine if the prospective adoptive parent and any other person over the age of 13 living in the home has a felony conviction consistent with subdivision 3 and section 471(a)(2) of the Social Security Act; and

(ii) an assessment of the effect of ~~a~~ any conviction or finding of substantiated maltreatment on the capacity of the prospective adoptive parent to safely care for and parent a child;

~~(b) an evaluation of the effect of any criminal conviction on the ability to care for a child;~~

~~(c) an evaluation of the effect of any finding of substantiated maltreatment on the ability to care for a child;~~

(b ~~d~~) an assessment ~~evaluation~~ of medical and social history;

(c ~~e~~) an assessment of current health;

(d ~~f~~) an assessment of potential parenting skills; ~~and~~

(e ~~g~~) an assessment of ability to provide adequate financial support for a child; ~~and~~

(f ~~g~~) an assessment of the level of knowledge and awareness of adoption issues, including, where appropriate, matters relating to interracial, cross-cultural, and special needs adoptions; and

(g) recommendations regarding the suitability of the subject of the study to be an adoptive parent..

Rule 37.03. Direct Placement Adoption; Background Study ~~Check~~ Incomplete

Unless otherwise ordered by the court, in a direct placement adoption the child may be placed in the preadoptive home prior to completion of the background study ~~check~~ if each prospective adopting parent has completed and filed with the court a sworn affidavit stating whether the affiant or any person residing in the household has been convicted of a crime. The affidavit shall also:

(a) state whether the adoptive parent or any other person residing in the household is the subject of an open investigation of, or has been the subject of a substantiated allegation of, child or vulnerable adult maltreatment within the past ten (10) years;

(b) include a complete description of the crime, open investigation, or substantiated allegation of child abuse or vulnerable adult maltreatment, and a complete description of any sentence, treatment, or disposition; and

(c) include the following statement: "Petitioner acknowledges that if, at any time before the adoption is final, a court receives evidence leading to a conclusion that a prospective adoptive parent knowingly gave false information in the affidavit, it shall be determined that the adoption of the child by the prospective adoptive parent is not in the best interests of the child."

Rule 37.04. Background Study ~~Check~~; Timing

Subd. 1. Timing of Background Study ~~Check~~. The background study ~~check~~ required in Rule 37.03 shall be completed before an adoption petition is filed.

Subd. 2. Direct Placement Adoption. In a direct placement adoption, if an adoption study report has been submitted to the court before the background study ~~check~~ is complete, an updated adoption study report which includes the results of the background study ~~check~~ shall be filed with the adoption petition.

Subd. 3. Agency Unable to Complete Background Study ~~Check~~. In the event that an agency is unable to complete ~~any of~~ the background study ~~records checks~~, the agency shall submit with the adoption petition an affidavit documenting the agency's efforts to complete the background study ~~checks~~.

RULE 38. POST-PLACEMENT ASSESSMENT REPORT

Effective July 1, 2007, Minnesota Statutes § 259.41, dealing with adoption home studies, was amended consistent with the background study and fingerprint requirements of the federal Adam Walsh Act. Consistent with the federal and state statutory amendments, the Committee

recommends that Rule 38 dealing with post-placement assessments should be amended to include the background study requirements.

Rule 38.03. Background Study ~~Check~~

If an adoption study is not required because the petitioner is an individual who is related to the child as defined in Rule 2.01(o), unless waived by the court, the agency, as part of its post-placement assessment report, shall conduct a background study ~~check~~ meeting the requirements of Minnesota Statutes § 259.41, subd. 3(b).

Rule 38.04. Waiver by Court

Subdivision 1. Post-Placement Assessment Waiver Permitted. The post-placement assessment report and the background check may be waived by the court pursuant to Minnesota Statutes § 259.53. A request to waive a post-placement assessment report shall be in writing and shall be filed and served with the petition pursuant to Rule 35.05. A request to waive a post-placement assessment report shall be decided by the court within fifteen (15) ~~ten (10)~~ days of filing, unless a written objection to the waiver is filed, in which case a hearing must be conducted as soon as practicable.

Subd. 2. Background Study Waiver Prohibited. The court shall not waive the background study.

RULE 43. PRETRIAL CONFERENCE IN CONTESTED MATTERS

Proposed Amendment from 2007 Committee
Pursuant to the request of the Supreme Court and Judicial Council, the Committee recommends that Rule 43.03 should be amended to conform to the suggested timing structure for issuing court orders.

Rule 43.03. Pretrial Order

Within fifteen (15) days of ~~Following~~ the pretrial conference, the court shall issue a pretrial order which shall specify all determinations required by this rule. From the date of the pretrial conference to the commencement of the trial, the parties shall have a continuing obligation to update information provided during the pretrial conference.

RULE 44. TRIAL IN CONTESTED MATTERS

Proposed Amendment from 2007 Committee
Pursuant to the request of the Supreme Court and Judicial Council, the Committee recommends that Rule 44.06 should be amended to conform to the suggested timing structure for issuing court orders.

Rule 44.06. Timing of Decision

Within fifteen (15) days of the conclusion of the trial in a contested matter, the court shall issue findings of fact, conclusions of law, an order for judgment, and an adoption decree pursuant to Rule 45. 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) ~~thirty (30)~~ days. The trial is not considered completed until written arguments, if any, are submitted or the time for submission of written arguments has expired.

RULE 47. RELIEF FROM ORDER

Proposed Amendment from 2007 Committee
Pursuant to the request of the Supreme Court and Judicial Council, the Committee recommends that Rule 47.03 should be amended to conform to the suggested timing structure for issuing court orders.

Rule 47.03. Invalidation of District Court Action – Indian Child Cases

Subd. 1. Petition. Any Indian child who is the subject of an adoption proceeding under State law, parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may file with any court of competent jurisdiction a petition to invalidate such action upon a showing that such action violates any provisions of the Indian Child Welfare Act, 25 U.S.C. §§ 1911, 1912, or 1913.

Subd. 2. Evidentiary Hearing. Upon the filing of a petition to invalidate, the court shall schedule an evidentiary hearing. The form and content of the petition to invalidate shall be governed by Rule 15.

Subd. 3. Findings and Order. Within fifteen (15) days of the ~~At~~ the conclusion of the evidentiary hearing, the court shall issue a written order which shall include findings of fact and conclusions of law.

APPENDIX A: "At a Glance: Minnesota's Existing TPR and Appellate Processes and Proposed Revised Processes"

Minnesota Existing Processes		Minnesota Proposed Revised Processes	
Trial Court files **TPR Order** within 15 days of conclusion of trial (includes time for filing of briefs) plus 15 days extension for good cause	Day 0 – 30	Day 0 – 30	Trial Court files **TPR Order** within 15 days of conclusion of trial (includes time for filing of briefs) plus 15 days extension for good cause
Notice of Filing of Order served on parties within 5 days of filing of TPR Order	Day 30 – 35	Day 30 – 33	**Notice of Filing of Order** served on parties within 3 days of filing of TPR Order
Post-Trial Motion process is 70+ days, including motion filed (15 days), response filed (10 days), hearing (10+ days–no rule) order filed (30 days), and notice of filing of order (5 days)	Day 35 – 105	Day 33 – 68	**Post-Trial Motion** process is 35 days, including motion filed (10 days), response filed (5 days), hearing (within 10 days of filing of motion), order filed (10 days of hearing or time for hearing), and notice of filing of order (5 days)
Notice of Appeal filed and served within 30 days of service of TPR order or order on last post-trial motion (appellate counsel appointed within this time frame)	Day 105 – 135	Day 68 – 88	**Notice of Appeal** filed and served upon parties and court reporter within 20 days of service of TPR order or order on last post-trial motion (appellate counsel appointed within this time)
Transcript process is 40-days (requested by Appellant within 10 days of notice of appeal; delivered to parties within 30 days of request mailed)	Day 135 – 175	Day 88 – 118	**Transcript** process is 30 days (requested simultaneously with of notice of appeal rather than within 10 days of filing of appeal; delivered to parties within 30 days of request received)
Trial Court Record (court file, exhibits) delivered to Court of Appeals within 10 days of request (this is simultaneous with other steps)	Day 145 – 175	Day 98 – 118	**Trial Court Record** (court file, exhibits) delivered to Court of Appeals within 10 days of request; file not redacted (this is simultaneous with other steps)
Appellant's Brief is filed and served within 30 days of the delivery of the transcript	Day 175 – 205	Day 118 – 148	**Appellant's Brief** is filed and served within 30 days of the delivery of the transcript
Respondent's Brief (optional) is filed and served within 30 days of service of Appellant's brief	Day 205 – 235	Day 148 – 168	**Respondent's Brief** (optional) is filed and served within 20 days of service of Appellant's brief
Appellant's Reply Brief (optional) is filed and served within 10 days of service of Respondent's Brief	Day 235 – 245	Day 168 – 178	**Appellant's Reply Brief** (optional) is filed and served within 10 days of service of Respondent's Brief
If **oral argument** is requested, the hearing takes place in an average of 42+ days from filing of Respondent's brief (no rule specifying time frame for hearing)	Day 235 – 277	Day 168 – 210	If **oral argument** is requested, the hearing takes place in an average of 42+ days from filing of Respondent's brief (no rule specifying time frame for hearing)
Court of Appeals decision is issued within 60 days of submission (oral argument or non-oral conference)	Day 277 – 337	Day 210 – 255	Court of Appeals decision is issued within 45 days of submission (oral argument or non-oral conference)
Petition for Further Review (PFR) process takes 60 days, including petition filed (30 days); response filed (20 days); decision on PFR (10 days based on internal process) (note that part of process is based on internal policy)	Day 337 – 397	Day 255 – 290	Petition for Further Review (PFR) process takes 35 days, including petition filed (15 days); response filed (10 days); decision on PFR (10 days based on internal process) (note that part of process is based on internal policy)
	Total: 397 Days		**Total: 290 Days**

APPENDIX B: "At A Glance: Nationally Recommended Best Practices"

National Council of Juvenile and Family Court Judges

Trial Court files **TPR Order** (no recommended timing practice but, for purpose of this chart, we estimate 30 days)	Day 0 - 30
Notice of Filing of Order served (no recommended timing practice but, for purpose of this chart, we estimate 5 days)	Day 30 - 35
Post-Trial Motion process – post-trial motions are not recommended and, instead, the case proceed directly to the appellate process	NA
Notice of Appeal filed and served within 30 days of service of TPR Order (notice also goes to court reporter and court administration to automatically trigger transcript and record)	Day 35 - 65
Trial Court Record (court file, exhibits, transcript) filed and served within 30 days of Notice of Appeal	Day 65 - 95
Appellant's Brief is filed and served within 20 days of the delivery of the transcript	Day 95 - 115
Respondent's Brief is filed and served within 10 days of service of Appellant's brief	Day 115 - 125
Appellant's Reply Brief (reply briefs are not included)	Day 115 - 125
If **oral argument** is required by appellate court for clarification of issues, hearing within 30 days of Respondent's Brief	Day 125 - 155
Court of Appeals decision is issued within 30 days of oral argument or Respondent's Brief	Day 155 - 185
Petition for Further Review process not included in recommended practices (but for purposes of this chart we estimate 30 days)	Day 185 - 215

Total: 215 Days

American Bar Association – Children's Law Division

Day 0 – 30	Trial Court files **TPR Order** (no recommended timing practice but, for purpose of this chart, we estimate 30 days)
Day 30 - 35	**Notice of Filing of Order** served (no recommended timing practice but, for purpose of this chart, we estimate 5 days)
NA	**Post-Trial Motion** process – post-trial motions are not recommended and, instead, the case proceed directly to the appellate process
Day 35 - 45	**Notice of Appeal** filed and served within10 days of service of TPR Order (notice also goes to court reporter and court administration to automatically trigger transcript and record)
Day 45 - 65	**Trial Court Record** (court file, exhibits, transcript) filed and served within 20 days of Notice of Appeal
Day 65 - 85	**Appellant's Brief** is filed and served within 20 days of the delivery of the transcript
Day 85 - 100	**Respondent's Brief** filed and served within 15 days of service of Appellant's brief
Day 85 - 100	**Appellant's Reply Brief** (reply briefs are not included)
Day 100 - 120	If **oral argument** is required by appellate court for clarification of issues, hearing within 20 days of Respondent's Brief
Day 120 - 210	Court of Appeals decision is issued within 90 days of oral argument or last brief
Day 210 - 240	Petition for Further Review process not included in recommended practices (but for purposes of this chart we estimate 30 days)

Total: 240 Days

APPENDIX C: "Detailed Comparison: Minnesota's Existing Rules and Practice Compared with Proposed Amendments to Rules and Practice"

TRIAL COURT TO COURT OF APPEALS

Conclusion of TPR Trial to Notice of Appeal Filed and Served
MN Rules: Day 0 to 105
MN Allowed Days Per Rules: Up to 105 days
Proposed Rules Revision: Day 0 – 68 (68 days)
NCJFCJ Recommendation: 30 days
ABA Recommendation: 10 days

Notice of Appeal Filed and Served to Respondent's Brief
MN Rules: Day 105 to 277
MN Allowed Days Per Rule: Up to 172 days
Proposed Rules Revision: Day 68 – 210 (142 days)
NCJFCJ Recommendation: 90 days
ABA Recommendation: 75 days

Respondent's Brief to COA Decision
MN Rules: Day 235 to 337
MN Allowed Days Per Rule: Up to 102 days
Proposed Rules Revision: Day 168 – 255 (87 days)
NCJFCJ Recommendation: 30 days
ABA Recommendation: 90 days

COURT OF APPEALS TO SUPREME COURT

COA Decision through Petition for Further Review Decision
MN Rules: Day 337 to 397
MN Allowed Days Per Rule: Up to 60 days
Proposed Rules Revision: Day 255 – 290 (35 days)

SUMMARY: TRIAL COURT TO SUPREME COURT

SUMMARY
Conclusion of TPR Trial through Supreme Court Decision
MN Rules: Day 0 to 522
MN Allowed Days Per Rules: Up to 522 days
Proposed Rules Revision: Day 0 – 425 (425 days)
NCJFCJ Recommendation: 150 days
ABA Recommendation: 175 days
CFSR: Approximately 8 months = 240 days

Event	Existing Minnesota Rule	Timeline Based on Existing Rules	Proposed Revision to Existing Minnesota Rule	Timeline Based on Proposed Rules Revisions
1. TPR order filed with court administrator by trial court judge	Within 15 days of conclusion of PPD hearing or trial (includes time for filing of briefs), plus 15 days extension for good cause *RJPP 39.05, subd. 1; 42.05, subd. 1*	Day 0 – 30	No change	Day 0 – 30
2. Notice of Filing of TPR Order served by trial court administrator	Within 5 days of filing of TPR order *RJPP 10.03*	Day 30 – 35	Within 3 days of filing of TPR order	Day 30 – 33
3. Motion for post-trial review filed	Within 15 days of service of Notice of Filing of TPR order *RJPP 45.01, subd. 1*	Day 35 – 50	Within 10 days of service of Notice of Filing of TPR order	Day 33 – 43
4. Response to motion for post-trial review	Within 10 days of service of motion for post-trial review *RJPP 45.01, subd. 3*	Day 50 – 60	Within 5 days of service of motion for post-trial review	Day 43 – 48
5. Hearing on post-trial motion	No rule regarding how soon to schedule hearing (typically at least 10+ days)	Day 60 – 70+	Within 10 days of filing of motion	Day 43 – 53
6. Decision on post-trial motion filed by trial court judge	Within 15 days of conclusion of the hearing, plus 15 days extension for good cause *RJPP 45.05*	Day 70+ – 100	Within 10 days of hearing or time for hearing	Day 53 – 63
7. Notice of Filing of Post-trial Order served by trial court administrator	Within 5 days of filing of post-trial order *RJPP 10.03*	Day 100 – 105	No change	Day 63 – 68
8. Appellate counsel appointed by trial court	No rule regarding timing of appointment of appellate counsel (assumes 2 days)	Day 100 – 105	Adopt a rule regarding timing of appointment of counsel and who should be appointed	Day 63 – 68
9. Notice of Appeal filed and served by Appellant	Filed and served on parties within 30 days of court administrator's service of the Notice of Filing of Order for TPR or Order for last post-trial motion *RJPP 47.02, subd. 2*	Day 105 – 135	Filed and served on parties and court reporter within 20 days of court administrator's service of the Notice of Filing of Order for TPR or Order for last post-trial motion Adopt a rule about whether trial attorney or appellate attorney should file notice of appeal	Day 68 – 88
10. Trial court transcript requested by Appellant	Within 10 days of the filing of the notice of appeal *R. Civ. App. P. 110.02, subd. 1*	Day 135 – 145	No change	Day 88 – 98
11. Trial court transcript submitted to Court of Appeals by court reporter	Within 30 days of the date request for the transcript mailed *RJPP 47.05*	Day 145 – 175	Within 20 days of the date request for the transcript received	Day 98 – 118

Event	Existing Minnesota Rule	Timeline Based on Existing Rules	Proposed Revision to Existing Minnesota Rule	Timeline Based on Proposed Rules Revisions
12. Appellant brief filed and served	Within 30 days after delivery of the transcript *R. Civ. App. P. 131.01, subd. 1*	Day 175 – 205	No change	Day 118 – 148
13. CHIPS and TPR court files submitted to Court of Appeals by court administrator	Redacted court files submitted within 10 days after the due date for filing of the Appellant's brief *R. Civ. App. P 111.01*	Day 205 – 215	No change in timing, but files not redacted	Day 148 – 158
14. Respondent brief filed and served (optional)	Within 30 days after service of Appellant's brief *R. Civ. App. P. 131.01, subd. 2*	Day 205 – 235	Within 20 days after service of Appellant's brief	Day 148 – 168
15. Appellant's reply brief filed (optional)	Within 10 days after service of the Respondent's brief *R. Civ. App. P. 131.01, subd. 3*	Day 235 – 245	No change	Day 168 – 178
16. Oral argument or non-oral conference – it is after this point that the case is deemed "submitted"	No rule regarding scheduling of hearings, however hearings have been scheduled in an average of 42 days from filing of the last brief	Day 235 – 277	No change	Day 168 – 210
17. Conference by Court of Appeals	No rule, but always occurs same day as oral argument	Day 235 – 277	No change	Day 168 – 210
18. Draft of COA decision circulated amongst COA panel	No rule, but typically within 30 days of the date the case is submitted (i.e., date of oral argument)	Day 277 – 307	No change	Day 210 – 240
19. Decision issued by Court of Appeals	Within 60 days of the date the case is deemed submitted (i.e., date of oral argument or non-oral conference) *JRPP 47.06*	Day 277 – 337	Within 45 days of the date the case is deemed submitted (i.e., date of oral argument or non-oral conference)	Day 210 – 255
20. Petition to Supreme Court for Further Review (PFR) filed and served	Within 30 days of the filing of the Court of Appeals decision *R. Civ. App. P. 117, subd. 1*	Day 337 – 367	Within 15 days of the filing of the Court of Appeals decision	Day 255 – 270
21. Response to Petition for Further Review (PFR) filed and served	Within 20 days of service of the PFR *R. Civ. App. P. 117, subd. 4*	Day 367 – 387	Within 10 days of service of the PFR	Day 270 – 280
22. Decision on Petition for Further review (PFR) filed by Supreme Court	Under internal guidelines for child protection cases, within 10 days of response to PFR or due date for PFR response (for other civil cases, it's at first special term conference after response received)	Day 387 – 397	No change	Day 280 – 290

Event	Existing Minnesota Rule	Timeline Based on Existing Rules	Proposed Revision to Existing Minnesota Rule	Timeline Based on Proposed Rules Revisions
23. Brief filed and served by Appellant	Within 30 days after filing of the order granting review (may be decreased by order of Supreme court[2]) *R. Civ. App. P. 131.01, subd. 1*	Day 397 – 427	No change	Day 290 – 320
24. Supreme Court brief filed and served by Respondent	Within 30 days after service of Appellant's brief (may be decreased by order of Supreme Court[1]) *R. Civ. App. P. 131.01, subd. 2*	Day 427 – 457	No change	Day 320 – 350
25. Reply brief filed and served by Appellant (optional)	Within 10 days after service of the Respondent's brief *R. Civ. App. P. 131.01, subd. 3*	Day 457 – 467	No change	Day 350 – 360
26. Oral argument held	Under internal guidelines for child protection cases, argument is set within 20 days of filing of Respondent's brief (in other Civil cases, at least 30 days after filing of Respondent's brief and average is 60-75 days)	Day 457 – 477	No change	Day 360 – 380
27. Conference by Supreme Court	No rule, but court practice is to conference cases immediately after argument	Day 457 – 477	No change	Day 360 – 380
28. Supreme Court disposition order	No rule, but under internal guidelines for child protection cases the order is issued immediately after conference, if possible, with the written opinion to follow	Day 457 – 477	No change	Day 360-380
29. Supreme Court Opinion	No rule, but under internal guidelines for child protection cases, goal is to issue the opinion within 45 days of oral argument	Day 477 – 522	No change	Day 380 – 425

[2] As part of its internal expedited process, in recent cases in which the Court has granted a Petition for Further Review in child protection cases the Court has ordered an expedited briefing schedule: See, for example, A07-16, A07-25, A07-272, all of which shortened the 30 day briefing deadlines to 20 days.

APPENDIX D: "Background: Child and Family Services Review (CFSR)"

CFSR Purpose and Timing

In 2007 the Children's Bureau of the federal Administration for Children and Families (ACF) conducted a Child and Family Services Review (CFSR) in Minnesota. The CFSR is the federal government's program for assessing the performance of state child welfare agencies with regard to achieving positive outcomes for children and families regarding the goals of child safety, permanency, and well-being. Each state undergoes a CFSR approximately every four years.

CFSR Identification of "Strengths" and "Areas Needing Improvement"

The CFSR assesses State performance on seven Outcomes (comprised of 23 items) and seven Systemic Factors (comprised of 22 items). Each item under an Outcome or Systemic Factor is rated as either a "strength" or an "area needing improvement" based on whether state performance on the item meets Federal policy requirements. With respect to the seven Outcomes, a state may be rated as having "Substantially Achieved," "Partially Achieved," or "Not Achieved" the Federal outcome. For a state to be in substantial conformity with an Outcome, 95% of the cases reviewed must be rated as having substantially achieved the Outcome. With respect to the CFSR standards, the CFSR documentation states as follows:

> The ACF has set very high standards of performance for the CFSR. The standards are based on the belief that because child welfare agencies work with our country's most vulnerable children and families, only the highest standards of performance should be acceptable. The focus of the CFSR process is on continuous quality improvement; high standards are set to ensure ongoing attention to the goal of achieving positive outcomes for children and families with regard to safety, permanency, and well-being.

CFSR Final Report and Program Improvement Plan

At the conclusion of the 12-month CFSR process, the Children's Bureau issues a final report for the state which includes findings identifying "strengths" and "areas needing improvement." A state that is not in substantial conformity with a particular outcome must develop (in conjunction with the ACF) and implement a Program Improvement Plan (PIP) to address the areas of concern associated with that outcome. The state has two years within which to achieve the agreed upon improvements specified in the PIP and must submit regular progress reports. Failure to achieve the goals in the PIP may subject the state to financial sanctions in the form of mandatory return of some of the state's federal foster care funding. In the first round of CFSRs, six states were assessed financial penalties because of failure to achieve the goals specified in their PIPs, although three of those states are appealing those penalties.

As a result of the findings related to Minnesota's CFSR, the Department of Human Services is required to develop a PIP designed to address the areas identified as needing improvement. Once the PIP is approved, Minnesota will have two years to meet the targets identified in the PIP. Failure to timely achieve the targets in the PIP means Minnesota is not improving outcomes for abused and neglected children and their families, and may result in a financial penalty to the state of up to $9.2 million.

CFSR Minnesota Findings – Areas Needing Improvement

The CFSR report states that Minnesota did not achieve substantial conformity with any of the seven Outcomes and with two of the seven System Factors, including the Case Review System factor which is of relevance to the work of the Committee.

As stated in Section B above, among the federal standards dealing with the Case Review System factor is the mandate that adoptions must be finalized within 24 months of a child's removal from home. In Minnesota, this outcome was identified as an "Area Needing Improvement" because "the State did not meet the national standard [for]. . . Timeliness of Adoptions." The Report states "DHS had made diligent efforts to achieve adoptions in a timely manner in 43 percent of the cases. This percent is less than the 90 percent or higher required for a rating of Strength. In the State's 2001 CFSR, this item was also rated as an Area Needing Improvement."

The CFSR report states that a contributing factor to the negative finding is Minnesota's court practices and, specifically, the appellate process:

> [A]lthough the State has a process in place for filing termination of parental rights (TPR) for children who have been in foster care, in both the Statewide Assessment and the on-site review, concerns were identified with timely filing or achievement of TPR. These delays were attributed for the most part to court practices, such as delays in scheduling, continuances, appeals, and problems with establishing paternity.

MINNESOTA TRIBAL COURT/STATE COURT FORUM

Co Chairs:

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Judge David Minge
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April 3, 2009

Re: Proposed Amendments to the Rules of Juvenile Protection Procedure and Rules of Adoption Procedure

Members of the Minnesota Supreme Court:

The Tribal Court/State Court Forum is made up of judges from all of the Native American tribes in Minnesota and judges from each of our state judicial districts. We meet quarterly and consider matters of mutual interest. One topic that has been considered extensively is the Indian Child Welfare Act (ICWA) and its treatment in the Minnesota juvenile court rules.

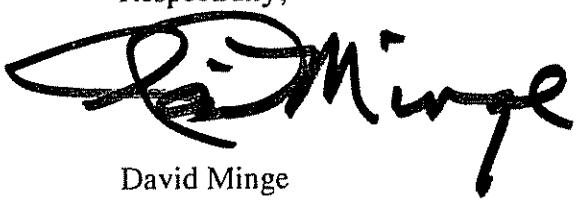
At our meeting on March 6, 2009, the Forum agreed to urge the Minnesota Supreme Court to adopt the proposed Minnesota Juvenile Court Rule in the committee report as it deals with ICWA. Members of the Forum participated in the extensive preparation, revision and discussion of the proposal. Hundreds of hours produced this collaborative report.

Our Forum understands that more detailed comments are being submitted regarding the issue of exclusive tribal jurisdiction versus concurrent jurisdiction and perhaps other limited topics as well. Our support for the proposed rule should not be construed as opposition to comments on such other matters.

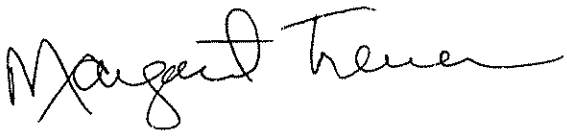
The Forum believes that the Juvenile Court Rule proposal encompasses significant improvements and will provide excellent guidance to state court trial judges, tribal judges, public and private attorneys, and social services agencies. Most importantly, the new rule will promote the best interests of Indian children. This proposed rule represents a positive collaboration for tribal and state communities, something we all wish to advance.

Thank you for your careful consideration of our position and comments on this vital matter.

Respectfully,



David Minge
State Court Chair



Margaret Treuer
Tribal Court Chair

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ONLY ADMITTED IN:
†MONTANA††

OFFICE OF
APPELLATE COURTS

APR 6 2009

FILED

April 3, 2009

Frederick K. Grittner
Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155

VIA FACSIMILE AND U.S. MAIL

Re: Rules of Juvenile Protection Procedure

Dear Mr. Grittner:

Presented here are comments in support of the proposed Amendments to the Rules of Juvenile Protection Procedure as they pertain to tribal children and families.

Throughout the attenuated discussion process that produced the proposed amendments to the Rules of Juvenile Protection Procedure as they pertain to the Indian Child Welfare Act (ICWA) and the Minnesota Indian Families Preservation Act (MIFPA), tribal representatives attempted to make all participants in the process aware that: (1) each Tribe and members of their Tribe have unique and distinct identities from other Tribes that are reflected in their values, beliefs and ways of life and that generalizations about Indian people are neither helpful nor accurate; (2) the historical destruction of tribal ways of life resulting from the actions of federal and state governments still plague families today; and (3) protection of the bond between an Indian child and her Tribe and tribal family must be the fundamental motivation for strictly adhering to the ICWA and MIFPA.

Because many non-Indian people have never had the opportunity to be properly taught the subtleties or profundities of American Indian history and specific Tribes' histories, the sub-committee's discussions required exacting treatment. Everyone understood the need for a strong and efficient judicial process as it relates to children's protection matters, but it was also necessary to make sure that the preservation of tribal jurisdiction over such matters, the proper identification of qualified expert witnesses in the ICWA and the full extent of active versus reasonable efforts was fully understood.

Tribes would note to this Court that these same detailed discussions were required for successful execution of the 2007 Tribal/State (ICWA) Agreement as well as the ICWA treatment in the Judge's benchbook. No one is fully satisfied with the outcome but everyone recognizes that even simple changes such as rule language that complies with the controlling statutes is a real

improvement. Notwithstanding that agreement could not be reached relative to tribal or state jurisdiction over child welfare matters involving tribal children, tribal representatives participating in the discussions agree that enlightening Judge's and others about the conflict between Tribes and states over the extent of the state's jurisdiction on an Indian reservation affected by Public Law 280 was helpful and appropriate.

One item of real note was the cooperation and collaboration and respect that was shown and shared by all of the active participants in the process. The Tribes would make particular note of the patient contributions of Judge Senyk, Ann Ahlstrom and Judy Nord to bring the study process of the sub-committee to a point where a useful product has now been proposed to the Court for its consideration.

The Tribes believe that the process undertaken by the sub-committee was a beginning rather than an end and are very hopeful that as these matters are further explored and treated there can continue to be high level of respect for differences as well as cooperation for a common purpose.

Sincerely,

Jessica L Ryan

Jessica L. Ryan

BLUEDOG, PAULSON & SMALL
SOUTHGATE OFFICE PLAZA, SUITE 500
5001 AMERICAN BOULEVARD WEST
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April 7, 2009

C1-01-924

Frederick K. Grittner
Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155

Re: Rules of Juvenile Protection Procedure

Dear Mr. Grittner:

The ICWA sub-subcommittee members are recommending an addition to the committee comments to the rules in the rules report filed with the court 2-13-09 and ask that the request be made an official part of the record:

On page 31 of the file report, at the end of the comment on "Exclusive Jurisdiction," add the following paragraph:

> There are differences of opinion regarding application of Public Law 83-280, codified at 25 U.S.C. § 1322, as it may intersect with exclusive jurisdiction requirements in child welfare proceedings governed by the *ICWA*. See: *Native Village of Venetie I.R.A. Council v. Alaska (Venetie II)*, 944 F.2d 548, 559-62 (9th Cir. 1991); *Teague v. Bad River Band of the Lake Superior Tribe of Chippewa Indians*, 236 Wis. 2d 384, 402, 612 N.W. 2d 709, 717 (2000); *In re M.A.*, 40 Cal. Rptr. 3d 439, 441-43 (Ct. App. 2006); *Doe v. Mann (Mann II)*, 415 F.3d 1038 (9th Cir. 2005); *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987); *State ex rel. Dep't of Human Servs. v. Whitebreast*, 409 N.W. 2d 460 (Iowa 1987); 78 Wis. Op. Att'y Gen. 122 (1989).

Sincerely,

Jessica L. Ryan

Jessica L. Ryan

FIDDLER LAW OFFICE, P.A.
510 Marquette Ave. So., Suite 200
Minneapolis, MN 55402
612-822-4095

April 3, 2009

Sent via email

Mr. Frederick Grittner
Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Blvd.
St. Paul, MN 55155-6101

Re: Comments on the Final Report of Juvenile Protection Rules Committee

Dear Mr. Grittner:

Thank you for allowing Comments on the proposed amendments to the Minnesota Rules of Juvenile Protection Procedure.

I suggest some changes to the proposed rules regarding transfer of proceedings to tribal courts. Proposed Rule 48 variously refers to "matters," "cases," and "jurisdiction" being the subject of motions to transfer proceedings to tribal court. The correct term that should be used consistently is "proceeding," since 25 U.S.C. § 1911 refers to "proceedings" which may be subject to transfer to tribal courts, not jurisdiction. To suggest "jurisdiction" may be transferred risks raising the implication that jurisdiction is "transferred" to the tribe, when tribes already possess either exclusive or presumptively but concurrent jurisdiction—jurisdiction *per se* may not be transferred—proceedings are.

Moreover, the word "matter" when used to describe the "thing" that is transferred to tribal court is also imprecise and risks confusion over exactly what type of proceedings may be transferred. The "proceedings" subject to transfer under § 1911 are foster care and termination of parental rights proceedings as defined in 25 U.S.C. § 1903 (1). Juvenile protection matters include cases which do not fall within the ICWA definition of "proceeding," (such as voluntary foster care placements), so correct use of the term "proceeding" will avoid confusion.

Thank for your consideration.

Yours truly,

Mark D. Fiddler
Mark D. Fiddler

THE MINNESOTA
COUNTY ATTORNEYS
ASSOCIATION

April 1, 2009

Frederick K. Grittner
Clerk of the Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155

RE: Comments of the Minnesota County Attorneys Association on 2009 Proposed Amendments to the Rules of Juvenile Protection Procedure

Dear Mr. Grittner:

I am writing on behalf of the Minnesota County Attorneys Association (MCAA) CHIPS Subcommittee of the Juvenile Law Committee. Thank you for the opportunity to submit comments to the Minnesota Supreme Court on the Juvenile Protection Rules Committee's proposed rule amendments. The MCAA is generally supportive of the proposed rule amendments but submits the following specific comments.

Rule 36.01. The court shall ~~may~~ convene a pretrial hearing ~~on its own motion or upon the motion of any party. Any pretrial hearing shall take place~~ at least ten (10) days prior to trial.

The MCAA strongly supports Rule 36.01 which would require the court to convene a pretrial hearing at least ten days prior to trial. We believe that changing the rule language from "may" to "shall" will promote the resolution of more cases before trial and improve the efficiency of the trial process.

Rule 36.02(k). determine the need for, and date for submission of, proposed findings consistent with the statutory grounds to be proved;

The MCAA does not object to the need for a discussion at the pretrial about the need for and timing of posttrial proposed findings. However, the language of the rule suggests that it is intended to apply to pretrial proposed findings. The MCAA opposes any requirement for the submission of pretrial proposed findings. Findings of fact, particularly in permanency matters, are often extremely lengthy and require

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www.mcaa-mn.org

many hours to complete. Many cases settle on the day of trial. Pretrial proposed findings would not be useful in the majority of cases. In addition, if proposed findings were submitted before the trial, it would be necessary to submit a second set after the trial. This, too, would increase the workload for attorneys. Thus, the impact on the workload of county attorneys, particularly in high volume counties, of any requirement to submit proposed findings *before* the trial, would be enormous and detrimental.

Further pretrial proposed findings are contrary to the concept of proposed findings submissions. Findings of fact describe testimony and exhibits that were introduced at the trial. Pretrial findings would be inaccurate and incomplete. If the goal is to focus the issues at trial, Rule 36.02(g), which already exists in the rule, can be utilized. The MCAA believes that judges will have the tools needed to manage trials through the combination of Rule 36.01 (requiring pretrials in all cases) and the existing content of Rule 36.02.

Rule 39.02, subd. 1(c). Unless otherwise provided by these rules, a trial regarding a termination of parental rights matter or other permanent placement matter shall commence within sixty (60) ~~ninety (90)~~ days of the admit/deny hearing, ~~from the date of the filing of the petition,~~ and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and wherever possible should be over consecutive days.

The MCAA supports the inclusion of the language in subdivision 1(c) requiring that testimony be concluded within 30 days from the commencement of the trial and, wherever possible, over consecutive days. The currently common practice of long continuances between trial days is detrimental to everyone involved in the proceeding but especially, to the children.

Rule 47.02, subds. 2 and 8. The MCAA supports the efforts of the Minnesota Supreme Court and the Juvenile Protection Procedure Rules Committee to expedite the appellate process in child protection cases

Thank you again for the opportunity to comment on the proposed Juvenile Protection Procedure Rules amendments.

Sincerely,

Julie K. Harris
Managing Attorney
Hennepin County Attorney's Office
Co-Chair Juvenile Law Committee (CHIPS)
Minnesota County Attorneys Association

JKH:cms
c: John Kingrey, Executive Director MCAA
Doug Johnson, Washington County Attorney

From: Wieners, Joseph
Sent: Wednesday, February 18, 2009 11:36 AM
To: Nord, Judy
Subject: RE: Minnesota Supreme Court Orders Hearing and Requests Comments Regarding Juv. Prot. Rules and Adoption Rules

Any change involving completing orders and other judicial tasks more quickly needs to take into account the fact that we now have 30% less court staff as compared with pre-state funding and increasing caseloads. It simply isn't reasonable to expect that more can be done quicker with less personnel.
Judge J. Wieners

STATE OF MINNESOTA
STATE PUBLIC DEFENDER

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State Public Defender

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February 20, 2009

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King, Jr., Blvd
St. Paul, MN 55155

Re: Proposed Amendments to the Rules of Juvenile Protection Procedure

Dear Mr. Grittner:

I am writing to comment on the proposed changes to Rule 21.01, and to request to appear at the hearing on April 15.

The State Board of Public Defense no longer represents any adults in juvenile protection matters, in keeping with Minn. Stat. 260C.331 and 611.14. However, in the interest of the juvenile protection system not creating more stress for itself, I would urge the Court not to expand the definition of "parties" at this time.

Since Chief Justice Blatz began the Children's Justice Initiative, Minnesota has had at least four studies on the responsibility for, and cost of, appointing counsel at public expense for the adults who are already parties under the existing Rule. Neither the state nor the counties have been able to come up with the $10-15 million annually which would vindicate this right on behalf of the most basic "parties," the child's parents. The funding prospects for the implementation of this right continue to decline sharply. So as desirable as it might be to confer this right on prospective placement families, I respectfully submit it is not appropriate to do so until Minnesota finds a way to provide for the rights that parties in these matters already have.

Sincerely,

John Stuart
State Public Defender

Minnesota Department of **Human Services**

March 4, 2009

Frederick K. Grittner, Clerk of the Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155

RE: Proposed Amendments to the Rules of Adoption Procedure

Dear Mr. Grittner:

Staff from the Minnesota Department of Human Services, Adoption and Guardianship Unit, have reviewed the proposed amendments to the Rules of Adoption Procedure. Although staff do not intend to provide an overall statement either supporting or opposing the proposed changes, staff do wish to submit comments regarding five of the proposed changes. Please accept the attached comments for consideration.

If you need to contact me, I may be reached at melissa.sherlock@state.mn.us or (651) 431-4711. Thank you.

Respectfully,

Melissa Sherlock

Melissa Sherlock, MSW
Program Consultant
Minnesota Department of Human Services
Child and Family Services Administration
Child Safety and Permanency Division
Adoption and Guardianship Unit

Enclosure: Comments RE: Proposed Amendments to the Rules of Adoption Procedure (12 copies)

Comments RE: Proposed Amendments to the Rules of Adoption Procedure

- **Rule 10. ORDERS** (page 97)
  Minnesota Statutes, section 257.59, subdivision 1(b) is cited twice in the explanation for the proposed rule change. However, that statute reference is incorrect. I believe the intended citation is Minnesota Statutes, section 259.57, subdivision 1(a).

- **Rule 38. POST-PLACEMENT ASSESSMENT REPORT** (page 101)
  In order to comply with the intended change in Rule 38.04, Rule 38.03 must be amended to read:

  Rule 38.03. Background Study ~~Check~~

  If an adoption study is not required because the petitioner is an individual who is related to the child as defined in Rule 2.01(o), ~~unless waived by the court,~~ the agency, as part of its post-placement assessment report, shall conduct a background study ~~check~~ meeting the requirements of Minnesota Statutes § 259.41, subd. 3(b).

- **Rule 38. POST-PLACEMENT ASSESSMENT REPORT** (page 101)
  In order to comply with the intention that the court may not waive a background study, Rule 38.04, subdivision 1, must be amended to read:

  Rule 38.04. Waiver by Court

  Subdivision 1. Post-Placement Assessment Waiver Permitted. The post-placement assessment report ~~and the background check~~ may be waived by the court pursuant to Minnesota Statutes § 259.53. A request to waive a post-placement assessment report shall be in writing and shall be filed and served with the petition pursuant to Rule 35.05. A request to waive a post-placement assessment report shall be decided by the court within fifteen (15) ~~ten (10)~~ days of filing, unless a written objection to the waiver is filed, in which case a hearing must be conducted as soon as practicable.

  Subd. 2. Background Study Waiver Prohibited. The court shall not waive the background study.

- **Rule 44. TRIAL IN CONTESTED MATTERS** (page 102)
  In a contested adoption matter, the timing (15 days) of issuing an order for judgment and adoption decree in Rule 44.06 may cause an adoptive family to lose eligibility for Adoption Assistance. At the conclusion of a trial in a contested adoption matter, if the court finds that the best interests of a child would be served by adoption by the petitioner(s) not supported by the county, an Adoption Assistance application would likely not have been submitted for that family. If the court finalizes the adoption (issues an order and decree) prior to Adoption Assistance approval by the commissioner, then the family is not eligible, unless and until determined eligible through a fair hearing process.

- **APPENDIX A** (page 104)
  Adoption staff support the proposed reduced timelines for the TPR and Appellate processes outlined in Appendix A, and recommend similar reductions in timelines for post-TPR hearings, including hearings regarding contested adoption matters, which significantly delay permanency for children.