STATE OF MINNESOTA
IN SUPREME COURT
C4-97-1693

MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON THE AMENDMENT OF THE JUVENILE PROTECTION RULES

FINAL REPORT
AND
PROPOSED JUVENILE PROTECTION RULES
APRIL 19, 1999

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PART I: INTRODUCTION

COMMITTEE PURPOSE

Minnesota's Juvenile Protection Rules have not been revised since their promulgation in 1982 by the Minnesota Supreme Court. In September 1997, the Minnesota Supreme Court established this Advisory Committee for the purpose of recommending amendments to the Juvenile Protection Rules (hereinafter "the Rules"). The Court directed the Committee to draft proposed amendments after considering the Final Report and Recommendations of the Minnesota Supreme Court Foster Care and Adoption Task Force, the existing Juvenile Protection Rules, relevant federal and state statutes, relevant case law, and other relevant materials.

COMMITTEE PROCEDURES

The Committee met at least monthly during the period from September 1997 through February 1999 with the goal of bringing the Rules into compliance with the federal and state statutory revisions that have been enacted since promulgation of the Rules. During the initial drafting phase, six subcommittees met to prepare preliminary drafts of rules regarding the following issues: timelines for decision making, discovery, termination of parental rights, alternative dispute resolution, runaway and habitual truant matters, and application of the Indian Child Welfare Act. Throughout its deliberations the Committee kept in mind the following key values and considerations:

- the purposes of child protection matters, including, in particular, the need to timely establish safe and permanent homes for children,
- the rights of parties,
- the need to comply with federally mandated expedited timelines for making decisions regarding permanency,
- the desire to reflect best practice as expressed in the *Resource Guidelines for Improving Court Practice in Child Abuse and Neglect Cases* published by the National Association of Family and Juvenile Court Judges, and
- the desire to recommend fiscally neutral amendments.

In July 1998, the First Draft of Proposed Rules was distributed for review and comment to nearly 800 individuals and public and private organizations, including all district court judges, district administrators, court administrators, chief public defenders, and county attorneys, as well as private attorneys, guardians ad litem, social workers, and other judicial system stakeholders and interested persons. The Committee discussed in detail the nearly 50 pages of written comments received from the public regarding the First Draft of Proposed Rules.

As a result of the public's comments, the Committee made numerous substantive revisions to the Proposed Rules and, in September 1998, distributed a Second Draft of Proposed Rules to the public for review and comment. The public was also notified of the opportunity to provide oral comment at a public hearing scheduled for October 23, 1998. Following the second round of comments, the Committee again carefully considered the oral and written comments received from the public. Through this process the Committee refined and finalized the Proposed Juvenile Protection Rules and its other recommendations.

OVERVIEW OF FINAL REPORT

Part II of this Report, "Committee Deliberations," summarizes the Committee's deliberations.

PART I: INTRODUCTION

For each Proposed Rule the Committee identifies proposed additions (shown through underline) and deletions (shown through ~~strikeout~~) to the existing rules and sets forth its reasoning for the recommended revisions.

Part III of this Report, "Committee Recommendations," sets forth the Committee's recommendations -- some of which are addressed to the Supreme Court and some of which are addressed to the Minnesota Legislature.

Part IV of this Report, "Proposed Juvenile Protection Rules," sets forth a "clean copy" of the Proposed Juvenile Protection Rules incorporating all additions and deletions.

PROPOSED RULES OF JUVENILE PROTECTION PROCEDURE

A. SCOPE; PURPOSE

PROPOSED RULE 1

RULE 1 ~~37~~. SCOPE; PURPOSE ~~APPLICATION, GENERAL PURPOSE AND CONSTRUCTION~~

Rule 1.01 ~~37.01~~. Scope ~~and Application~~

These rules ~~Rules 1 through 65~~ govern the procedure for juvenile protection matters in the juvenile courts in ~~the State of~~ Minnesota. Juvenile protection matters include all ~~children in need of protection or services~~ matters defined in Rule 2(h) ~~including truant and runaways, as defined by Minnesota Statutes § 260.015, subd. 2a (1994), neglect, neglected and in foster care, termination of parental rights, review of foster care, domestic child abuse, and review of out-of-home placement~~.

Rule 1.02 ~~37.02~~. Purpose ~~and Construction~~

These rules establish uniform practice and procedure for juvenile protection matters in the juvenile courts of ~~the State of~~ Minnesota. The purposes of these rules are to:

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

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

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

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

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

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

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

(h) ensure a coordinated decision-making process;

(i) reduce unnecessary delays in court proceedings; and

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

Advisory Committee Comment

The purpose statement is not intended to be a rule of construction. Rather, it is meant to be a guide for judges, attorneys, social services personnel, families, and other judicial system

stakeholders to articulate that the overall objective of juvenile court is to move expeditiously toward a resolution of the matter in such a way as to secure that which is in the best interests of the child while ensuring due process for all of the parties.

The purpose statement reflects the policy set forth in the federal Adoption and Safe Families Act, P.L. 95-108 (Nov. 19, 1997), which emphasizes that the overriding objective in any juvenile protection matter is to timely provide a safe, permanent home for the child. The purpose statement also reflects the policy set forth in Minnesota Statutes § 260.011, subd. 2(a), which provides, in pertinent part, as follows:

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

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

~~**Rule 37.03. Indian Child Welfare Act Applicability**~~

~~Juvenile protection matters concerning an Indian child shall where applicable be governed by the Indian Child Welfare Act, 25 USCA Chapter 21, sections 1901-1963, and by these rules when they are not inconsistent with the Indian Child Welfare Act.~~

DELIBERATIONS REGARDING RULE 1

Rule 1.01. Scope

The Committee agreed that the Juvenile Protection Rules should be renumbered beginning with Rule 1 to emphasize that they are different and separate from the Juvenile Delinquency Rules.

The Committee considered two alternatives for organizing these rules:

(1) Drafting rules applicable to all juvenile protection matters and delineating within each rule the differences applicable to each of the three separate types of matters: non-status child protection matters, permanency matters, and status matters; or

(2) Drafting a comprehensive section of rules for each of these three types of juvenile protection matters.

The Committee determined that the Rules should be comprehensive from beginning to end, and decided that the first alternative is the easiest to use.

Rule 1.02. Purpose

Much of the language in Rule 1.02 is taken from Minnesota Statutes § 260.011, subd. 2(a), which sets forth Minnesota's policy concerning the purpose of juvenile court with respect to child in need of protection or service matters.

The Committee agreed to include a purpose statement in the rules. Some members of the Committee were concerned that such a statement could lead to litigation over whether the statement of purpose superseded a particular rule. The Committee decided that that concern could be addressed by a comment clarifying that the purpose statement does not constitute a rule of construction.

The Committee agreed the purpose statement should emphasize that the overriding objective in any juvenile protection matter is to timely provide a safe, permanent home for the child. That may mean the court orders protective measures while the child remains at home, places the child away from home while efforts are made to correct the conditions that led to out of home placement, or ultimately orders some other permanent resolution for the child.

The purpose statement articulates that the court must expeditiously move cases toward a resolution that is in the best interests of the child. Recent federal and state legislative changes mandate shortened timelines in juvenile protection matters. While the court must eliminate unnecessary delay, the court must also ensure the protection of each party's due process rights.

Paragraph (h) of the purpose statement includes the goal of ensuring a coordinated decision-making process. The Committee recognizes that juvenile, criminal, and family cases may be proceeding simultaneously concerning the same family. By including paragraph (h), the Committee intended to emphasize that those matters should be coordinated to assure consistent resolutions.

The language in former Rule 37.03 concerning the applicability of the Indian Child Welfare Act has been moved to Rule 3.

PROPOSED RULE 2

RULE 2. DEFINITIONS

Rule 2.01. Definitions

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

(a) "**Child placing agency**" means any agency licensed pursuant to Minnesota Statutes § 245A.03, subd. 1(3), or § 252.28, subd. 2.

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

(1) taken into custody by a peace officer pursuant to Minnesota Statutes § 260.135, subd. 5, or § 260.145;

(2) ordered into placement by the court pursuant to Minnesota Statutes § 260.172 or § 260.185 before a disposition; or

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

(c) **"Foster care"** as defined in Minnesota Statutes § 260.015, subd. 7, means the 24-hour-a-day care of a child in any facility which for gain or otherwise regularly provides one or more children, when unaccompanied by their parents, with a substitute for the care, food, lodging, training, education, supervision, or treatment they need but which for any reason cannot be furnished by their parent or legal custodian in their homes.

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

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

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

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

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

(1) child in need of protection or services matters as defined in Minnesota Statutes § 260.015, subd. 2a, including habitual truant and runaway matters;

(2) neglected and in foster care matters as defined in Minnesota Statutes § 260.015, subd. 18;

(3) review of foster care matters and review of out-of-home placement matters as defined in Minnesota Statutes § 257.071 and § 260.131, subd. 1a;

(4) termination of parental rights matters as defined in Minnesota Statutes § 260.221 to § 260.245; and

(5) permanent placement matters as defined in Minnesota Statutes § 260.191, subd. 3b, including transfer of permanent legal and physical custody to a relative matters and long-term foster care matters.

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

(j) **"Legal guardian"** means a person who is the court-appointed legal guardian of the child pursuant to Minnesota Statutes § 260.242 or Minnesota Statutes Chapter 525 or an equivalent law in another jurisdiction.

(k) **"Parent"** as adapted from Minnesota Statutes § 260.015, subd. 11, means the birth, legally adjudicated, or adoptive parent of a minor child. For an Indian child, parent includes any Indian person who has adopted a child by tribal law or custom as provided in Minnesota Statutes § 257.351, subdivision 11.

(l) **"Person"** as defined in Minnesota Statutes § 260.015, subd. 12, means any individual, association, corporation, partnership and the state or any of its political subdivisions, departments, or agencies.

(m) **"Placement facility"** as defined in to Minnesota Statutes § 260.015, subd. 17, means a physically unrestricing 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. "Placement facility" does not include a secure detention facility.

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

(o) **"Protective supervision"** as defined in Minnesota Statutes § 260.191, subd. 1(a)(1), means the right and duty of the local social services agency or child-placing agency to monitor the conditions imposed by the court directed to the correction of the child's need for protection or services while in the care of the child's parent or legal custodian.

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

(q) **"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 (g).

(r) **"Relative"** as adapted from Minnesota Statutes § 260.015, subd. 13, and § 260.181, subd. 3, means a parent, stepparent, grandparent, brother, sister, uncle or aunt of the minor, or an important friend with whom the child has resided or had significant contact. This relationship may be by blood, marriage, or adoption. For an Indian child, relative includes

members of the extended family as defined by the law or custom of the Indian child's tribe or, in the absence of laws or custom, nieces, nephews, or first or second cousins, as provided in the Indian Child Welfare Act, 25 U.S.C. § 1903.

(s) **"Removed from Home"** means taking the child out of the care of the parent or legal custodian, including a substitute caregiver, and placing the child in foster care or in a placement facility.

DELIBERATIONS REGARDING RULE 2

The Committee includes a definitions section to facilitate a uniform interpretation of the rules.

The definitions of Indian child, Indian custodian, and Indian tribe at Rules 2.01(d), (e), and (f) are taken from the Indian Child Welfare Act, 25 U.S.C. § 1903 et. seq.

The Committee intentionally excluded adoption cases from the definition of "juvenile protection matter" at Rule 2.01(h). Neither Minnesota Statutes § 260.015 nor the existing rules define juvenile protection matters to include adoption cases. The Committee considered drafting proposed rules to cover adoption, but decided that it had neither the time nor the expertise to address the special considerations and issues important to drafting rules for adoption cases. The Committee recommends that the Supreme Court convene a separate rules committee to draft and propose rules for adoption cases. Until adoption rules are promulgated and incorporated into the Juvenile Protection Rules, the committee recommends that adoption matters continue to be covered by the Minnesota Rules of Civil Procedure.

Rule 2.01(h)(1) specifically refers to habitual truant and runaway cases to emphasize that those matters are included in the statutory definition of a child in need of protection or services at Minnesota Statutes § 260.015, subd. 2a. Habitual truant and runaway cases were previously considered status offenses and were covered by the Juvenile Delinquency Rules until those rules were amended in 1997.

The Committee recommends that the legislature eliminate the "neglected and in foster care" provision from the definition of " child in need of protection or services" set forth in Minnesota Statutes § 260.015, subd. 2a, as any child who meets that statutory definition would also meet one of the other definitions and the "neglected and in foster care" statutory language no longer describes a unique type of juvenile protection matter. If the Legislature adopts this recommendation, then the Committee further recommends that the Court delete the "neglected and in foster care" definition set forth in Rule 2.01(h)(2).

"Emergency protective care," Protective care," and "Protective supervision" defined in Rules 2.01(b), (n), and (o) are terms of art describing the role and authority of the local social services agency. These definitions also distinguish between the legal custody granted to the local social services agency in the context of a juvenile protection matter and the legal custody granted to or retained by a parent or another individual.
The definition of "reasonable efforts" in Rule 2.01(p) is consistent with Minnesota Statutes § 260.012(b). In addition, the definition includes language required by the federal Adoption and Safe Families Act, P.L. 95-108 (Nov. 19, 1997).

The definition of "relative" in Rule 2.01(q) combines definitions from Minnesota Statutes § 260.015, subd. 13, and § 260.181, subd. 3.

PROPOSED RULE 3

RULE 3. APPLICABILITY OF OTHER RULES AND STATUTES

Rule 3.01. Applicability of Rules of Civil Procedure

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

Advisory Committee Comment

The Rules of Civil Procedure continue to apply in transfer of permanent legal and physical custody matters and in adoption matters.

Rule 3.02. Applicability of Rules of Evidence

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

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

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

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

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

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

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

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

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

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

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

Subd. 3. Judicial Notice. The court upon its own motion or the motion of any party may take judicial notice of any finding of fact and court order in any other proceeding in any other court involving the child or the child's parent or legal custodian.

Rule 3.03 ~~37.03~~. Applicability of Indian Child Welfare Act ~~Applicability~~

Juvenile protection matters concerning an Indian child shall ~~where applicable~~ be governed by the Indian Child Welfare Act, 25 U.S.C. ~~USCA Chapter 21,~~ § 1901 to § 1963; the Minnesota Indian Family Preservation Act, Minnesota Statutes § 257.35 to § 257.3579; and by these rules when these rules ~~they~~ are not inconsistent with the Indian Child Welfare Act or the Minnesota Indian Family Preservation Act.

Rule 3.04. Applicability of the Rules of Guardian Ad Litem Procedure

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

Rule 3.05. Applicability of Court Interpreter Statutes and Rules

The statutes and court rules 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. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and in the discretion of the court may be taxed ultimately as a cost.

DELIBERATIONS REGARDING RULE 3

Rule 3.01. Applicability of Rules of Civil Procedure

After a great deal of discussion, and after considering a number of proposals, the Committee decided to recommend that the juvenile rules incorporate applicable provisions of the Rules of Civil Procedure modified to fit the peculiar nature of matters brought before the juvenile court. This decision was in accordance with the Committee's determination that, to the extent possible, the juvenile rules should be able to stand on their own as a comprehensive guide to juvenile court practice. Furthermore, many of the Rules of Civil Procedure did not adequately address the issues that arise in this specialized court. A subcommittee reviewed the Rules of Civil Procedure to ensure that the juvenile rules address all relevant areas of practice.

Rule 3.02. Applicability of Rules of Evidence

Rule 3.02 is added to clarify the applicability of the Minnesota Rules of Evidence. The language of subdivision 2 is taken directly from Minnesota Statutes § 260.156.

Rule 3.03. Applicability of Indian Child Welfare Act

This Rule was originally located at Rule 37.03. It is amended to clarify the applicability of the Indian Child Welfare Act and the Indian Family Preservation Act.

Rule 3.04. Applicability of Rules of Guardian Ad Litem Procedure

Rule 3.04 is added to clarify that the Rules of Guardian Ad Litem Procedure apply to all juvenile protection matters.

Rule 3.05. Applicability of Court Interpreter Statutes and Rules

Minnesota Statutes § 546.43, subd. 1, requires appointment of interpreters in civil actions. The Committee recommends that the legislature clarify that provision to explicitly provide for interpreters in juvenile protection matters.

Applicability of Proposed Juvenile Protection Rules to Open Hearings Pilot Project

Twelve counties are participating in the Minnesota Supreme Court Open Hearings Pilot Project

which commenced June 22, 1998, and will continue through June 21, 2001. The Proposed Juvenile Protection Rules are intended to apply to all juvenile protection matters in each of Minnesota's 87 counties, unless the Rules are superseded by the special rules on access to juvenile protection case records applicable in the twelve counties participating in the Open Hearings Pilot Project.

B. GENERAL OPERATING RULES

PROPOSED RULE 4

RULE 4 ~~65~~. TIME; TIMELINE ~~TIMING FOR DELINQUENCY, PETTY, TRAFFIC, AND JUVENILE PROTECTION MATTERS~~

Rule 4.01 ~~65.01~~. Computation of Time

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

Rule 4.02 ~~65.02~~. Additional Time After Service by Mail

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

Rule 4.03. Timeline

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

(a) **Emergency Protective Care Hearing.** If a child has been removed from the home of the parent or legal custodian, the court shall hold an emergency protective care hearing within seventy-two (72) hours of the child's removal. However, in proceedings where the sole statutory ground alleged in the petition is that the child is a habitual truant or runaway, the emergency protective care hearing shall be held within thirty-six (36) hours of the child's removal.

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

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

commence.

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

(e) **Findings/Adjudication.** The court shall issue its findings and order concerning adjudication within fifteen (15) days of the date 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. The trial is not considered completed until written arguments, if any, are submitted.

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

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

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

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

(a) within six (6) months of the date the child is removed from the home of the parent or legal custodian if the child is under eight (8) years of age at the time the petition is filed, or

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

Subd. 3. Termination of Parental Rights Matters.

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

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

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

(d) **Findings/Adjudication.** The court shall issue its findings and order concerning adjudication within fifteen (15) days of the date 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. The trial is not considered completed until written arguments, if any, are submitted.

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

Advisory Committee Comment

The timeline set forth in Rule 4.03 is based upon the requirements of Minnesota Statutes § 260.171, subd. 2; § 260.171; § 260.191, subds. 3a and 3b; and the Adoption and Safe Families Act, 42 U.S.C. § 5106a.

Rule 4.03, subd. 1, sets forth the timeline for child in need of protection or services matters. The following schedule is intended as an example of how that timeline applies to a non-Indian child over eight years of age who has been removed from the child's home:

Day	Event
1	Child removed from home
3	Emergency Protective Care Hearing
3-13	Admit/Deny Hearing
14-53	Pretrial Conference
63	Trial
78	Findings/Adjudication
78-88	Disposition Hearing
168-178	Review Hearing
258-268	Review Hearing
348-358	Review Hearing
365	Permanent Placement Determination Hearing

Rule 4.03, subd. 2, complies with Minnesota Statutes § 260.191, subd. 3b, which becomes effective July 1, 1999, and provides that a permanent placement determination hearing must be held within six (6) months of a child's removal from the home if the child is under eight (8) years of age at the time the petition is filed.

Rule 4.04. 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 5 and any other timing provisions set forth in each specific rule.

DELIBERATIONS REGARDING RULE 4

Rule 4.03. Timeline

Since promulgation of the Juvenile Protection Rules in 1982, the approach to child protection matters has changed dramatically. State and federal statutes have established expedited permanency timelines for children and now provide that decisions regarding permanency must be made within twelve months of the date the child is removed from home. For young children, Minnesota's statutes establish an even more expedited timeline. Effective July 1,1999, the

permanency decision must be made within six months of the child's removal from home if the child is under age eight years of age.

These federal and state statutory changes represent a significant change in practice. The compressed timeline means that all of the parties, their attorneys, the court, and court administrators must be aware of the need to comply with a specific schedule for hearings and decision making. The Committee concluded that it was critical to emphasize these new requirements by including a separate rule that sets out a timeline which assures compliance with the statutes.

Rule 4.03 provides a timeline road map for judges, litigants, and practitioners, and includes references to the specific rules that apply to each hearing. The timeline is based on the requirements of Minnesota Statutes § 260.171, subd. 2; § 260.171; § 260.191, subds. 3a and 3b; and 42 U.S.C. § 5106a.

Although the court may grant continuances as provided in Rule 5, Rule 4.03 is included to assure that parties are aware that there is a statutorily mandated end point and requests for continuances must be considered and granted with that in mind.

Rule 4.03, subd. 1(g) and subd. 3(e), provide for regular in court review of cases. Research conducted by the National Council of Juvenile and Family Court Judges indicates that these regular reviews are important to keep cases moving toward resolution.

Rule 4.04. Sanctions

The court bears responsibility for scheduling hearings and assuring compliance with the statutory timelines. This responsibility is particularly important in light of legislation expediting decision making in these proceedings. To fulfill that responsibility, the court must have the authority to sanction parties for willful failure to follow the rules. The Committee determined that such authority should be expressly stated in the Rules. Rule 4.04 authorizes imposition of sanctions for willful failure to follow the timelines. The Committee considered recommending inclusion of specific sanctions to be imposed by the court but, after discussion, decided to state the rule in general terms and leave the particulars up to the discretion of the court.

PROPOSED RULE 5

RULE 5 ~~47~~. CONTINUANCES ~~AND ADVANCEMENTS~~

Rule 5.01 ~~47.01~~. Findings ~~By Court Order~~

Subdivision 1. Generally. ~~Either on~~ Upon its own motion or ~~by~~ motion of ~~counsel for~~ a party or the county attorney ~~person who has the right to participate or the county attorney,~~ the court may continue a scheduled hearing or trial to a later date so long as the timelines for achieving permanency as set forth in these rules are not delayed ~~or advance a hearing~~ ~~for a reasonable time for good cause shown taking into consideration whether or not the child is placed outside the child's home by court order~~. To grant a continuance, the court must make written findings or oral findings on the record that the continuance is necessary for the protection of the child, for accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown.

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

Advisory Committee Comment

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

Rule 5.02. Notice of ~~Advancement or~~ Continuance

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

Rule 5.03 ~~47.02.~~ Existing Orders; Interim Orders

Unless otherwise ordered, ~~The court may order that~~ existing orders shall remain in full force and effect during a continuance. When a continuance is ordered, the court may make any interim orders it deems to be in the best interests of the child in accordance with the provisions of Minnesota Statutes § 260.011 to § 260.301.

DELIBERATIONS REGARDING RULE 5

The provisions of Rule 5 are consistent with Minnesota Statutes § 260.155.

The Committee considered including a provision that a party could be granted only one continuance during the course of a proceeding. The Committee determined, however, that such a provisions would be too limiting. Instead the Rule includes a provision requiring the court to make specific findings that a continuance is necessary. A continuance may not delay the timeline for achieving permanency.

The Committee proposes striking the provisions permitting advancements as the Rules establish an expedited timeline that eliminates the need for a separate rule on advancements.

PROPOSED RULE 6

RULE 6. SCHEDULING ORDER

Rule 6.01. Purpose

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

Rule 6.02. Order

Subdivision 1. When Issued. The court shall issue a scheduling order at the admit/deny hearing held pursuant to Rule 35 or within five (5) days of the admit/deny hearing.

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

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

Advisory Committee Comment

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

Rule 6.03. Amendment

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

DELIBERATIONS REGARDING RULE 6

As a logical extension of the timing provisions set forth in the Rules, the Committee included a rule requiring the court to issue a scheduling order in each case. The scheduling order will make it easy for court personnel and parties to keep track of important dates in the case. The Rule provides that the order may be amended as necessary to allow flexibility. The Committee recommends that the State Court Administrator create a scheduling order form.

PROPOSED RULE 7

RULE 7 ~~38~~. REFEREES AND JUDGES

Rule 7.01 ~~38.01~~. Referee Authorization to Hear Matter

A referee may, as authorized by the chief judge of the judicial district ~~statute~~, hear any juvenile protection matter under the jurisdiction of the juvenile court ~~in the manner provided by for the hearing of matters by the court~~.

Rule 7.02 ~~38.02~~. Objection to ~~Assignment of~~ Referee Presiding Over Matter

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

Rule 7.03. Removal of Particular Referee

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

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

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

Subd. 4. Termination of Parental Rights Matters and Permanent Placement Matters. When a termination of parental rights matter or a permanent placement matter is filed in connection with a child who is the subject of a pending child in need of protection or services

matter, the termination or permanency matter shall be considered a continuation of the protection matter. If the referee assigned to the protection matter is assigned to hear the termination or permanency matter, the parties and the county attorney shall not have the right to disqualify the assigned referee as a matter of right.

Advisory Committee Comment

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

Rule 7.04 ~~38.03~~. Transmittal of Referee's Findings and Recommended Order

Subdivision 1. Transmittal. Upon the conclusion of a hearing, the referee shall transmit to a ~~the~~ judge the written findings and recommended order ~~recommendations in writing~~. Notice of the findings and recommended order, along with notice of the right to review by a judge, shall be given either orally on the record or in writing to all parties, the county attorney, and to any other person as directed by the court ~~of the referee together with a statement relative to the right to a review before a judge shall be given either orally on the record, or in writing to persons present at the hearing who have the right to participate, their counsel and guardian ad litem, the county attorney and to any person that the court may direct~~.

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

Rule 7.05 ~~38.04~~. Review of Referee's Findings and Recommended Order

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

~~**Subd. 2. Filing.** A motion for a review by a judge must be filed with the court within ten (10) days after the referee's findings and recommendations have been provided, pursuant to Rule 45.~~

~~**Subd. 3. Right of Review Upon Filing of Timely Motion.** Persons who have the right to participate and the county attorney are entitled to a review by a judge in any matter upon which a referee has made findings or recommendations.~~

~~**Subd. 4. Discretionary Review.** The judge may grant a review at any time before confirming the findings and recommendations of the referee.~~

~~**Subd. 5. Procedure.** A review by a judge may be on the verbatim recording made pursuant to Rule 46 or may be de novo in whole or in part.~~

Subd. 2. Motion for Review. Any motion for review of the referee's findings and recommended order, together with a memorandum of law, shall be filed with the court and

served on all parties and the county attorney within five (5) days of the filing of the referee's findings and recommended order. Upon the filing of a motion for review, the court administrator shall notify each party and the county attorney of the name of the judge to whom the review has been assigned.

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

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

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

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

Advisory Committee Comment

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

Rule 7.06 ~~38.05~~. 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 findings and recommendations of the referee become the order of the court when confirmed by the judge, subject to review pursuant to Rule 38.04~~. The order shall be confirmed or modified by the court within ten (10) days of the transmittal of the findings and proposed order.

Rule 7.07. Removal of Judge

Subdivision 1. Disability of Judge. If by reason of death, sickness, or other disability a judge before whom a proceeding in the matter has been tried is unable to perform judicial duties after a decision is made or findings of fact and conclusions of law are filed, any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties; but if such other judge is satisfied that the duties cannot be performed because that judge did not preside at the trial or for any other reason, that judge may exercise discretion to grant a new trial.

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

Subd. 3. Motion to Remove. A party or the county attorney may file with the court and serve upon all other parties a motion to remove. The motion shall be served and filed within ten (10) days of the date the party receives notice of the name of the judge who is to preside at the hearing or trial, but not later than the commencement of the hearing or trial.

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

After a party has once disqualified a presiding judge as a matter of right pursuant to Minnesota Statutes § 542.16, that party may disqualify the substitute judge, but only by making an affirmative showing of prejudice. A showing that the judge might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice.

Upon the filing of a motion to remove, or if a litigant makes an affirmative showing of prejudice against a substitute judge, the chief judge of the judicial district shall assign any other judge of any court within the district to hear the matter.

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

DELIBERATIONS REGARDING RULE 7

Rules 7.03 and 7.05 are adapted from Rules 22.03 and 23.03 of the Juvenile Delinquency Rules, Rule 312 of the Rules of Family Court Procedure, and Rule 63 of the Rules of Civil Procedure.

PART II: COMMITTEE DELIBERATIONS

Rule 7 as proposed differs in several ways from the current Rules. The existing Juvenile Protection Rules allow a party to object to having a matter heard by a referee instead of a judge, but do not allow for removal of a particular referee. This proposed Rule allows for both.

The current Rules provide that the court may conduct a de novo review of the referee's recommended findings and order or limit the review to the record before the referee. The Committee recommends eliminating the option of de novo review as it compromises the court's ability to comply with federal and state statutory requirements that permanency decisions be made within six or twelve months of placement. De novo review also gives a party two opportunities to present evidence. Restricting review to the record before the referee will encourage parties to prepare for and provide evidence at one hearing.

Rule 7 provides that a notice of review must be filed within five days of the referee's findings and recommended order. Rule 7.05, subd. 6, establishes the procedures for requesting and submitting a transcript of the proceedings before the referee. The Committee recognizes that it may not be possible to obtain the transcript within the time for filing the motion for review. The parties must still file the papers within the time period proscribed by the Rule, but the decision of the court may be delayed until the court has the opportunity to consider the transcript.

PROPOSED RULE 8

RULE 8 ~~64~~. ACCESSIBILITY OF JUVENILE PROTECTION CASE RECORDS

~~**Rule 64.01. Generally**~~

~~Juvenile court records include:~~

~~(a) all documents filed with the court;~~

~~(b) all documents maintained by the court; and~~

~~(c) all reporter's notes and tapes, electronic recordings, and transcripts of hearings and trials.~~

Rule 8.01 ~~64.02~~. Availability of Juvenile Protection Case ~~Court~~ Records

~~Subdivision 1. By Statute or Rule.~~ Juvenile protection case ~~court~~ records shall be available for disclosure, inspection, copying, and release as required by statute or these rules.

Advisory Committee Comment

"Juvenile protection case records" is defined at Rule 2.01(g) and specifically excludes judicial work product and drafts.

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

Rule 8 applies in counties that are not part of the pilot project.

Rule 8.02 ~~Subd. 2~~. No Order Required

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

(a) the court and court personnel;

(b) any party;

(c) counsel for any party; and

(d) the county attorney.

~~***(A) Court and Court Personnel.*** Juvenile court records shall be available to the court and court personnel without a court order.~~

~~***(B) Child's Counsel and Guardian Ad Litem.*** Juvenile court records of the child shall be available for inspection, copying and release to the child's counsel and guardian ad litem without a court order.~~

~~***(C) County Attorney.*** Juvenile court records shall be available for inspection, copying or release to the county attorney. However, if the matter has not had court action taken on it for over one (1) year, the court may require an ex parte showing by the county attorney that inspection or copying of the court records is necessary and in the best interest of the child, public safety, or the functioning of the juvenile court system.~~

~~***(D) Counsel and Guardian Ad Litem for Child's Parent or Legal Custodian.*** Juvenile court records shall be available for inspection, copying, and release to by counsel and guardian ad litem for the child's parent and guardian.~~

~~***(E) Counsel for Petitioner.*** Juvenile court records shall be available for inspection, copying or release to counsel for a petitioner who has the right to participate pursuant to Rule 39.05. However, if the court no longer has jurisdiction over the matter, the court may require an ex parte showing by counsel that inspection, copying or release of the court records is necessary and in the best interest of the child, public safety or the functioning of the juvenile court system.~~

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

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

Subd. 4. Counsel Sharing Record with Client. Unless the court otherwise orders, counsel for a party may only share juvenile protection case records with that party consistent with state and federal access rules.

Advisory Committee Comment

Minnesota Statutes § 260.161, subd. 1(a), mandates that "unless otherwise provided by law, all court records shall be open at all reasonable times to the inspection of any child to whom the records relate and to the child's parent or guardian." Rule 8.02 reflects the statutory language and provides that parties may have direct access to juvenile protection case records. The court may at any time issue a protective order regarding specific juvenile protection case records. If a party feels that certain documents are particularly sensitive, the party may ask the court to issue a protective order.

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

Rule 8.03 ~~Subd. 3~~. Court Order Required

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

(a) a representative of a state or private agency providing supervision or having

custody of the child under order of the court; ~~or~~

(b) any individual for whom such record is needed to assist or to supervise the child or parent in fulfilling a court order; or

(c) any other person having a legitimate interest in the child or in the operation of the court.

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

(a) in the best interests of the child; ~~or~~

(b) in the interests of public safety; or

(c) necessary for the functioning of the juvenile court system.

~~The record of the child shall not be inspected, copied, disclosed or released to any present or prospective employer of the child or the military services.~~

Rule 8.04. Disclosure to Employer and Military Prohibited

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

Rule 8.05. Protective Order

Upon motion pursuant to Rule 15, and for good cause shown, the court may at any time issue a protective order regarding any record or portion of a record. The court may require an ex parte showing that inspection, disclosure, copying, or release of the record is necessary and in the best interest of the child, public safety, or the functioning of the juvenile court system. Pursuant to Minnesota Statutes § 260.161, subdivision 3a, the court may issue a protective order prohibiting an attorney from sharing a record or portion of a record with a client other than a guardian ad litem.

Rule 8.06 ~~64.03~~. Procedure for Requesting Access ~~Court Rule May Define Process~~

The procedures for requesting access to case records are set forth in the Rules of Public Access to the Records of the Judicial Branch. ~~All inspection and release of juvenile court records may be subject to individual court rules to provide for an efficient, just, and orderly process of allowing inspection, copying, disclosure, or release.~~

Advisory Committee Comment

Rule 8.06 refers to the Rules of Public Access to the Records of the Judicial Branch. Those rules set forth the procedures for requesting access to records and for determining fees when copies are requested.

DELIBERATIONS REGARDING RULE 8

The definition of "juvenile court record" set forth in former Rule 64.01 is deleted as that phrase is now defined in Rule 2.01(g).

Rule 8.02. Party Access Without Court Order
Minnesota Statutes § 260.161, subd. 1(a), provides that parties may have direct access to case records. Rule 8.02 reflects that statutory provision and is intended to assure that parties have access to all records unless the court issues an order restricting access. The Committee discussed whether to retain the language of the current rule denying parties direct access to records filed with the court. The Committee recognizes that the rule may have been intended to control release of sensitive material and to protect children from future inappropriate use and disclosure of the information. However, the Committee decided that the parties are entitled to direct access to case records without a court order. If a party feels that certain documents are particularly sensitive, the party can ask the court to issue a protective order.

Parents whose rights have been terminated are not parties to subsequent proceedings in juvenile court, and do not have access to post-termination records.

Rule 8.05. Protective Order
The Committee included Rule 8.05 to clarify the court's authority to issue a protective order.

Rule 8.06. Procedures for Accessing Records
Rule 8.06 is intended to clarify the procedures to be used to access juvenile protection case records. The Rule refers to the Rules of Public Access to Records of the Judicial Branch which set forth the procedures for requesting access and the fee when copies are provided.

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

Rule 8 applies in counties that are not part of the pilot project.

PROPOSED RULE 9

RULE 9. EX PARTE COMMUNICATION

Rule 9.01. Ex Parte Communication Prohibited

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

Advisory Committee Comment

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

Rule 9.02. Disclosure

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

DELIBERATIONS REGARDING RULE 9

Rule 9 is adapted from Rule 2.05 of the Juvenile Delinquency Rules and Rule 908.03 of the Rules of Guardian Ad Litem Procedure. The Committee wanted to address the historical problem of ex parte communication in juvenile protection matters, including improper communication from a party to the court, and ex parte communications from the court to a party. Further, the Committee wanted to include this explicit prohibition so that pro se parties understand that ex parte communication is not appropriate. Rule 9 sets forth a procedure for the court to follow in the event it receives an ex parte communication.

Rule 3.5 of the Rules of Professional Conduct and Cannon 3A(7) of the Rules of Judicial Conduct govern the actions of attorneys and judges in connection with ex parte contact between counsel and the tribunal.

PROPOSED RULE 10

RULE 10 ~~45~~. ~~COPIES OF~~ ORDERS

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. An order shall remain in full force and effect until the first occurrence of one of the following:

(a) issuance of an inconsistent order;

(b) the order ends pursuant to the terms of the order; or

(c) jurisdiction of the juvenile court is terminated.

Rule 10.02. Immediate Effect of Oral Order

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

Rule 10.03 ~~45~~. Delivery; Mailing

Court orders shall be ~~stated on the record at the hearing or a copy of the written order shall be~~ delivered at the hearing or mailed by the court administrator to each party, ~~persons who have the right to participate, their counsel, their guardian ad litem and~~ the county attorney, ~~who are present at the hearing to which the order relates~~ and such other persons as the court may direct. If a party is represented by counsel, delivery or service shall be upon counsel.

~~Copies of court orders shall be sent by the court to the persons who have the right to participate, their counsel and guardian ad litem and the county attorney who request such a copy in writing or on the record and to such other persons as the court may direct.~~

DELIBERATIONS REGARDING RULE 10

Rule 10.01. Written or Oral Orders

Rule 10.01 allows for oral orders on the record, but provides that such orders must be reduced to writing to assure that case files accurately document the status of the case and to promote efficient handling of further proceedings in the case.

Rule 10.02. Immediate Effect of Oral Order

To conform to current practice, language has been added to clarify that an order is effective when stated on the record.

Rule 10.03. Delivery or Mailing of Order

Rule10.03 provides that, ideally, orders should be reduced to writing and issued to the parties and counsel before they leave the courtroom. However, in the event such immediate delivery is not possible, the rule requires the court administrator to serve the order.

To discourage the practice followed in some jurisdictions of serving a party directly and not serving the attorney, Rule 10.03 provides that the order must be served on counsel if the party is represented.

PROPOSED RULE 11

RULE 11 ~~46~~. RECORDING AND TRANSCRIPTS

Rule 11.01 ~~46.01~~. Procedure

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

Rule 11.02 ~~46.02~~. Availability of Transcripts

Transcripts shall be available only to the county attorney, parties, and participants ~~of hearings~~ for further use in the hearing or subsequent hearings, appeal, habeas corpus actions, or for other use as the court deems proper~~ shall be made available to counsel for all persons who have the right to participate and the county attorney on application to the court~~. Any request for a transcript shall be made to the court in writing or on the record.

Rule 11.03 ~~46.03~~. Expense

Except as otherwise provided in this rule, a party or participant requesting a copy of a transcript shall pay for the preparation cost of the transcript. If a party ~~counsel for any person with the right to participate~~ requests ~~applies to the court for~~ a transcript of all or part of a hearing for an authorized use pursuant to Rule 11.02 ~~46.02~~, and that party is unable to pay the preparation cost of the transcript, the court shall direct the preparation and delivery of the transcript to that party ~~person's counsel~~, at public expense, in whole or in part, depending on the ability of the person to pay.

DELIBERATIONS REGARDING RULE 11

The Committee considered recommending a rule that only parties be allowed to obtain transcripts of hearings. However, under certain circumstances, participants may also have a legitimate need for transcripts -- for example, to appeal an order denying a motion to intervene. The rule as proposed retains the limitation that a transcript is available only upon application to the court, and allows the court discretion to order a transcript when deemed proper. The rule also provides that parties and participants must bear the cost of the transcript.

PROPOSED RULE 12

RULE 12. TELEPHONE AND INTERACTIVE VIDEO CONFERENCES

Rule 12.01. Motions and Conferences

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

Advisory Committee Comment

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

Rule 12.02. Hearings and Taking Testimony

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

Advisory Committee Comment

Rule 12.02 authorizes the court to hold hearings or take testimony by telephone or interactive video conference only upon agreement of the parties or in exceptional circumstances upon motion. Generally, emergency protective care hearings conducted pursuant to Rule 31 and trials should not be held by telephone conference or interactive video conference.

The intent of this rule is to ensure that parties are permitted to fully participate in hearings and to be present when testimony is offered. The rule provides that the court has the opportunity, in all but the most exceptional cases, to personally observe witnesses in order to effectively weigh credibility. However, it also gives the court some flexibility in those exceptional cases.

Rule 12.03. In Court Appearance Not Precluded

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

DELIBERATIONS REGARDING RULE 12

Rule 12.01 authorizes the court to use telephone or interactive video conferencing to hear motions and conduct procedural conferences with counsel for the parties. Under Rule 12.02, absent agreement of the parties, the court may hold hearings or take testimony by telephone or interactive video conferencing only in exceptional circumstances. Generally, emergency protective care hearings conducted pursuant to Rule 31 should not be held by telephone conference or interactive video conferencing.

The intent of this rule is to ensure that parties are permitted to fully participate in hearings and be present when testimony is offered. The rule provides that the court has the opportunity, in all

but the most exceptional cases, to personally observe witnesses in order to effectively weigh credibility. However, it also gives the court some flexibility in those exceptional cases.

Many public defenders objected to this provision. They asserted that allowing telephone and interactive video conferencing would deprive a respondent of the right to trial, including the right to confront the accuser and to cross examine witnesses. Several public defenders expressed the fear that respondents would be coerced or pressured into agreeing to telephone or interactive video conferencing to save the system the cost and inconvenience of holding hearings in person. This was a particular concern for incarcerated respondents. There was also concern about the potential for arrangements that would create the appearance of unfairness -- for instance, if a public defender and her client were at the prison and all of the other parties ere sitting in chambers with the judge. Some commenters suggested that telephone and interactive video conferencing, if it is used at all, be limited to procedural conferences between the judge and counsel or motions involving only argument of counsel.

The Committee carefully considered these objections and the arguments that weigh in favor of adopting this rule. Many of the motion hearings and conferences held in juvenile court do not involve the taking of testimony. Many respondents have no objection to allowing such hearings to proceed in their absence. The rule allows for the taking of testimony by video conferencing or telephone conference only in exceptional circumstances, and provides that a party cannot be precluded from being present in person if she so desires. The Committee determined that the rule provides the court with a necessary option for conducting its business and yet provides safeguards that adequately protect the due process rights of the parties.

The Committee notes that video conferencing is being used in a pilot project in the Ninth Judicial District. To protect the public defenders and their clients from pressure to agree to forego an in-person hearing, the rules of that pilot project provide that the child's public defender must consent before the court may proceed without the respondent's physical presence. Other jurisdictions may want to establish similar procedures.

PROPOSED RULE 13

RULE 13 ~~48~~. SUBPOENAS

~~**Rule 48.01. Motion for Subpoenas**~~

~~On the court's own motion or at the request of counsel for a person who has the right to participate or the county attorney, the court administrator shall issue subpoenas requiring the attendance and testimony of witnesses and the production of records, documents or other tangible objects at any hearing.~~

~~**Rule 48.02. Expense**~~

~~The fees and mileage of witnesses shall be paid by public funds if the subpoena is issued by the court on its own motion or at the request of the county attorney.~~

~~If a subpoena is issued at the request of counsel for a person who has the right to participate, and that person is unable to pay the fees and mileage of witnesses, these costs shall be paid at public expense upon order of the court, in whole or in part, depending on the ability of that person to pay.~~

~~All other fees shall be paid by the requesting person unless otherwise ordered by the court.~~

Rule 13.01. Subpoena for a Hearing or Trial

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

Rule 13.02. Form; Issuance; Notice

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

Subd. 2. Issuance. A subpoena shall be issued only for appearance at a hearing, a deposition pursuant to Rule 17, a trial pursuant to Rule 38, or to produce books, papers, documents, or other tangible things designated in the subpoena.

Subd. 3. Notice. Every subpoena shall contain a notice to the person to whom it is directed advising that person of the right to reimbursement for certain expenses pursuant to Rule 15.

Rule 13.03. Service

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

Rule 13.04. Motion to Quash a Subpoena

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

(a) direct compliance with the subpoena;

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

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

(d) quash the subpoena.

Rule 13.05. Objection

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

Rule 13.06. Production of Documentary Evidence

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

Rule 13.07. Subpoena for Taking Depositions; Place of Examination

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

Subd. 2. Location. A resident of the state may be required to attend an examination

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

Rule 13.08. Expenses

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

Subd. 2. Expenses of Experts. Subject to the provisions of Rule 17, a witness who is not a party to the action or an employee of a party and who is required to give testimony or produce documents relating to a profession, business, or trade, or relating to knowledge, information, or facts obtained as a result of activities in such profession, business, or trade, is entitled to reasonable compensation for the time and expense involved in preparing for and giving such testimony or producing such documents. The party serving the subpoena shall make arrangements for such reasonable compensation prior to the time of the taking of the testimony. If such reasonable arrangements are not made, the person subpoenaed may proceed pursuant to Rule 13.04 or Rule 13.05, subd. 2. If the deponent has moved to quash or otherwise objected to the subpoena, the party serving the subpoena may, upon notice and motion to the deponent and all parties, move for an order directing the amount of such compensation at any time before the taking of the deposition.

Rule 13.09. Failure to Appear

If any person personally served with a subpoena fails, without reasonable cause, to appear or bring the child if ordered to do so, or if the court has reason to believe the person is avoiding personal service, the court may sua sponte or upon the motion of a party or the county attorney pursuant to Rule 15 proceed against the person for civil contempt of court pursuant to Rule 14 or the court may issue a warrant for the person's arrest, or both. When it appears to the court that service will be ineffectual, or that the welfare of the child requires that the child be immediately brought into the custody of the court, the court may issue a warrant for immediate custody of the child. The child shall not be placed in secure detention.

DELIBERATIONS REGARDING RULE 13

The Committee wanted to clarify the procedures for obtaining and issuing subpoenas in juvenile protection matters, to assure attendance of necessary persons at hearings and depositions, and to ensure production of relevant documents, but not to allow unreasonable or oppressive subpoenas.

Rue 13 is derived from Rule 45 of the Minnesota Rules of Civil Procedure and Minnesota Statutes § 260.135, subd. 4, and § 260.141, subd. 2.

Failure to obey a subpoena is constructive civil contempt of court pursuant to Minnesota Statutes § 588.01, subd. 3, and § 260.145. The court, a party, or the county attorney may proceed against the alleged contemnor pursuant to Rules 14 and 15.

PROPOSED RULE 14

RULE 14. CONTEMPT

Rule 14.01. Initiation

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

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

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

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

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

Rule 14.02. Supporting and Responsive Affidavits

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

Rule 14.03. Hearing

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

Rule 14.04. Sentencing

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

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

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

Subd. 4. Failure to Appear. If any person personally served with a summons or subpoena fails, without reasonable cause, to appear or bring the child if ordered to do so, or if the court has reason to believe the person is avoiding personal service, the court may sua sponte or upon the motion of a party or the county attorney pursuant to Rule 16 proceed against the person for contempt of court or the court may issue a warrant for the person's arrest, or both. When it appears to the court that service will be ineffectual, or that the welfare of the child requires that the child be immediately brought into the custody of the court, the court may issue a warrant for immediate custody of the child. The child shall not be placed in secure detention.

DELIBERATIONS REGARDING RULE 14

The Committee wanted to clarify the applicability of and procedure for constructive civil contempt in juvenile protection matters. The rule incorporates language from Rule 309 of the Minnesota Rules of General Practice, the general contempt statute (Minnesota Statutes § 588.01, subd. 3), and the juvenile court statutes (Minnesota Statutes § 260.145 and § 260.301).

Constructive civil contempt of court may not be punished summarily. Formal proceedings are required to establish contemptuous conduct and to give the alleged contemnor notice and the right to be heard. The Rules set out that formal procedure.

The sanctions for constructive civil contempt of court are stated in Minnesota Statutes § 588.10 and include a fine or imprisonment for not more than six (6) months or both.

PROPOSED RULE 15

RULE 15 ~~49~~. MOTIONS

Rule 15.01. Form

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

Subd. 2. ~~Rule 49.01~~. Motions to Be in Writing ~~Motion to be Signed~~. ~~Every motion shall be in writing, state with particularity the grounds therefor, be signed by the person making the motion, and filed with the court unless it is made in court on the record.~~ Except as permitted by subdivision 3, a motion shall be in writing and shall:

(a) set forth the relief or order sought;

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

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

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

(e) be accompanied by a supporting affidavit or other supporting documentation or a memorandum of law.

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

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

Rule 15.02 ~~49.02~~. Service and Notice of Motions

Subdivision 1. Upon Whom. ~~When Required. *(A) Prior to First Appearance*~~. The moving party shall serve the notice of motion and motion, ~~Every written motion~~ along with any supporting affidavit~~s~~ or other supporting documentation or a memorandum of law, ~~served prior to the first appearance shall be served~~ on~~:~~ all parties, the county attorney, and any other persons designated by the court. The moving party shall serve notice of the hearing on all participants, except a child under age 12.

~~(i) the guardian ad litem for the child, and~~

~~(ii) the child who has reached twelve (12) years of age, and~~

~~(iii) persons who have the right to participate who are entitled to receive initial service of a petition pursuant to Rule 44, their counsel and guardian ad litem, and~~

~~(iv) the county attorney~~.

~~(B) After First Appearance~~. ~~Every motion along with any supporting affidavits served at or after the first appearance shall be served on:~~

~~(i) the guardian ad litem for the child, and~~
~~(ii) the child who has reached twelve (12) years of age, and~~
~~(iii) persons who are exercising their right to participate, their counsel and guardian ad litem, and~~
~~(iv) the county attorney who is exercising the right to participate, and~~
~~(v) such other persons as the courts may order.~~

Subd. 2. How Made. ~~When service is required to be made upon a person represented by counsel, service shall be made upon counsel. Service upon counsel is sufficient service upon the person counsel represents unless the court also orders service upon the person.~~ Service of a motion~~s~~ may be made by personal service, ~~or~~ by mail, or by transmitting a copy by facsimile transmission pursuant to Rule 32. ~~Service by mail shall be complete three (3) days after mailing to the last known address of the person to be served.~~

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

Rule 15.03 ~~49.03~~. Ex Parte Motion and Hearing

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

Subd. 2. Hearing. When the court issues an ex parte order removing a child from the care of a parent, the court shall schedule a hearing to review the order within seventy-two (72) hours of the child's removal. Upon issuance of an ex parte order in cases of domestic child abuse, the court shall schedule a hearing pursuant to the requirements of Minnesota Statutes § 260.133. Upon issuance of any other ex parte order, a hearing shall be scheduled on the request of a party at the earliest possible date.

Rule 15.04. Motion to Dismiss Petition

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

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

Rule 15.05. Motion to Strike Pleadings

Any party or the county attorney may bring a motion to strike pleadings or portions of pleadings not authorized by statutes or these rules. If the motion to strike a pleading is granted, the pleading shall be physically removed from the court file. If a motion to strike a portion of a pleading is granted, that portion of the pleading shall be redacted from the court file.

Advisory Committee Comment

When the court grants a motion to strike pleadings or portions of pleadings, the objectionable matter should be physically removed from the court file and should not be considered by any fact finder with jurisdiction over the case.

DELIBERATIONS REGARDING RULE 15

Rule 15.01. Form of Motion

The Committee considered requiring that all motions be in writing with no exceptions. However, given the specialized and expedited nature of child protection proceedings, the Committee recommends a limited exception permitting oral motions. When the court allows an oral motion, the other parties must have an adequate opportunity to respond to the motion.

The Committee also wanted to ensure that the court could be flexible with respect to motions filed by pro se parties. In those cases, the court may, for instance, accept letter motions.

Rule 15.03. Ex Parte Motion and Hearing

Ex Parte Motions. *The Committee discussed the issues that arise when there is a request to remove a child from the care of parents during the course of a child in need of protection or services matter. If the parent's attorney is notified of the motion to remove, ethically the attorney must consult with the client regarding the motion. However, that notice to the parent may place a child in danger of imminent harm or could result in the child being hidden or removed from the court's jurisdiction. The intent of this rule is to allow a party to proceed on an ex parte basis if the court finds that a motion on notice would place the child in danger of imminent harm. The rule also allows the court to grant an order ex parte if efforts to notify the other parties have been unsuccessful. The language is based in part on Rule 3.01 of the General Rules of Practice for the District Courts.*

Summary Judgment Motions. *The Committee discussed including a rule authorizing the juvenile court to hear and decide motions for summary judgment. Some Committee members recommended inclusion of such a rule to provide a uniform system for early resolution of juvenile protection matters where there are no genuine issues of material fact. Other Committee members objected to the inclusion of a summary determination rule on the grounds that summary judgment would deny a party the statutory right to a formal evidentiary hearing and undermine the clear and convincing evidentiary standard. Furthermore, the filing of a summary*

judgment motion could actually extend the proceedings and delay decision-making while the parties engage in discovery practice to contest the motion

The Committee specifically requested public comment on this issue and, after reviewing the comments and the considerations noted above, concluded that the problems, particularly those connected with timing, outweighed any advantage there may be to including a summary judgment rule.

PROPOSED RULE 16

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

Rule 16.01. Signing of Pleadings, Motions and Other Papers

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

Subd. 2. Party Not Represented by an Attorney. A party who is not represented by an attorney shall personally sign the pleading, motion, or other paper and shall state the party's address and telephone number.

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

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

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

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

Rule 16.02. Sanctions

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

DELIBERATIONS REGARDING RULE 16

This Rule sets forth the language of Rule 11 of the Minnesota Rules of Civil Procedure.

PROPOSED RULE 17

RULE 17 ~~57~~. DISCOVERY

~~**Rule 57.01. Generally**~~

~~For purposes of this rule:~~

~~(a) participants are persons with the right to participate, pursuant to Rule 39, and~~

~~(b) the officer is the person designated by the court to take testimony, pursuant to Rule 57.09, subd. 3.~~

~~**Rule 57.02. Methods of Discovery**~~

~~A participant may obtain discovery by: depositions upon oral examination, inspection of documents or other tangible things, physical and mental examinations and disclosure of information within the scope of this rule. Unless the court orders otherwise, the frequency and sequence of discovery methods are not limited.~~

~~The discovery procedures provided for by this rule do not exclude other lawful methods for obtaining evidence.~~

~~**Rule 57.03. Scope of Discovery**~~

~~**Subdivision 1. Generally.** A participant may obtain discovery regarding any matter, not privileged, which is relevant to the pending action including the existence, nature, custody, condition, and location of any documents, data, photographs or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.~~

~~**Subd. 2. Written, Recorded or Transcribed Statements.** A participant may obtain a written, recorded or transcribed statement concerning the matter previously made by that participant or another.~~

~~**Subd. 3. Witnesses.**~~

~~(A) Generally. Counsel for a participant and the county attorney shall:~~

~~(i) provide to other counsel and the county attorney the names and addresses of persons intended to be called as witnesses at trial,~~

~~(ii) permit other counsel and the county attorney to inspect and copy any written or recorded statements of the persons intended to be called as witnesses at trial and which are within the possession or control of counsel or the county attorney, and~~

(iii) permit other counsel and the county attorney to inspect and copy any written summaries within the knowledge of counsel or the county attorney or the substance of any oral statements made by such witnesses to counsel or the county attorney or obtained at the direction of counsel or the county attorney.

(B) Experts

(1) Generally. Counsel for any participant and the county attorney may obtain discovery of the identity of each person expected to be called as an expert witness at trial and the substance of the facts and opinions to which an expert witness is expected to testify and a summary of the grounds for each opinion.

(2) Limitations. Facts and opinions held by an expert not expected to be called as a witness at trial are discoverable only as otherwise provided in Rule 57.09.

Subd. 4. Trial Preparation Materials. Subject to the provisions of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under this rule and prepared in anticipation of trial by or for another participant or that person's representative only upon a showing that the participant seeking discovery has substantial need of the materials in preparation for trial and that person is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of counsel concerning the matter.

Rule 57.04. Stipulation Regarding Discovery Procedure

The participants may, by stipulation, provide that discovery be made at any time or place, upon any notice and in any manner, and modify the procedures provided by these rules for methods of discovery.

Rule 57.05. Duty to Disclose

Subdivision 1. Supplementation of Response. A participant is under a continuing duty to disclose, and where applicable, permit inspection of:

(a) the existence of any designated documents, data, photographs or other tangible things within the scope of Rule 57, and

(b) the identity and location of persons having knowledge of discoverable matters, and

(c) the identity of each person expected to be called as a witness at trial.

Subd. 2. Amendment. A participant shall amend discovery previously provided upon receiving knowledge that information previously given was incomplete, incorrect, or if correct, no longer true, and the circumstances are such that a failure to disclose additional information constitutes a knowing concealment.

Rule 57.06. Protective Orders

Subdivision 1. Generally. Upon motion and for good cause shown, the court may make any order which justice requires to protect a participant from annoyance, embarrassment, oppression or undue burden or expense including one or more of the following:

(a) hat discovery not be had or that it may be had only on specific terms and conditions, or

(b) hat discovery may be had only by a method other than that selected by the participant seeking it, or

(c) that certain matters not be inquired into or that the scope of discovery be limited to certain matters, or

(d) that discovery be conducted with no one present except persons designated by the court, or

(e) that a deposition after being sealed be opened only by order of the court, or

(f) that the participants simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

Subd. 2. Denial. If the motion for protective order is denied in whole or in part the court may on such terms and conditions as are just, order that any participant provide or permit discovery.

Rule 57.07. Expenses

The costs of discovery shall be at the expense of the requesting participant. However, when the participant is unable to afford the costs of discovery, the costs shall be at public expense in whole or in part depending on the ability of the participant to pay.

Rule 57.08. Physical and Mental Examinations

Subdivision 1. Generally. If the physical or mental condition of a participant is in controversy, the court may order the participant to submit to a mental or physical examination by a licensed professional. For purposes of this rule:

(a) mental examination shall include any testing or evaluation by a licensed psychologist or psychiatrist, and

(b) physical examination shall include any testing or evaluation by a licensed physician.

The order may be only on motion for good cause shown and upon notice to the participant to be examined and to all other participants. The order shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made.

~~**Subd. 2. Copy of Report of Examination.** The participant causing the examination to be made shall deliver to the participant examined a copy of a detailed written report of the examining professional setting his findings and conclusions, together with like reports of all earlier examinations of the same condition. After such delivery, the participant causing the examination to be made shall be entitled, upon request, to receive from the participant examined a like report of any examination, previously or thereafter made of the same mental or physical condition. If the participant examined refuses to deliver such report, the court, on motion and notice may make an order requiring delivery on such terms as are just. If an examining professional fails or refuses to make such a report, the court may exclude his testimony at any hearing.~~

~~By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the participant examined waives any privilege that person may have in the proceeding or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the participant for the same mental or physical condition.~~

~~Other participants may obtain copies of the report of an examination upon motion and a showing that the report would be of material aid to the requesting participant.~~

~~**Subd. 3. Disclosure after Waiver of Privilege.** When medical privilege has been waived by a participant under this rule, such participant within ten (10) days of a written request by another participant:~~

~~(a) hall furnish to the requesting participant copies of all reports previously or thereafter made by any treating or examining professional, and~~

~~(b) shall provide written authority signed by the participant of whom request is made to permit the inspection of all hospital, medical treatment center, psychological or psychiatric records, concerning the physical or mental condition of such participant.~~

~~Depositions of treating or examining professional shall not be taken except upon order of the court for good cause shown upon motion and notice pursuant to Rule 44 and upon such terms as the court may provide.~~

~~Disclosures under this rule shall include the conclusions of such treating or examining professional.~~

~~Rule 57.09. Depositions~~

~~Subdivision 1. Generally.~~ ~~Following the initial appearance, any participant may take the testimony of any other person or participant by deposition upon oral examination when there is a reasonable probability that the testimony of a prospective witness will be used at a hearing, and:~~

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

~~(b) the participant taking the deposition cannot procure the attendance of the witness at a hearing by a subpoena, order of the court or other reasonable means, or~~

~~(c) there is a stipulation by counsel.~~

~~The court may order that the testimony of a person may be taken by oral deposition upon motion pursuant to Rule 49 and a showing that the information sought cannot be obtained by other means.~~

~~Attendance of witnesses at oral deposition may be compelled by subpoena as provided by Rule 48.~~

~~Subd. 2. Notice of Taking.~~ ~~A participant desiring to take the deposition of a person upon oral examination shall give reasonable notice pursuant to Rule 44. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify the deponent. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice. The court may for good cause shown, lengthen or shorten the time for taking the deposition.~~

~~Subd. 3. Before Whom Taken.~~

~~(A) Persons Authorized. Deposition shall be taken before an officer authorized to administer oaths by the laws of the United States, or before a person appointed by the court in which the matter is pending. A person so appointed has the power to administer oaths and take testimony.~~

~~(B) Disqualification for Interest. No deposition shall be taken before an officer who is a relative or employee of a participant or the participant's attorney.~~

~~Subd. 4. Recording.~~ ~~A deposition shall be recorded by an electronic recording device, in which event the court shall designate the manner of recording, preserving and filing the deposition. The court may order additional procedures be followed to insure that the recorded testimony will be accurate and trustworthy, including but not limited to:~~

~~(a) equipment shall be of high quality and tested before being used,~~

~~(b) the person who operates and monitors the equipment shall not otherwise~~

participate in the interrogation process. This person should be someone independent of the participants and their counsel,

(c) speakers shall identify themselves whenever necessary for clarity of the record,

(d) the original tape recording should be labeled, placed in a sealed envelope, and delivered promptly to the court, and

(e) any participant:

(i) may make a copy of the recorded deposition, and

(ii) may make a written transcript of the deposition, at that participant's expense. To be used in court, the person copying or transcribing the recorded deposition shall certify that the copy or transcript is true and accurate. The participant producing the transcript shall give notice to all other participants pursuant to Rule 44 that a transcript had been made and shall make the transcript available for photocopying at the expense of any participant who requests a copy.

A participant may nevertheless arrange to have a stenographic transcription made at that participant's expense.

Subd. 5. Procedure.

(A) Examination and Cross Examination of Witnesses. Examination and cross examination of witnesses may proceed as permitted at trial. The officer before whom the deposition is taken shall put the witness on oath. The testimony shall be recorded by the officer or by a person at the officer's direction and in the officer's presence. Testimony shall be recorded pursuant to Rule 57.09, Subd. 4.

(B) Objections.

(1) Officer, Recording, Conduct, Evidence or Other. Oral objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of recording it, or to the evidence presented, or to the conduct of any participant, or any other objection to the proceeding shall be noted by the officer on the record. Evidence objected to shall be taken subject to the objection.

(2) Accuracy of Transcript. Objections to the accuracy or trustworthiness of the recording, by electronic or stenographic means, shall be in writing and filed with the court within ten (10) days of the filing of the recorded deposition.

(3) Review by Court. The court shall rule on any objection by reviewing the original tape and transcript, if any, of the deposition.

(C) Limitation or Termination. At any time, on motion of the child's counsel or the county attorney, or of the deponent, the court may limit the taking of the deposition to that which is commensurate in cost and duration with the needs of the case, the resources available and substantiality of the issues.

~~At any time during the taking of a deposition on motion of a participant or of the deponent and upon a showing that the examination is being conducted in bad faith, or in such a manner as unreasonably to annoy, embarrass, or oppress the participant or deponent, the court may order the person conducting the examination to cease from taking the deposition or may limit the scope and manner of taking the deposition by ordering as follows:~~

~~(i) that certain matters not be inquired into or that the scope of the examination be limited to certain matters, or~~

~~(ii) that the examination be conducted with no one present except the persons designated by the court.~~

~~Upon demand of a participant or the deponent, the taking of the deposition shall be suspended for the time necessary to move the court for the order. If the court orders termination, the deposition shall resume only upon further order of the court.~~

~~(D) Examination and Alteration of Transcript. When testimony is stenographically transcribed, the deposition shall be submitted to the deponent for examination and shall be read to or by the deponent unless such examination or reading are waived by the deponent or by the participants. Any changes in form or substance which the deponent desires to make, shall be entered upon the deposition by the officer with a statement of the reasons given by the deponent for making those changes.~~

~~(E) Signature of Deponent. The stenographically transcribed deposition shall be signed by the deponent after examination and alteration of the transcript or a waiver of either. Participants may forego signing by stipulation, by waiver or if the deponent is ill, or cannot be found or refuses to sign. If the deposition is not signed by the deponent within fifteen (15) days of submitting it to the deponent, the officer shall sign it and state on the record the fact of the waiver, illness, absence or refusal to sign by the deponent together with any reason given therefor. The deposition may then be used as though fully signed, unless on a motion to suppress the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.~~

~~(F) Certification of Deposition and Exhibits. The officer shall certify on the deposition that the deponent was duly sworn and that the deposition is a true record of the testimony given by the deponent. The officer shall then place the deposition in an envelope addressed with the title of the matter and marked "Deposition of (here insert the name of the deponent)" and shall promptly deliver or mail it to the court administrator.~~

~~Documents and things produced for inspection during the examination of the deponent shall upon request of a participant be marked for identification and annexed to and returned with the deposition and may be copied and inspected by any participant, except that:~~

~~(i) he person producing the materials may substitute copies to be marked for~~

identification if that person affords to all participants fair opportunity to verify the copies by comparison with the originals, and

(ii) If the person producing the materials requests their return, the officer shall mark them, give each participant an opportunity to inspect and copy them and then return the materials to the person producing them and the materials may then be used in the same manner as if annexed to and returned with the deposition.

Any participant may move for an order that the original be annexed to and returned with the deposition to the court pending final disposition of the case.

(G) Notice of Filing. The participant taking the deposition shall give prompt notice of its filing to all other parties.

(H) Copies. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any participant or the deponent.

(I) Procedural Failure of Requesting Participant. If the participant giving the notice of the taking of a deposition fails to attend or proceed therewith or if that participant fails to serve a subpoena on the deponent and the deponent because of the failure does not attend and another participant attends in person or by counsel pursuant to the notice, the court may order the participant giving notice to pay such other participant the amount of the reasonable expenses incurred by that participant and the participant's counsel in so attending, including reasonable attorney's fees.

Subd. 6. Use of Deposition.

(A) Unavailability of Witness. All or a part of a deposition so far as otherwise admissible under the Rules of Evidence may be used at any hearing against any participant who was present or represented at the taking of the deposition or had reasonable notice thereof, if it appears that:

(a) the witness is unable to be present or to testify at the hearing because of the witness's existing physical or mental illness, infirmity, imprisonment or death, or

(b) the person offering the deposition has been unable to procure the attendance of the witness by subpoena, order of the court or other reasonable means, or

(c) he witness is at a greater distance than one hundred (100) miles from the place of the hearing or is out of state, or

(d) there is a stipulation by counsel, or

(e) upon application and notice that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of the witness orally in open court, to allow the deposition to be used.

The court shall not allow the deposition to be used if it appears that the absence of the

witness was procured by the party offering the deposition.

(B) Inconsistent Testimony. Any deposition may also be used by a participant for the purpose of contradicting or impeaching the testimony of the deponent as a witness. A deposition may not be used if it appears that the absence of the witness was procured by the person offering the deposition, unless part of the deposition has previously been offered.

(C) Substantive Evidence. A deposition may be used as substantive evidence so far as otherwise admissible under the rules of evidence if the witness refuses to testify despite an order of the court to do so.

Subd. 7. Objection at Hearing. Subject to the provision of this rule, objections may be made at any hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of evidence if the witness were then present and testifying.

Subd. 8. Effect of Taking or Using Depositions. A participant does not make a deponent that participant's witness for any purpose by taking that person's deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the participant introducing the deposition, but this shall not apply to the use by an adverse participant of a deposition under this rule. At any hearing a participant may rebut any relevant evidence contained in the deposition whether introduced by the offering participant or any other participants.

Subd. 9. Errors and Irregularities. The effect of errors and irregularities in depositions shall be as follows:

(a) all errors and irregularities in notice for taking the deposition are waived unless written objection is promptly served upon the participant giving notice,

(b) objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could have been discovered with reasonable diligence,

~~(c) errors and irregularities in the manner of taking the deposition, in the questions and answers, in the oath or affirmation, or in the conduct of the participants, and errors of any kind which might be obviated, removed or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.~~

~~(d) objection to the competency of a witness or to the competency or relevancy of testimony are not waived by failure to make them before or during the taking of a deposition, unless the ground of the objection is one that might have been obviated or removed if presented at that time,~~

~~(e) errors and irregularities in the manner in which:~~

~~(i) the testimony is transcribed and preserved, or~~

~~(ii) the deposition is prepared, signed, certified, sealed, endorsed, transmitted, or filed, are dealt with by the officer taking the deposition, or are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been ascertained.~~

~~Rule 57.10. Failure to Comply; Sanctions~~

~~Subdivision 1. Compelling Discovery.~~ ~~A participant upon reasonable notice to other participants may apply for an order compelling discovery as follows.~~

~~(A) Procedure. An application for an order may be made to the court in which the action is pending, or on matters relating to a deponent's failure to answer questions propounded under Rule 57, to the court in the county where the deposition is being taken. An application for an order to a deponent who is not a participant shall be made to the court in the county where the deposition is being taken.~~

~~(B) Failure to Answer. If a deponent fails to answer a question propounded under Rule 57 or if a participant in response to a request for inspection or disclosure authorized by Rule 57 fails to respond or permit inspection or disclosure, the discovering participant may move for an order compelling inspection or disclosure. When taking a deposition upon oral examination the proponent of the question may complete or adjourn the examination before applying for an order. If the court denies the motion in whole or in part, the court may make such protective order as it would have been empowered to make on a motion pursuant to Rule 57.~~

~~(C) Evasive or Incomplete Answers. For purposes of this rule, an evasive or incomplete answer is to be treated as a failure to answer.~~

~~(D) Expenses of Motion.~~

~~(1) When Motion Granted. If the motion is granted the court shall, after opportunity for hearing, require the participant or deponent whose conduct necessitated the motion, the participant or counsel advising such conduct, or both to pay the moving participant reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court~~

finds that the opposition to the motion was substantially justified or that circumstances make an award of expenses unjust.

(2) When Motion Denied. If the motion is denied, the court shall, after opportunity for hearing, require the moving participant or counsel advising the motion, or both of them, to pay the participant or deponent who opposed the motion reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that circumstances make an award of expenses unjust.

(3) Apportionment. If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the participants and persons in a just manner.

Subd. 2. Failure to be Sworn or Answer. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county in which the deposition is being taken, the failure may be considered a contempt of court.

Subd. 3. Failure to Appear or Respond. If a participant fails:

(a) to appear before the officer who is to take that designated person's deposition, after being served with proper notice, or

(b) to serve a written response to a request for inspection or disclosure permitted under Rule 57, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, including orders within the scope of this rule.

In lieu of any order or in addition thereto, the court shall require the participant failing to act, or that participant's counsel or both to pay reasonable expenses including attorney's fees caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described herein may not be excused on the ground that the discovery sought is objectionable unless the participant failing to act has applied for a protective order as provided by Rule 57.

Subd. 4. Order. If a participant fails to obey an order to provide or permit discovery, including an order under these rules, the court in which the action is pending may make such orders in regard to the failure as are just, including the following:

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

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

~~(c) an order striking the petition or parts thereof, or staying further proceedings until the order is obeyed or dismissing the proceeding or any part thereof, or rendering a judgment by default against the disobedient participant, or~~

~~(d) in lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination.~~

~~In lieu of any of the foregoing orders or in addition thereto, the court shall require the participant failing to act or the participant's counsel, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances made an award of expenses unjust.~~

~~The failure to act described herein may not be excused on the ground that the discovery sought is objectionable unless the participant failing to act has applied for a protective order as provided in Rule 57.06.~~

Rule 17.01. Disclosure by Petitioner Without Court Order

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

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

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

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

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

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

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

Rule 17.02. Disclosure by Other Parties Without Court Order

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

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

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

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

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

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

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

Rule 17.03. Information Not Discoverable

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

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

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

Rule 17.04. Discovery Upon Court Order

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

Subdivision 1. Physical and Mental Examinations.

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

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

Subd. 2. Depositions.

(a) **Agreement of Parties.** A deposition may be taken upon agreement of the parties, or if ordered by the court, pursuant to subdivision 2(b).

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

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

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

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

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

(d) **Notice.** A party taking a deposition shall give reasonable notice of the deposition. The deposition shall be taken before an officer authorized to administer oaths by the laws of the United States, or before a person appointed by the court in which the matter is pending. The parties shall agree on or the court shall order the manner of recording of the deposition. A stenographic transcription may be made at a party's request. Examination and cross-examination of witnesses shall be as permitted at trial. However, the deponent shall answer any otherwise objectionable question, except that which would reveal privileged material unless the privilege does not apply pursuant to Minnesota Statutes § 626.556, subd. 8, so long as it leads to or is reasonably calculated to lead to the discovery of any relevant data.

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

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

(a) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions concerning fees and expenses as the court may deem appropriate.

(b) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35.02 or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(c) Unless manifest injustice would result, (1) the court shall require the party seeking discovery to pay the expert a reasonable fee for time spent in responding to discovery pursuant to this rule, and (2) with respect to discovery obtained pursuant to this rule, the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

Rule 17.05. Time, Place, and Manner of Discovery

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

Rule 17.06. Regulation of Discovery

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

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

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

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

(a) an order that the matters regarding which the order was made, or the other

designated facts, shall be taken to be established for purposes of the proceedings, in accordance with the claim of the party who obtained the order;

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

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

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

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

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

Rule 17.07. Expenses

The costs of discovery shall be at the expense of the requesting party. However, when the party is unable to afford the costs of discovery, the costs shall be at public expense in whole or in part, depending on the ability of the party to pay.

DELIBERATIONS REGARDING RULE 17

Type of Discovery. *The Committee considered several approaches to discover. The Committee concluded that allowing formal discovery in juvenile protection matters created the risk of delaying the proceedings with no corresponding improvement in decision making. The Committee also determined it was appropriate to have different standards for the petitioner and the respondent.*

Since the Petitioner has the burden of proof and the burden of going forward with the evidence, the rule requires that the petitioner, upon the request of a party or the county attorney, make available all information, material and items in the petitioner's possession or control which relate to the case. Therefore, discovery is more expansive for the petitioner. Other parties must only disclose, upon request, documents, tangible objects, and the results of tests and examinations that the party intends to introduce into evidence at trial. If the petitioner is aware of other test results or reports, the petitioner can only gain access to that information by moving for a court order. The Committee proposes this more limited disclosure obligation for non-petitioners to address concerns that forcing a party's attorney to produce evidence that the attorney did not intend to introduce at trial would undermine the attorney-client relationship and impermissibly impinge on the assurance of confidentiality that is an essential part of that

relationship.

Answers and Requests for Admission. *The Committee considered including a provision allowing the petitioner to pose requests for admission to help narrow the issues in dispute or requiring the respondent to answer the petition. In this context, the Committee discussed whether juvenile court proceedings are properly considered quasi-criminal. If so, requiring the respondent to answer the petition or respond to requests for admission would be tantamount to requiring self-incrimination. The Committee determined that the efficiency gained by requiring answers was outweighed by the prejudice to the respondent.*

Interrogatories*. The Committee discussed and rejected provisions allowing use of interrogatories. The Committee determined that use of interrogatories would be too time-consuming to be useful in these proceedings.*

Sanctions. *After discussion, the Committee agreed to incorporate language from Rule 37.02(b) of the Rules of Civil Procedure concerning sanctions for failure to cooperate with disclosure. The Committee questioned the appropriateness of including an option to dismiss the petition without prejudice. Upon dismissal, the petitioner, usually the county attorney, could immediately re-file the case if the safety of a child is at risk. Re-filing of a dismissed petition would trigger new deadlines for discovery, but the permanency timeline clock would remain the same. On the other hand, the prospect of having to go through the time and expense of re-filing could help to assure the petitioner's compliance with discovery. Therefore, the Committee includes this option for sanctions.*

PROPOSED RULE 18

RULE 18. DEFAULT

Rule 18.01. Procedure

If a party fails to appear after being properly served with a summons and notice that failure to appear may result in (a) a finding that the statutory grounds set forth in the petition have been proved and (b) an order granting the relief requested, the court shall take testimony in support of the petition. If the petition is proved by the applicable burden of proof, the court shall enter an order granting the relief sought in the petition. The court shall not grant a default if a party was served with a summons less than three (3) days prior to the hearing.

DELIBERATIONS REGARDING RULE 18

The Committee included a default rule to clarify that the court has jurisdiction to proceed if a party fails to appear after being properly served. This rule is based upon Rule 55 of the Minnesota Rules of Civil Procedure. To obtain a default order, the petitioner must present evidence that proves the petition.

PROPOSED RULE 19

RULE 19 ~~56~~. SETTLEMENT ~~DISCUSSIONS~~

Rule 19.01 ~~56.01~~. Generally

~~For the purpose of achieving the objectives of the juvenile court,~~ Settlement discussions may be utilized to achieve one or more of the purposes set forth in Rule 1.02.

Rule 19.02. Content of Settlement Agreement

Any settlement agreement shall include a statement of:

(a) the statutory grounds to be admitted;

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

(c) the factual allegations to be admitted;

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

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

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

Rule 19.03 ~~56.02~~. Procedure

~~The court shall require disclosure of any settlement agreement in advance of an admission of the allegations of the petition.~~ Every settlement agreement shall be filed with the court or stated and agreed to on the record by the settling parties. Before approving a settlement agreement, the court shall determine that each party to the agreement understands the content and consequences of the admission or settlement agreement and voluntarily consents to the agreement. When a party makes an admission ~~person admits the allegations of a petition,~~ the court may accept or reject the admission based upon the terms of the settlement agreement or may conditionally accept or reject the admission pending receipt of a predisposition report prepared for the disposition hearing ~~shall reject or accept the admission on the terms of the settlement agreement~~. ~~The court may postpone its acceptance or rejection until it has received a pre-disposition report prepared for the disposition hearing.~~ The court may accept a settlement agreement that resolves the issues with respect to the petitioner and one or more but not all parties, and proceed with the matter with respect to the non-settling parties. If the court approves the settlement agreement, it shall proceed pursuant to Rule 39. If the court rejects the settlement agreement, it shall advise the parties and the county attorney ~~person(s) entering into the settlement agreement~~ of this decision in writing or on the record and shall call upon the parties ~~person(s) admitting~~ to either affirm or withdraw the admission. If the admission is withdrawn, the court shall make a finding that the admission is not accepted and proceed pursuant to Rule 38.

~~**Rule 56.03. Settlement Agreement on Record**~~

~~The settlement agreement shall be filed with the court or affirmed on the record.~~

~~**Rule 56.04. Settlement Agreement May Include Disposition Recommendation**~~

~~Settlement agreements may include recommendations for as to disposition~~

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

If a party objects to a settlement agreement in a termination of parental rights matter or a permanent placement matter, that party shall within five (5) days of service of notice of the proposed settlement agreement adopt the existing pleadings and assume the burden of proof or file pleadings in support of an alternative. The matter shall be set for trial within the timelines set forth in Rule 38.

DELIBERATIONS REGARDING RULE 19

The Committee recognized that informal settlement discussions take place in many juvenile protection matters. The Committee learned, however, that the process and procedure for settlement discussions and agreements, including who can or must negotiate or enter into an agreement, vary from jurisdiction to jurisdiction. The Committee recommends adoption of Rule 19 to establish uniform procedures for the use of settlement agreements.

Objection to Settlement Agreement. *The Committee discussed how to handle situations where some, but not all, of the parties agree to the terms of a settlement. This issue will arise primarily in connection with permanent placement determinations. For instance, if the local social services agency and the respondent parent agree that a child should be returned to the care of the parents, but the guardian ad litem takes the position that such a result would place the child at risk of harm and that it is in the child's best interest to terminate parental rights, the question then becomes whether the guardian ad litem can force the agency to proceed to trial. This rule recognizes a party's right to object to a settlement, but requires the objecting party to assume the burden of proof.*

If a party disagrees with the settlement of a child in need of protection or services matter that would result in dismissal of the petition, the objecting party can file a petition or assume the petition filed by the county.

Any party who disagrees with a proposed disposition has the right to request a hearing.

PROPOSED RULE 20

RULE 20. ALTERNATIVE DISPUTE RESOLUTION

[Reserved for future use.]

Advisory Committee Comment

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

DELIBERATIONS REGARDING RULE 20

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

C. PARTIES AND PARTICIPANTS

PROPOSED RULE 21

RULE 21 ~~39~~. PARTIES ~~RIGHT TO PARTICIPATE~~

~~**Rule 39.01. Right of Child**~~

~~**Subdivision 1. Under Twelve (12) Years of Age.** A child who is the subject of a petition who has not reached the age of twelve (12) years has the right to participate through the child's guardian ad litem and may personally participate upon order of the court.~~

~~**Subd. 2. Twelve (12) Years of Age and Older.** A child who is twelve (12) years of age or older who is the subject of a petition has the right to participate in all hearings unless excluded from the hearing pursuant to Rule 42.03. When the child is excluded from the hearing the child may participate through the child's counsel and guardian ad litem.~~

~~**Rule 39.02. Right of Parent and Guardian**~~

~~The parent and or guardian of a child who is the subject of a petition have the right to participate in all hearings on a petition unless excluded from the hearing pursuant to Rule 42.03. When excluded from the hearing the excluded person has the right to participate through their counsel.~~

~~**Rule 39.03. County Welfare Board and County Attorney**~~

~~The county welfare board has the right to participate in the hearings through the county attorney.~~

~~The county attorney may also may participate in a matter in which counsel, other than the county attorney, has drafted and filed a petition pursuant to Rule 53.01, subd. 1, and the county welfare board does not participate. The county attorney must inform the court of the county attorney's intent to participate in writing or on the record at or before a first appearance on the petition. In such matter when the county attorney has not so informed the court of the intent to participate at or before a first appearance on the petition, the county attorney may only participate when requested by the court upon the court's own motion or upon motion of the county attorney with good cause shown.~~

~~**Rule 39.04. Guardian Ad Litem**~~

~~The guardian ad litem of a child or of the parent of a child who is the subject of a petition has the right to participate as such guardian ad litem in all hearings.~~

~~**Rule 39.05. Petitioner**~~

~~When a petition has been drafted and filed by counsel other than the county attorney pursuant to Rule 53.01, the court may permit the petitioner to participate in all hearings unless excluded pursuant to Rule 42.03. When excluded from the hearing the excluded person has the right to participate through their counsel.~~

~~**Rule 39.06. Procedure**~~

~~Persons represented by counsel shall [participate in hearings through their counsel. Persons not represented by counsel may participate in their own behalf.~~

Rule 21.01. Party Status

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

(a) the child, if the child is age 12 or older, is represented by counsel, or is made a party pursuant to court order;

(b) the child's guardian ad litem;

(c) the child's legal custodian;

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

(e) the local social services agency;

(f) the petitioner;

(g) in the case of an Indian child as defined in the Indian Child Welfare Act, 42 U.S.C. § 1901to § 1906, the Indian custodian of the child and the Indian child's tribe through the tribal representative;

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

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

(j) any other person, including a child under age 12, 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 and Runaway Matters. In addition to the parties identified in subdivision 1, in any matter alleging a child to be a habitual truant or a runaway, 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) any other person who is deemed by the court to be important to a resolution that is in the best interests of the child.

Rule 21.02. Rights of Parties

A party shall have the right to:

(a) receive notice pursuant to Rule 33;

(b) legal representation pursuant to Rule 25;

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

(d) conduct discovery pursuant to Rule 17;

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

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

(g) subpoena witnesses pursuant to Rule 13;

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

(i) present evidence;

(j) cross-examine witnesses;

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

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

(n) bring post-trial motions pursuant to Rule 44;

(o) appeal from orders of the court pursuant to Rule 46; and

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

Rule 21.03. Address

It shall be the responsibility of the petitioner to set forth in the petition the names and addresses of all parties if known to the petitioner after reasonable inquiry. It shall be the responsibility of each party to inform the court administrator of any change of address.

DELIBERATIONS REGARDING RULE 21

The existing rule regarding the rights of parties and others to participate is replaced by two separate rules: Rule 21 deals with parties and Rule 22 deals with participants.

Children as Parties. *The Committee had extended discussions regarding the appropriateness of including children as parties to these proceedings. The discussions are addressed in the deliberations regarding Rule 25 concerning the right to counsel. The Committee ultimately voted to include a child as a party if: (1) the child is twelve years of age or older, (2) the child is represented by an attorney, or (3) the court approves the child's participation as a party.*

Children as Parties in Termination of Parental Rights Matters. *The Committee also discussed whether it was appropriate to provide that each child who is the subject of a termination of parental rights petition be considered a party regardless of age. Some thought that even though it may be appropriate to limit the right of children to be considered as parties in child protection matters, the rights being determined in a termination proceeding are so life-altering for the child that the child should have all of the rights of a party. This would make the termination proceeding analogous to a paternity proceeding where the child is always a party regardless of age. The Committee voted to follow the same guidelines for termination proceedings as for protection cases, with a strong minority voting to make children parties regardless of age.*

Noncustodial Parents as Parties. *The Committee voted to not include noncustodial parents as parties because they have no legal authority to protect the child. It is the act or failure to act of the legal custodian that places the child in need of protection or services. The Committee recognized that a noncustodial parent may want to be considered a party to participate fully in decision making concerning the child. The rule includes a simplified procedure allowing noncustodial parents to intervene as a matter of right. Noncustodial parents will be notified of the proceedings and all they have to do if they want to intervene is file a notice of intervention.*

There was a strong minority view that noncustodial parents should automatically be parties. This group argued that the noncustodial parent's rights would inevitably be affected by decisions made in the child protection case. Therefore, they should be brought into the proceedings at the outset as parties and they should participate fully, especially with respect to working on case planning concerning the child. Otherwise, if the child is removed from the custodial parent and that parent fails to accomplish the goals of the case plan, the court may make a permanency decision that impacts the noncustodial parent's rights without giving that parent an adequate opportunity to work on a case. The Committee decided that the rights of noncustodial parents are adequately protected by giving them notice and the right to intervene.

Foster Parents as Parties. *The Committee discussed whether to include foster parents as parties to these proceedings. The Committee agreed that foster parents need to be involved because they have information potentially relevant to the court in determining the best interests of the child, and they have the most immediate information about the child's daily functioning. The Committee determined, however, that making foster parents parties could chill their willingness to be long-term caregivers because that would mean they would be required to appear at all proceedings and take on the rights and obligations of parties. The Committee determined it would be most appropriate to make foster parents participants in the first instance, and to provide that the court may allow them to intervene if it determines they are "deemed by the court to be important to a resolution that is in the best interests of the child."*

PROPOSED RULE 22

RULE 22. PARTICIPANTS

Rule 22.01. Participant Status

Unless already a party pursuant to Rule 21, or unless otherwise specified, participants to all juvenile protection matters shall include:

(a) all parents of the child, including any noncustodial parents and any alleged, adjudicated, or presumed father;

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

(c) relatives providing care for the child and other relatives who request notice;

(d) current foster parents and persons proposed as long-term foster care parents;

(e) the spouse of the child, if any; and

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

Advisory Committee Comment

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

Rule 22.02. Rights of Participants

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

(a) receiving notice pursuant to Rule 33;

(b) attending hearings pursuant to Rule 27; and

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

Subd. 2. Foster Parents and Relatives. Notwithstanding subdivision 1, the foster parents, if any, of a child and any preadoptive parent or relative providing care for the child shall be provided an opportunity to be heard in any hearing regarding the child. Any other relative may also request, and shall be granted, an opportunity to be heard. This subdivision does not require that a foster parent, preadoptive parent, or relative providing care for the child be made a party to the matter.

Rule 22.03. Participant Address

It shall be the responsibility of the petitioner to set forth in the petition the names and addresses of all participants if known to the petitioner after reasonable inquiry. It shall be the responsibility of each participant to inform the court administrator of any change of address.

DELIBERATIONS REGARDING RULE 22

The Committee recognizes that the court may benefit by receiving input from a number of individuals who have information relevant to a decision on what is in the best interests of a child, but that it may not be appropriate for these individuals to have all of the rights of parties. Conferring participant status upon the listed individuals clarifies that their presence and information may be important in decision-making, but that their legal interests do not rise to the level of party status. A participant may become a party by intervening or by being joined.

Rule 22.02 provides that participants may offer information at the discretion of the court. The Committee intends that the court may elicit information from participants.

Federal law requires that foster parents and relatives have notice and opportunity to be heard at hearings. Rule 22.02, subd. 2, incorporates the federal statutory language.

PROPOSED RULE 23

RULE 23. INTERVENTION

Rule 23.01. Intervention of Right

Subdivision. 1. Indian Child. In any proceeding for the foster care placement of, or the termination of parental rights regarding, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene as a party at any point in the proceeding. An Indian tribe and an Indian custodian shall file with the court and serve on all parties a notice of intervention in order to exercise party status in proceedings involving an Indian child.

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

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

Rule 23.02. Permissive Intervention

Any person may be permitted to intervene as a party at any point in the proceeding if the court finds that such intervention is in the best interests of the child.

Rule 23.03. Procedure

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

Subd. 2. Permissive Intervention. A person seeking permissive intervention pursuant to Rule 23.02 shall file with the court and serve upon all parties and the county attorney a notice of motion and motion to intervene pursuant to Rule 15. The notice shall state the nature and extent of the person's interest in the child and the reason(s) that the person's intervention would be in the best interests of the child. A hearing on a motion to intervene shall be held within ten (10) days of the filing of the motion to intervene.

Rule 23.04. Effect of Intervention

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

DELIBERATIONS REGARDING RULE 23

Grandparents. *Minnesota Statutes § 260.155, subd. 1a, provides that "[a]ny grandparent of the child has a right to participate in the proceedings to the same extent as a parent, if the child has lived with the grandparent within the two years preceding the filing of the petition. . . . Failure to notify a grandparent of the proceedings is not a jurisdictional defect." Under Rule 23, grandparents must be notified that they have the right to intervene. The Committee decided not to make grandparents parties in the first instance for the following reasons: (1) the law does not require it; (2) many grandparents may want to participate, but not to exercise all of the rights and responsibilities of parties; and (3) it would be unnecessarily burdensome for the court to serve a summons on and appoint counsel for all grandparents, whether or not they want to exercise the rights of a party.*

Timing. *To effectuate the expedited nature of child protection proceedings, the timelines for intervention have been shortened from the thirty days provided in the Rules of Civil Procedure.*

PROPOSED RULE 24

RULE 24. JOINDER

Rule 24.01. Procedure

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

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

(b) in the best interests of the child.

The moving party shall serve the motion upon the person proposed to be joined.

Advisory Committee Comment

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

DELIBERATIONS REGARDING RULE 24

In In Re the Matter of the Welfare of Q.T.B., an unpublished decision of the Court of Appeals filed on May 26, 1998, the court considered the appellant's claim that she should have been joined as a party to a child in need of protection or services proceeding because without such joinder she was at risk of losing her visitation rights with the infant who was the subject of the petition. The court cited Minn. R. Civ. P. 1901 and determined that the rights of the appellant did not rise to the level of requiring joinder under Rule 19.01.

PROPOSED RULE 25

RULE 25 40. RIGHT TO COUNSEL

~~**Rule 40.01 Right of Child and Parent to Separate Counsel**~~

~~**Subd. 1. Generally.**~~

~~The child has the right to be represented by an attorney who shall act as the child's counsel and who shall not be counsel for the parent or guardian.~~

~~The parent and guardian of the child have the right to be represented by an attorneys who shall act as their counsel.~~

~~**Subd. 2. Advisory of Right to Counsel**. Any child, parent or guardian who is not represented by counsel, if present in court, shall be advised of the right to court appointed counsel by the court on the record, or in writing, at or before any hearing.~~

~~**Subd. 3. Appointment of Counsel.**~~

~~(A) Child. When the child cannot afford to retain counsel, the child is entitled to representation by counsel appointed by the court at public expense. However, the court may order, after giving the parent a reasonable opportunity to be heard, that service of counsel shall be at the parent' expense in whole or in part depending on their ability to pay.~~

~~(B) Parent(s) and Guardian. When the parent(s) or guardian cannot afford to retain counsel, the parent(s) or guardian are entitled to representation by counsel appointed by the court at public expense. However, the court may order, after giving the parent a reasonable opportunity to be heard, that service of counsel shall be at the parent's expense in whole or in part depending on their ability to pay.~~

~~**Rule 40.02. Right of Guardian Ad Litem to Counsel**~~

~~The guardian ad litem for the child shall be represented by the child's counsel. However, in the event of a conflict between the child and the guardian ad litem, considered in the context of the matter, counsel for the child shall continue to represent the child. The court may appoint separate counsel to represent the guardian ad litem.~~

Rule 25.01. Right to Representation

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

Advisory Committee Comment

Rule 25.01 sets forth the basic principle that each person appearing in court has the right to be represented by counsel. That person, however, does not necessarily have the right to appointment of counsel at state expense, which is provided in Rule 25.02.

Rule 25.02. Appointment of Counsel

Subdivision 1. Mandatory Appointment for Child Age 12 or Over. The court shall appoint counsel at state expense for a child who cannot afford to retain counsel if the child is age 12 or older.

Subd. 2. Mandatory Appointment for Child Alleged to be a Habitual Truant, a Runaway, or Engaged in Prostitution. The court shall appoint counsel at state expense for a child who cannot afford to retain counsel if the child, regardless of age, is the subject of a petition based solely on the statutory grounds that the child is a habitual truant, a runaway, or engaged in prostitution.

Subd. 3. Discretionary Appointment for Child Under Age 12. The court may, sua sponte or upon the written or on-the-record request of a party, the county attorney, the child, or a participant, appoint counsel for a child under age 12. When the child cannot afford to retain counsel, the appointment shall be made at state expense. If the court denies a request to appoint counsel for a child under age 12, the court shall make written findings as to the reason for the denial.

Subd. 4. Appointment for Child's Parent or Legal Custodian.

(a) **Mandatory Appointment -- Generally.** When the child's parent who is a party, the legal custodian, or, in the case of an Indian child, the child's Indian custodian, cannot afford to retain counsel, the court shall appoint counsel at state expense. Such representation shall include all juvenile protection matters as defined in Rule 2.01(h), except that it shall not include representation for the purpose of establishment or enforcement of child support pursuant to Minnesota Statutes § 518.551 or cost of care pursuant to Minnesota Statutes § 260.251.

(b) **Habitual Truant, Runaway, and Prostitution Matters.** The parent or legal custodian of a child who is the subject of a petition where the sole allegation is that the child is a habitual truant, a runaway, or engaged in prostitution has the right to assistance of counsel after the court has found that the statutory grounds set forth in the petition have been proved. The court has discretion to appoint counsel to represent the parent or legal custodian at state expense if the parent or legal custodian is financially unable to obtain counsel and in any other case in which the court finds such appointment desirable.

Subd. 5. Right of Guardian Ad Litem to Counsel. Upon request of the guardian ad litem, the court shall appoint counsel for the guardian ad litem at state expense. Counsel for the guardian ad litem shall not be counsel for the child or for any other party or participant.

Advisory Committee Comment

The Committee contemplates that one attorney may represent all siblings in any given matter and a separate attorney may represent both parents. In either case, the attorney would be bound by Minnesota Rules of Professional Conduct 1.7 through 1.10 concerning conflict of interest.

Rule 25.03. Reimbursement

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

Rule 25.04. Notice of Right to Representation

Subdivision 1. Written Notice. Written notice of the right to be represented by counsel and the right to court-appointed counsel pursuant to this rule shall be provided to the child and the child's parent or legal custodian with:

(a) notice that the child has been placed in emergency protective care pursuant to Rule 29;

(b) notice or summons served with a petition;

(c) notice of the disposition hearing; and

(d) notice of a review hearing.

Subd. 2. In-Court Advisory. Any child, parent, or legal custodian who appears in court and is not represented by counsel shall be advised by the court on the record of the right to representation pursuant to Rule 25.01 and the right to court-appointed counsel pursuant to Rule 25.02.

Rule 25.05. Certificate of Representation

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

Rule 25.06. Withdrawal of Counsel

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

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

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

~~**Rule 50. Waiver of Counsel and Other Rights**~~

~~**Subdivision 1. Standards.** A person entitled to counsel pursuant to Rule 40 and to any other right pursuant to these rules may waive the right to counsel and any other right only if the waiver is voluntarily and intelligently made. If the child is not present or if the court determines in writing or on the record, based on the totality of the circumstances, that the child is incapable of understanding the proceedings or participating in the child's own behalf, the guardian ad litem may waive the right to counsel and any other right.~~

~~**Subd. 2. Recording.** A waiver of counsel or any other right shall be on the record.~~

~~**Subd. 3. Renewal.** After a person waives the right to counsel, that person shall be advised of the right to counsel, pursuant to Rule 40, at each subsequent hearing at which that person is present and is not represented by counsel.~~

DELIBERATIONS REGARDING RULE 25

Rule 25.01. Right to Representation

Rule 25.01 states the basic principle that each person appearing in court has the right to be represented by an attorney. That person, however, does not necessarily have the right to appointment of counsel at state expense.

Multiple Clients. *The Committee recognizes that one attorney may represent siblings and that another attorney may represent both parents. In either case, the attorney would be bound by Minnesota Rules of Professional Conduct 1.7 through 1.10 concerning conflict of interest.*

Rule 25.02. Appointment of Counsel

Introduction.

Rule 25 regarding appointment of counsel and Rule 26 regarding appointment of guardians ad litem for children prompted extensive deliberation by the Committee. In drafting the two rules, the Committee reviewed law and practice in other states and across Minnesota, consulted with an expert in child development, considered funding constraints, and discussed the role of attorneys for children as compared to the role of guardians ad litem for children. For purposes of discussion and comment, the Committee then initially identified two options for legal representation of children. Both options assumed that, pursuant to federal and state law, a

guardian ad litem will be appointed for each child. Option 1: appoint counsel for all children. Option 2: appoint counsel for all children once they reach age 10 or age 12, and allow the court discretion to appoint counsel for children under the mandatory age.

Statutory Mandate for Appointment of Counsel.
Minnesota Statutes § 260.155, subd. 2(a), provides that "[t]he child, parent, guardian or custodian has the right to effective assistance of counsel in connection with a proceeding in juvenile court." Section 260.155, subd. 2(c), further provides that "[i]f they desire counsel but are unable to employ it, the court shall appoint counsel to represent the child or the parents or guardian in any case in which it feels that such an appointment is desirable, except a juvenile petty offender who does not have the right to counsel under paragraph (a)." The statute does not define "desirable" and that language has been interpreted differently across the state. Some counties routinely appoint an attorney for each child who is the subject of a child in need of protection or services petition, regardless of the child's age. Other counties appoint counsel for a child age 12 or over and appoint guardians ad litem for children younger than 12.

Statutory Mandate for Appointment of Guardians Ad Litem.
Minnesota law also requires, pursuant to Minnesota Statutes § 260.155, subd. 4(a), that a guardian ad litem be appointed to advocate for the best interests of the child "in every proceeding alleging a child's need for protection or services under section 260.015, subdivision 2a." Not all counties have been able to fulfill that mandate due to lack of funding and the inadequate number of persons to serve as guardians ad litem

Funding considerations.
The existing rule provides for appointment of counsel at public expense, but there is no uniformity across the state regarding who pays for those attorneys. In some areas the county pays the cost, while in other areas the cost is paid by the state through the state public defenders office. The Legislature has not adequately funded either the guardian ad litem system or the state public defender system. Promulgating a rule that requires the appointment of a guardian ad litem and an attorney for each child whose life is in the hands of the juvenile court will not make money available to ensure that enough people are available to competently fulfill those roles. The resources of the state public defender system are stretched to the limit. To assure adequate funding and uniform compliance with the statute and these rules the Committee recommends that the state fully fund the legal representation programs for all parties entitled to appointment of counsel, including children, parents, and guardians ad litem.

The rule as proposed by the Committee calls for appointment of counsel at state expense. Some people have read this as a proposal to assign this work to the State Public Defender's office. That is not the Committee's intent. The Committee intends to point out that the current patchwork system is inadequate and does not serve the needs or the best interests of the families who come before the court. The Committee believes that State government should assume the

burden of financing the attorney appointment programs so that decisions regarding who gets an attorney are not driven by availability of county property tax money. The State could meet this obligation by funding the Office of the State Public Defender at a level that would allow hiring of a sufficient number of attorneys and staff to adequately represent all of the eligible parents and children. Alternatively, the State could fund another agency to assume some of the case load. In an adversarial system, the parents and children who are the subject of the proceedings need adequate representation. It is intent of the Committee to recommend the minimum level of representation, and to recommend that the cost of providing that representation by fully borne by the State of Minnesota.

Ethical Considerations Regarding Representing Children.
Beyond the funding considerations, there are also other differences of opinion in the professional community regarding the appropriateness of appointing attorneys for very young children. These differences are based in part on an understanding of the contrasting roles of the attorney and the guardian ad litem in the context of juvenile court. Pursuant to Rule 1.2 of the Minnesota Rules of Professional Conduct, an attorney's professional obligation to a client, including a youthful client, is to "abide by a client's decisions concerning the objectives of representation, . . . and [to] consult with the client as to the means by which they are to be pursued." Rule 1.14 of the Rules of Professional Conduct requires that "[w]hen a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client." The rule specifies that the attorney may seek the appointment of a guardian ad litem "only when the lawyer reasonably believes that the client cannot adequately act in the client's interest." The comment to the rule recognizes that a client lacking legal competency often has the ability to understand, deliberate upon, and reach conclusions about matters affecting her well-being. The rule recognizes that the lawyer may often act as de facto guardian ad litem when the person has no guardian or legal representative.

The Committee agreed that children have the right to be represented by an attorney. The Committee could not reach consensus on whether the right to appointed counsel should depend on the child's age. The Committee decided, by majority vote, to recommend that children age twelve and over be appointed counsel at state expense and that the court have discretion to appoint counsel for younger children. A strong minority supported appointment of counsel for all children regardless of age.

The majority reasoned that unless a child is old enough to articulate her wishes and objectives and to really understand the long term impact of her decisions, an attorney would be acting as de facto guardian ad litem. Under those circumstances, the majority questioned whether the attorney could ethically continue to serve as the child's lawyer, and if not, what role that lawyer would play in the case. The majority argued the child's interests would best be represented by the appointed guardian ad litem. The guardian ad litem, represented by an attorney, could be sure that the case proceeds in accordance with the law.

The majority also pointed to the report of Dr. Donna Cairncross, a child psychologist who spoke to the Committee regarding the cognitive development of children. It was her conclusion that children reach the "stage of concrete operations" at around age 11. This stage marks the start of abstract thought and deductive reasoning, and the ability to appreciate long term consequences of decision-making. There is some variation among children as to when they reach that stage development. Some younger children who have been subjected to trauma might be more able to participate in child in need of protection or services proceedings based on the maltreatment and to express preferences and articulate their wishes with respect to outcomes. In some cases in fact, such involvement and sense of control may be good for the child's recovery.

In setting age 12 as the age at which counsel should be appointed for a child, the Committee considered several benchmarks set forth in current law. For instance, Minnesota Statutes § 260.155, subd. 9, presumes that a child's absence from school is due to parental neglect if a child is under 12 years of age, and for a child age 12 or over assumes that unexcused absence from school is due to the child's intent. Minnesota Statutes § 260.191, subd. 3b(d)(3), provides that a child younger than age 12 may not be placed in long term foster care unless living with a sibling who is at least 12 years of age. Minnesota Statutes § 260.015, subds. 2a(10) and 5, provide that a child cannot be adjudicated delinquent before becoming ten years old. The current Rules of Juvenile Procedure provide that a child may participate personally in a child in need of protection or services proceeding at age 12, but before that may only participate through a guardian ad litem unless the court permits otherwise.

The minority who favored appointment of attorneys for all children asserted that representation by an attorney is essential to protect the child's legal rights. Such representation would assure that hearings are held and orders issued in a timely way, that adequate and effective services are provided in connection with an appropriate case plan, and that a timely decision on permanent placement is made for each child. Attorneys can be held accountable for their representation because they are bound by the Code of Professional Conduct and their professional behavior is monitored by the Board of Professional Responsibility. Under the rules, an attorney may ask for a guardian ad litem to be appointed for a client who cannot act in her own best interest.

Right to Counsel in Truancy and Runaway Matters.

Since truancy matters focus primarily on the behavior of the child, the Committee recommends that every child have the right to appointed counsel regardless of any age limit recommended in

other juvenile protection matters. The Committee recommends that the child not be given the option to waive counsel.

Calculating the Ability of the Child to Afford Counsel.
How should the court determine financial eligibility of children for appointment of counsel at state expense? At least one jurisdiction is attributing parental income to their children in making this decision. Some Committee members felt this raised inevitable conflict of interest questions. However, the Committee felt that a rule directing jurisdiction not to count parental income would be a substantive change leading to additional eligibility for counsel with resultant increased costs. The Committee notes that the rule provides that the court may appoint counsel and then order the parent to reimburse the county for the fees.

Separate Rule on Roles of Attorneys and Guardians ad Litem.
The Committee considered including in the rules a statement concerning the role of attorneys for children and the role of guardians ad litem for children. One option would have been to include language from Rule 1.2 of the Minnesota Rules of Professional Conduct which provides:

> *The child's attorney shall abide by the child's decisions concerning the objectives of representation and shall consult with the child as to the means by which they are to be pursued. The child's attorney may limit the objectives of the representation if the child consents after consultation. The child's attorney shall abide by the child's decision whether to accept an offer of settlement of a matter.*

Another option would have been to adopt language from the "Standards of Practice for Lawyers Who Represent Children" adopted by the American Bar Association. That language provides:

> ***Subdivision 1. Attorney.*** *The term "child's attorney" means a lawyer who provides legal services for a child and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client. The child's attorney should elicit the child's preferences in a developmentally appropriate manner, advise the child, and provide guidance. The child's attorney should represent the child's expressed preference and follow the child's direction throughout the course of the litigation. To the extent that a child cannot express a preference, the child's attorney shall make a good faith effort to determine the child's wishes and advocate accordingly or request the appointment of a guardian ad litem if one has not already been appointed. If the child's attorney determines that the child's expressed preference would be seriously injurious to the child (as opposed to merely being contrary to the attorney's opinion of what would be in the child's best interests), the attorney may request the appointment of a guardian ad litem, if one has not already been appointed, and continue to represent the child's expressed preference, unless the child's position is prohibited by law or without any factual foundation. The child's attorney shall not reveal the basis of the request for appointment of a*

guardian ad litem which would compromise the child's position.

> ***Subd. 2. Guardian Ad Litem.*** *An attorney or other person appointed as a "guardian ad litem" for a child is an officer of the court appointed to protect and advocate for the child's best interests without being bound by the child's expressed preferences. If an attorney appointed as guardian ad litem for a child determines that there is a conflict caused by performing both roles of guardian ad litem and child's attorney, the attorney should continue to perform as the child's attorney and withdraw as guardian ad litem. The lawyer should request appointment of guardian ad litem without revealing the basis for the request.*

The Committee determined that although an understanding of the differences between the roles of lawyer and guardian ad litem is essential to competent practice in this area, a court rule is not the most appropriate or effective place to accomplish that objective.

Qualifications of Counsel.

The Committee also considered including the following rule adapted from Rule 12 of the "Sample Rules to Achieve Permanency for Foster Children" adopted by the American Bar Association:

> *Attorneys appearing in juvenile court matters shall satisfy the court that they have sufficient experience and skills to provide competent representation. This shall include, where appropriate, specific experience in similar cases and, where available, satisfactory completion of an appropriate training program. To continue to receive appointments, attorneys should participate in periodic training programs and should be rated favorably on their performance.*

Such a rule would have emphasized the mandate of Rule 1.1 of the Rules of Professional Conduct which provides that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." The Comment to Rule 1.1 provides that "[e]xpertise in a particular field of law may be required in some circumstances," thus authorizing the court to demand special skills and training of attorneys appearing in juvenile court matters.

Although the Committee agrees unanimously that competent representation is essential, the Board of Professional Responsibility is best qualified to hear complaints and assure that people receive competent representation.

Rule 25.02, subd. 5. Right of Guardian ad Litem to Counsel.

Some attorneys and judges have suggested that ethical and malpractice issues are raised by the language of the existing rule which mandates that the guardian ad litem for the child shall be represented by the attorney for the child. For this reason, the proposed revision deletes this

language and clarifies that counsel for the guardian ad litem cannot also be counsel for another party or participant.

Minnesota Statutes § 260.155, subd. 4(a), provides that "[t]he court may appoint separate counsel for the guardian ad litem if necessary." No direction is given as to when such appointment is "necessary." Options considered by the Committee included leaving the language somewhat vague or mandating the appointment of counsel upon request of the guardian ad litem. The majority of Committee members chose to recommend mandatory appointment.

Rule 25.04. Waiver of Right to Counsel

The Committee considered recommending the adoption of waiver rules similar to those found in the Juvenile Delinquency Rules. However, due to the different nature of child protection proceedings, the Committee concluded that the child's rights are adequately protected by assuring that the child is advised of the right to counsel at key points in the proceedings and by the court on the record and requiring that any waiver be on the record.

Rule 3.04 of the Juvenile Delinquency Rules provides the following standards for waiver of the right to counsel:

> ***Subdivision 1. Conditions of waiver.*** *Any waiver of counsel must be made knowingly, intelligently, and voluntarily. Any waiver shall be in writing and on the record. The child must be fully and effectively informed of the child's right to counsel and the disadvantages of self-representation by an in-person consultation with an attorney, and counsel shall appear with the child in court and inform the court that such consultation has occurred. In determining whether a child has knowingly, voluntarily, and intelligently waived the right to counsel, the court shall look to the totality of the circumstances including, but not limited to: the child's age, maturity, intelligence, education, experience, ability to comprehend, and the presence of the child's parents, legal guardian, legal custodian or guardian ad litem. The court shall inquire to determine if the child has met privately with the attorney, and if the child understands the charges and proceedings, including the possible disposition, any collateral consequences, and any additional facts essential to a broad understanding of the case.*
>
> ***Subd. 2. Court Approval/Disapproval****. If the court accepts the child's waiver, it shall state on the record the findings and conclusions that form the basis for its decision and shall appoint stand-by counsel . . . ."*

Rule 25.05. Certificate of Representation

Given the expedited nature of child protection proceedings, it is critical that one attorney represent a client throughout the proceedings. The intent of Rule 25.05 is to preclude

withdrawal or substitution of counsel without compelling reasons. Counsel are required to file a notice of representation. This is intended to give the court administrator information needed to serve notices and orders.

The Committee considered but rejected a proposal to include language that the county attorney must file a notice of intent to participate in private petitions. The Committee considered including language requiring the county attorney to file a certificate of representation identifying their client. The intent would have been to make the county attorney clarify whether the county is appearing on behalf of the local social service agency, the public interest, or both. The Committee decided not to include this language.

PROPOSED RULE 26

RULE 26 ~~41~~. GUARDIAN AD LITEM

Rule 26.01 ~~41.01~~. Mandatory Appointment for Child

Subdivision 1. Generally. ~~The court shall appoint a guardian ad litem, except as provided by Rule 41.02, to protect the interest of the child when it appears, at any stage of the proceedings, that the child is without parent or guardian, or that considered in the context of the matter, the parent or guardian is unavailable, incompetent, indifferent to, hostile to, or has interests in conflict with the child's interests.~~ The court shall appoint a guardian ad litem to advocate for the best interests of each child who is the subject of a juvenile protection matter, except in cases where the sole allegation is that a habitual truant or a runaway. The court may appoint a person to serve as guardian ad litem for more than one child in a proceeding. The appointment of a guardian ad litem shall be made pursuant to Rule 904 of the Rules of Guardian ad Litem Procedure. The guardian ad litem shall carry out the responsibilities set forth in Rule 908 of the Rules of Guardian ad Litem Procedure. The guardian ad litem shall have the rights and powers set forth in Rule 909 of the Rules of Guardian Ad Litem Procedure.

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

Advisory Committee Comment

The federal Child Abuse Prevention and Treatment Act (CAPTA), 42 U.S.C. § 5106a(b)(2)(A)(ix), mandates that for a state to qualify to receive federal grants for child protection prevention and treatment services, the state must have in place:

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

Minnesota has complied with CAPTA by enacting the following language at Minnesota Statutes § 260.155, subd. 4(a):

> The court shall appoint a guardian ad litem to protect the interests of the minor . . . in every proceeding alleging a child's need for protection or services under § 260.015, subd. 2a.

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

Rule 26.02. Discretionary Appointment in Habitual Truant and Runaway Matters

Upon a finding that it is in the best interest of the child to do so, the court may, sua sponte or upon a written or on-the-record request of a party or participant, appoint a guardian ad litem to advocate for the best interest of the child where the sole statutory ground alleged in the petition is that the child is a habitual truant or a runaway.

Rule 26.03. Discretionary Appointment for Child's Parent or Legal Custodian

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

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

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

Upon request of the guardian ad litem for the parent or legal custodian, the court shall appoint counsel for the guardian ad litem at state expense. Counsel for the guardian ad litem shall not be counsel for the child or for any other party or participant. Appointment of a guardian ad litem for a parent shall not result in discharge of counsel for the parent.

~~**Rule 41.02. Determination Not to Appoint Guardian Ad Litem.**~~

~~The court may determine not to appoint a guardian ad litem when:~~

~~(a) counsel has been appointed or is otherwise retained for the child, and~~

~~(b) the court finds that the interests of the child are otherwise protected.~~

~~**Rule 41.03. Standards**~~

~~In determining whether or not to appoint a guardian ad litem pursuant to Rule 41.02 the court should examine the totality of the circumstances. These circumstances include but are not limited to: the presence and competence of the child's parent or guardian, considered in the context of the matter, the parent or guardian's hostility to, indifference to or interests in conflict with the interests of the child, the child's age, maturity, intelligence, education, experience and ability to comprehend.~~

~~**Rule 41.04. Findings**~~

~~A determination of the court not to appoint a guardian ad litem when required by Rule 41.01 must be based on a finding on the record or in writing which states the facts on which the decision was made.~~

~~**Rule 41.05. Discretionary Appointment of Guardian Ad Litem.**~~

~~In any other matter the court may appoint a guardian ad litem on its own motion or on the motion of the child's counsel or the county attorney when the court determines the appointment is in the interests of the child.~~

~~**Rule 41.06. Guardian Ad Litem Not Counsel for Child.**~~

~~When the court appoints a guardian ad litem, the guardian ad litem shall not be the child's counsel.~~

~~**Rule 41.07. Guardian for More than One Child.**~~

~~A person may be a guardian ad litem for more than one child in a hearing.~~

~~**Rule 41.08. Guardian Ad Litem for Parent**~~

~~The court shall appoint a guardian ad litem for the parent of a child who is the subject of a juvenile protection matter when:~~

~~(a) the parent is incompetent so as to be unable to assist counsel in the matter or understand the nature of the proceedings, or~~

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

DELIBERATIONS REGARDING RULE 26

Rule 26.01. Mandatory Appointment of Guardian Ad Litem for Child

The Committee recommends adoption of this Rule requiring the appointment of a guardian ad litem for every child alleged to be in need of protection or services pursuant to Minnesota Statute § 260.015, subd. 2a, except those where the sole allegation is that the child is a runaway or a habitual truant. The proposed rule complies with federal law.

The federal Child Abuse Prevention and Treatment Act (CAPTA), 42 U.S.C. § 5106a(b)(2)(A)(ix), mandates that for a state to qualify to receive federal grants for child protection prevention and treatment services, the state must have in place:

> *provisions and procedures requiring that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who may be an attorney or a court appointed special advocate or both, shall be appointed to represent the child in such proceedings*

(I) to obtain first-hand, a clear understanding of the situation and needs of the child; and

(II) to make recommendations to the court concerning the best interests of the child.

Minnesota has complied with CAPTA by enacting the following language at Minnesota Statutes § 260.155, subd. 4(a): "The court shall appoint a guardian ad litem to protect the interests of the minor . . . in every proceeding alleging a child's need for protection or services under section 260.015."

The types of cases to which guardians ad litem must be appointed are much more expansive under Minnesota's statutes than under Federal statutes. Minnesota's statutes require the appointment of a guardian ad litem not only in cases where the act of an adult places the child in need of protection or services, but also in cases where the child's act or status places the child in need of protection or services. The Committee determined that the rights of children who are petitioned solely on the basis that they have run away, are habitually truant, have been found by the court to have committed domestic abuse perpetrated by a minor, have committed a delinquent act before becoming ten years old, have been found not guilty by reason of mental illness or mental deficiency, or have been found to have engaged in prostitution are adequately protected by an attorney. In fact, an attorney would represent the legal interests of the child better than a guardian ad litem. The court would still have discretion to appoint a guardian ad litem under Rule 26.02.

The Committee recommends that the Legislature amend the statutes to limit the mandatory appointment of guardians ad litem to comply with federal statues.

Rule 26.03. Discretionary Appointment for Child or Child's Parent or Legal Custodian.
Neither federal nor state law mandates the appointment of a guardian ad litem for a parent of a child who is the subject of a juvenile protection matter. The current rule mandates that the court appoint a guardian ad litem for a parent if certain conditions are met. The Committee recommends that the rule be amended to make appointment discretionary.

The language previously set forth in Rule 41.03 is deleted because the standards and factors for selecting a guardian ad litem for a child are now set forth in Rule 904 of the Rules of Guardian Ad Litem Procedure.

PART II: COMMITTEE DELIBERATIONS

The language previously set forth in Rule 41.04 is deleted because under Minnesota Statutes § 260.155, subd. 4a., the court must appoint a guardian ad litem for every child. There is no discretion regarding the appointment of a guardian ad litem for a child.

The Committee notes that state law also provides at Minnesota Statutes § 260.155, subd. 4(c), that the court may waive appointment of a guardian ad litem if the child has a lawyer. This provision of state law may be out of compliance with the CAPTA which requires the appointment of a guardian ad litem to make recommendations to the court concerning the best interests of the child. That duty would be at odds with the attorney's ethical duty to advocate for the child's view point. A legislative change may be required to bring this provision into compliance with federal law.

PROPOSED RULE 27

RULE 27 ~~42~~. PRESENCE AT PROCEEDINGS

Rule 27.01 ~~42.01~~. Right to Attend Hearing

Any person who is entitled to summons or notice pursuant to ~~under~~ these rules or who is summoned or given notice shall have the right to attend the hearing to which the summons or notice relates.

Advisory Committee Comment

Pursuant to Rule 21, a party has the right to be present in person at any hearing. For a child who is a party, the person with physical custody of the child should generally be responsible for assuring the child's attendance at hearings. When a child is in emergency protective care or protective care, the local social services agency is responsible for ensuring the child's presence in court. If the child is in the custody of the county in out-of-home placement, the social services agency should transport the child to the hearing. If the agency fails to make arrangements for the child to attend the hearing, the child's attorney or guardian ad litem may need to ask for a continuance and for an order requiring the child to be brought to the next hearing.

Rule 27.02 ~~42.02~~. Absence Does not Bar Hearing

The absence from a hearing of a person who has the right to attend shall not prevent the hearing from proceeding provided appropriate notice has been served or the court finds that notice would be ineffectual and that it is in the best interests of the child to proceed without notice.

Rule 27.03 ~~42.03~~. Exclusion of Persons Who Have Right to Attend Hearings

In any hearing the court may temporarily exclude the presence of any person other than counsel or guardian ad litem when it is in the best interest of the child to do so. If a person other than counsel or guardian ad litem~~, after warning,~~ engages in conduct which disrupts the court, the person may be excluded from the courtroom. The exclusion of the person shall not prevent the court from proceeding with the hearing.

Rule 27.04 ~~42.04~~. Record of Exclusion and Right to Continued Participation

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

DELIBERATIONS REGARDING RULE 27

Rule 27.01. Right to Attend Hearing

When a child entitled to appointment of counsel is in emergency protective care or protective care, the local social services agency is responsible for ensuring the child's presence in court. This is particularly important in counties where counsel for the child is not appointed unless the child comes to court.

Rule 27.04. Record of Exclusion and Right to Continued Participation

The Committee amended from Rule 42.04 to delete the words "after warning". The Committee intended to recognize that there maybe some extreme situations where the court will need to exclude someone without first giving them a warning.

PROPOSED RULE 28

RULE 28 ~~43~~. ~~PRIVACY~~ CLOSED PROCEEDINGS

Rule 28.01 ~~43.01~~. Attendance at Hearings

Only the following may attend hearings:

(a) all parties pursuant to Rule 22; ~~the child, guardian ad litem and counsel for the child; and~~

(b) all participants pursuant to Rule 23; ~~the parent(s), and guardian of the child and their counsel, guardian ad litem and legal custodian of the child, and~~

~~(c) the spouse of the child, and~~

(~~d~~c) the ~~county welfare board and~~ county attorney; ~~and~~

~~(e) the petitioner and petitioner's counsel when the petitioner has the right to participate pursuant to Rule 39.05, and~~

(~~f~~d) persons requested by a party ~~person with the right to participate~~ or by the county attorney who are approved by the court; and

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

~~(h) persons authorized by statute under such conditions as the court may approve.~~

Advisory Committee Comment

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

DELIBERATIONS REGARDING RULE 28

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D. COURSE OF CASE

PROPOSED RULE 29

RULE 29 ~~51~~. EMERGENCY PROTECTIVE CARE ORDER AND NOTICE ~~IMMEDIATE CUSTODY~~

~~**51.01. Order for Immediate Custody**~~

~~**Subdivision 1. Order Upon Probable Cause.** An order for immediate custody of a child may issue if a court finds from the facts set forth separately in writing in or with the petition filed with the court and any supporting affidavits or sworn testimony that there is probable cause to believe that a juvenile protection matter exists and that the child is the subject of that matter and there is probable cause to believe that:~~

~~(a) the child failed to appear after having been personally served with a summons or subpoena, or~~

~~(b) reasonable efforts to personally serve the child have failed, or~~

~~(c) there is a substantial likelihood that the child will fail to respond to a summons, or~~

~~(d) the welfare of the child requires that the child be brought into the custody of the court.~~

~~**Subd. 2. Order Without Probable Cause Petition. A**n order for immediate custody of a child without a finding of probable cause by the court may issue if the child has appeared in regard to a petition and~~

~~(a) the child has left the custody of the court-ordered placement without permission of the court, or~~

~~(b) the child has violated a court order.~~

Rule 29.01. Emergency Protective Care Defined

A child is in "emergency protective care" when:

(a) taken into custody by a peace officer pursuant to Minnesota Statutes § 260.135, subd. 5, § 260.145 or § 260.165;

(b) the court orders placement of the child pursuant to Minnesota Statutes § 260.172 or § 260.185 before a disposition; or

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

Advisory Committee Comment

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

Rule 29.02 Ex Parte Order for Emergency Protective Care

Subdivision 1. Generally. The court may issue an ex parte order for emergency protective care if it finds from the facts set forth in the petition or any supporting affidavits or sworn testimony that:

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

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

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

(a) there is a prima facie showing that the child has engaged in prostitution as defined in Minnesota Statutes § 260.015, subd. 11; is a habitual truant as defined in Minnesota Statutes § 260.015, subd. 19; or is a runaway as defined in Minnesota Statutes § 260.015, subd. 20; and

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

Rule 29.03 ~~51.02~~. Contents of Order ~~for Immediate Custody~~

An order for emergency protective care ~~immediate custody~~ shall be signed by a judge and shall:

(a) order the child to be ~~brought immediately before the court, or the child to be~~ taken to an appropriate relative, a designated caregiver pursuant to Minnesota Statutes § 257A, or a placement facility designated by the court ~~to be placed pursuant to Minnesota. Statutes. 260.173,~~ pending ~~a~~ an emergency protective care hearing pursuant to Rule 31 ~~52;~~ ~~and~~

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

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

(d) state the reasons why the child is being taken into emergency protective care; ~~custody as set forth in Rule 51.01, and~~

(e) ~~where applicable,~~ state the reasons for any ~~a~~ limitation on the time or location of the execution of the emergency protective care order; and

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

Rule 29.04 ~~51.03~~. Execution of Order ~~for Immediate Custody~~

An order for emergency protective care:

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

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

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

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

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

~~**Subdivision 1. Who May Execute.** The order for immediate custody may only be executed by a peace officer authorized by law to execute a warrant.~~

~~**Subd. 2. How Executed.** The order for immediate custody shall be executed by taking the child into custody.~~

~~**Subd. 3. Where Executed.** The order for immediate custody may be executed at any place in the state except where prohibited by law, unless the judge who issues the order limits the location where the order may be executed.~~

~~**Subd. 4. When Executed.** An order may be executed at any time unless the judge who issues the order limits the time during which the order may be executed.~~

~~**Subd. 5. Possession of Order.** An order for immediate custody need not be in the peace officer's possession at the time the child is taken into custody.~~

~~**Subd. 6. Advisory.** When an order is executed the child, if capable of understanding, and the child's parent(s), guardian and custodian, if present, shall immediately be informed of the existence of the order for immediate custody and as soon as possible of the reasons why the child is being taken into custody.~~

Rule 29.05. Notice

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

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

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

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

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

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

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

Rule 29.06. Enforcement of Order

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

DELIBERATIONS REGARDING RULE 29

Changing the title of this Rule eliminates the delinquency language and more accurately reflects the nature of this proceeding.

Generally

Rule 29 is amended to be consistent with the following statutes:
Minnesota Statutes § 260.135, subd. 5,which provides: "If it appears from the notarized petition or by sworn affidavit that there are reasonable grounds to believe the child is in surroundings or conditions which endanger the child's health, safety or welfare and require that the child's custody be immediately assumed by the court, the court may order, by endorsement upon the summons, that the officer serving the summons shall take the child into immediate custody."

Minnesota Statutes § 260.145 which provides: "If any person personally served with a summons or subpoena fails, without reasonable cause, to appear or bring the child, or if the court has reason to believe the person is avoiding personal service, or any custodial parent or guardian fails, without reasonable cause, to accompany the child to a hearing, the person may be proceeded against for contempt of court or the court may issue a warrant for the person's arrest or both. In any case when it appears to the court that the service will be ineffectual, or that the welfare of the child requires that the child be brought forthwith into the custody of the court, the court may issue a warrant for immediate custody of the child."

Minnesota Statutes § 260.165, subd. 1, which provides: No child may be taken into immediate custody except:

> *(a) With an order issued by the court in accordance with the provisions of section 260.135, subdivision 5, or Laws 1997, chapter 239, article 10, section 10, paragraph (a), clause (3), or 12, paragraph (a), clause (3), or by a warrant issued in accordance with the provisions of section 260.145; or*
> *(b) In accordance with the laws relating to arrests; or*
> *(c) By a peace officer*
> *(1) when a child has run away from a parent, guardian, or custodian, or when the peace officer reasonably believes the child has run away from a parent, guardian, or custodian; or*
> *(2) when a child is found in surroundings or conditions which endanger the child's health or welfare or which such peace officer reasonably believes will endanger the child's health or welfare. If an Indian child is a resident of a reservation or is domiciled on a reservation but temporarily located off the reservation, the taking of the child into custody under this clause shall be consistent with the Indian Child Welfare Act of 1978, United States Code, title 25, section 1922;*
> *(d) By a peace officer or probation or parole officer when it is reasonably believed that the child has violated the terms of probation, parole, or other field supervision; or*

(e) By a peace officer or probation officer under section 260.132, subdivision 4.

Secure Detention Facility.
A child taken into emergency protective care should never be held in a secure detention facility. Minnesota Statutes § 260.173, subd. 3, provides that if a child is detained due to allegations that the child is a runway or a truant, or that the child has violated the terms of probation under which the child has been placed because of such behavior, the child may only be held in a shelter care facility. Minnesota Statutes § 260.015, subd. 17, defines shelter care facility as "a physically unrestricting facility, such as but not limited to, a hospital, a group home or a licensed facility for foster care, used for the temporary care of a child pending court action." In some jurisdictions, children petitioned into court as truants or runaways have been held in secure detention and occasionally in adult facilities. The Committee has been informed that in some jurisdictions there are no other facilities for holding these children pending an appearance in court. Some concern was expressed to the Committee that children who run away should be detained in secure facilities for their own protection. The Committee concluded that the law does not provide for such detention for status offenses. Children who pose a threat to themselves or others can be petitioned into commitment proceedings where their rights are protected by the procedural safeguards.

Rule 29.05. Notice
Former 51.03, subd. 6, provided that when an order is executed the child, if capable of understanding, should be informed of the order for immediate custody. The Committee recommends elimination of the language "if capable of understanding" to make this a "bright line rule."

Rule 29.06. Enforcement of Order
The purpose of Rule 29.06 is to authorize any peace officer in the State of Minnesota to execute an emergency protective care order issued by any juvenile court in Minnesota. Minnesota Statutes § 260.165, subd. 2, provides that "the taking of a child into custody under the provisions of this section shall not be considered an arrest." A legislative change may be necessary to allow these orders to be entered in the state system or the NCIC system so that police officers know that the emergency protective care order is outstanding. This may require just a change in reporting and enforcement software, or it may require that these orders be called warrants.

PROPOSED RULE 30

RULE 30 ~~52~~. PROCEDURES DURING PERIOD OF EMERGENCY PROTECTIVE CARE

~~**Rule 52.01. Generally**~~

~~A child is placed (detained) when~~

~~(a) taken into custody pursuant to Minnesota Statutes §§ 260.135, 260.145 or 260.165, (or)~~

~~(b) the court orders placement of the child pursuant to Minnesota Statutes §§ 260.172 or 260.185 before a disposition, pursuant to Rule 62, and~~

~~(c) the court orders conditions of release, pursuant to Rule 52.02, Subd. 3, before a disposition, pursuant to Rule 62.~~

Rule 30.01 ~~52.02~~. Release from Emergency Protective Care ~~or Continued Placement~~

Subdivision 1. Child Taken Into Emergency Protective Care Pursuant to ~~Custody With~~ Court Order.

(a) **Release Prohibited.** A child taken into emergency protective care ~~custody with~~ pursuant to a court order shall be held for ~~may not be released within~~ seventy-two (72) hours pursuant to the timing provisions set forth in Rule 4 unless the court issues an order authorizing release.

(b) **~~Mandatory~~ Release Required.** A child taken into emergency protective care pursuant to a court order shall not be held in emergency protective care ~~placement~~ for more than seventy-two (72) hours pursuant to the timing provisions set forth in Rule 4 unless ~~a~~ an emergency protective care hearing has commenced pursuant to Rule 31 and the court has ordered continued protective care.

Subd. 2. Child Taken Into Emergency Protective Care ~~Custody~~ Without Court Order ~~– Mandatory Release~~.

(a) **Release Required.** A child taken into emergency protective care without a court order ~~The child~~ shall be released unless an emergency protective care ~~if~~ a hearing pursuant to Rule 31 ~~52.04~~ has ~~not~~ commenced within ~~the time required by statute,~~ seventy-two (72) hours of the time the child was removed from home and the court has ~~not~~ ordered continued protective care ~~placement~~.

(b) **~~Subd. 4.~~ Discretionary Release by Peace Officer or County Attorney.** ~~Except when release is prohibited pursuant to court order or Rule 52.02, subdivision 1(A),~~ When a peace ~~detaining~~ officer has taken a child into emergency protective care without a court order, the peace ~~detaining~~ officer's supervisor or the county attorney may release ~~a~~ the child any time prior to an emergency protective care ~~a placement~~ hearing. The peace ~~detaining~~ officer, the peace ~~detaining~~ officer's supervisor, or the county attorney who releases the child may not place any conditions of release on the child.

Rule 30.02. ~~Subd. 3.~~ Discretionary Release by Court; Custodial Conditions

The court at any time before an emergency protective care ~~an initial~~ hearing may release a child and may: ~~in placement pursuant to Minnesota Statutes § 260.165 and may impose one or more of the following conditions~~:

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

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

Any conditions ~~of release~~ terminate after seventy-two (72) hours unless a hearing has commenced pursuant to Rule 31 and the court has ordered ~~continued placement and~~ continuation of the conditions(s).

Rule 30.03 ~~Subd. 5~~. Release to Custody of Parent or Other Suitable Person

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

Rule 30.04 ~~52.03~~. Reports

Subdivision 1. Report by Peace ~~Detaining~~ Officer. Any report required by Minnesota Statutes § 260.171, subd. 5, shall be filed with the court on or before the first court day following placement of the child and the report shall include at least:

(a) the time the child was taken into emergency protective care; ~~custody, and~~

(b) the time the child was delivered for transportation to the placement facility, ~~and~~

(c) the reasons why the child was taken into emergency protective care ~~custody~~, ~~and~~

(d) the reasons why the child has been placed, ~~and~~

(e) a statement that the child and the child's parent or legal custodian ~~guardian~~ have received the advisory required by Minnesota Statutes § 260.171, subd. 4, or the reasons why the advisory has not been made, and

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

Subd. 2. Report by Supervisor of Placement Facility. Any report required by Minnesota Statutes § 260.171, subd. 6, shall be filed with the court on or before the first court day following placement. The report shall include, at least, acknowledgement of receipt of the child and state the time the child arrived at the placement facility.

DELIBERATIONS REGARDING RULE 30

For purposes of clarity, former Rule 52 entitled "Prehearing Placement (Detention)" was divided into two Rules: Rule 29 dealing with procedures to be followed after the child has been taken into emergency protective care but before a hearing, and Rule 30 dealing with the Emergency Protective Care Hearing itself.

Rule 30.01. Release from Emergency Protective Care

The Committee considered recommending that the county attorney have the authority to impose conditions on release. The Committee decided that would be an inappropriate infringement on the responsibility of the court.

Rule 30.04. Reports

Pursuant to Minnesota Statutes § 260.171, peace officers and supervisors of placement facilities must file reports with the court whenever the police place a child in emergency care. Some courts use the reports, while others do not. By requiring filing of these reports the Legislature may have intended to ensure that the court had information necessary to oversee out-of-home placements and assure children would not languish in foster care or be wrongfully removed from their parent(s). Actually, many children are released from custody before the end of the 72 hour hold and the filed reports become moot. The Committee recommends that the Legislature either clarify with whom these reports should be filed and what purpose they are intended to serve, or eliminate the filing requirement.

PROPOSED RULE 31

RULE 31 ~~52~~. EMERGENCY PROTECTIVE CARE HEARING ~~PREHEARING PLACEMENT (DETENTION)~~

Rule 31.01 ~~52.04~~. Timing ~~Placement Hearing (Detention Hearing)~~

Subdivision 1. Generally. The court shall hold an emergency protective care ~~commence a placement~~ hearing within seventy-two (72) hours of the child being taken into emergency protective care ~~when the child has been taken into and not~~ unless the child is ~~custody and not~~ released pursuant to Rule 30. The purpose of the hearing shall be to determine whether the child shall be returned home or placed in protective care.

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

(a) upon a determination by the court that there is a prima facie showing that the child should be held in emergency protective care pursuant to Rule 30; and

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

Advisory Committee Comment

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

Rule 31.02 ~~52.04, subd. 3~~. Notice of Hearing ~~Information of Hearing to be Provided~~

The court shall inform the county attorney, the child, and the child's counsel, ~~child's~~ guardian ad litem, ~~county attorney, and the~~ parent, ~~guardian,~~ legal custodian, ~~and~~ spouse ~~of the child,~~ and school district of residence as required by Minnesota Statutes § 124A.036, subd. 4, ~~those persons required by Minnesota Statutes §~~ ~~124.2129, subd. 4,~~ of the time and place of the emergency protective care ~~a placement~~ hearing. Failure to inform the child's parent, ~~guardian,~~ legal custodian, school district, or spouse ~~of the child~~ or their non-attendance at the hearing shall not prevent a hearing from being conducted~~, or~~ and shall not invalidate the proceeding or ~~an~~ any order for protective care resulting from the hearing ~~of placement~~.

Rule 31.03. Inspection of Reports

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

Advisory Committee Comment

Rule 31.03 places upon each party the burden of providing to opposing parties all documentation the party intends to introduce at the hearing. The rule is intended to ensure that the parties have the relevant information before the hearing so they are prepared to respond. This rule is not intended to limit discovery allowed by Rule 17.

Rule 31.04. Determination Regarding Notice

During the hearing, the court shall determine whether notice has been provided in compliance with Rule 33 and what further efforts, if any, must be taken to notify all parties and participants as rapidly as possible of the pendency of the matter and the date and time of the next hearing.

Rule 31.05 ~~52.04, subd. 4~~. Advisory ~~Advice of Rights~~

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

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

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

(c) the purpose and scope of the hearing; ~~and~~

(d) the possible consequences of the proceedings;

(~~d~~e) the right of the child and the child's parent or legal custodian to be represented by counsel at the hearing and at every subsequent ~~other~~ hearing and, where applicable, of the right to court-appointed counsel;

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

(g) that failure to appear at future hearings could result in a finding that the petition has been proved and an order adjudicating the child in need of protection or services or terminating parental rights.

Rule 31.06. ~~52.04, subd. 5~~. Evidence

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

~~**Rule 52.04, Subd. 6. Finding Necessary for Continued Placement**~~.

~~A child may be detained after a placement hearing if:~~

~~(a) prior to or during the hearing the court finds that the petition:~~

~~(i) alleges that the child has appeared in court in regard to a petition and the child has left the custody of the court-ordered placement without permission of the court, or the child has violated a court order, or~~

~~(ii) contains probable cause that a juvenile protection matter exists and that the child is the subject of that matter, and~~

~~(b) at the hearing the court finds probable cause that:~~

~~(i) the child or others would be endangered if the child is released, or~~

~~(ii) the child would not appear for a court hearing or would not respond to a summons or notice if the child is released, or~~

~~(iii) the child would not remain in the care or control of the person to whose lawful custody the child is released, or~~

~~(iv) release of the child would immediately endanger the child's health or welfare.~~

~~**Rule 52.05. Release of the Child**~~

~~A child shall be released after a placement hearing if the court does not make the findings pursuant to Rule 52.04, Subd 6(a) and (b).~~

Rule 31.07. Filing and Service of Petition

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

Rule 31.08. Protective Care Determinations

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

Subd. 2. Endangerment. 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:

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

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

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.

Advisory Committee Comment

Rule 31.08 is consistent with Minnesota Statutes § 260.172, subd. 1(c), which provides: Unless there is reason to believe that the child would endanger self or others, not return for a court hearing, run away from the child's parent, guardian, or custodian, or otherwise not remain in the care or control of the person to whose lawful custody the child is released, or that the child's health or welfare would be immediately endangered, the child shall be released to the custody of a parent, guardian, custodian, or other suitable person, subject to reasonable conditions of release including, but not limited to, a requirement that the child undergo a chemical use assessment as provided in section 260.151, subd. 1.

Rule 31.09. Factors

Subdivision 1. Generally. Except in cases described in subdivision 2, or when the parental rights of the parent to a sibling of the child have been terminated involuntarily, or the child is an abandoned infant as defined in Minnesota Statutes § 260.221, subd. 1a(a)(2), at the emergency protective care hearing the court shall require petitioner to present evidence regarding

the following issues:

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

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

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

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

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

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

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

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

Subd. 2. Egregious Harm. The court may determine at the emergency protective care hearing, or at any time prior to adjudication in a child in need of protection or services matter, that reasonable efforts are not required because the facts, if proved, demonstrate that the parent has subjected the child to egregious harm as defined in Minnesota Statutes § 260.015, subd. 29, or the parental rights of the parent to a sibling of the child have been terminated involuntarily, or the child is an abandoned infant as defined in Minnesota Statutes § 260.221, subd. 1a(a)(2).

Rule 31.10 ~~52.06~~. Protective Care Findings and ~~Placement~~ Order

~~**Subdivision 1. Alternatives.** If the court makes the findings, pursuant to Rule 52.04, Subd 6(a) and (b), the court may:~~

~~(a) order the continued placement of the child, or~~

~~(b) release the child and impose conditions pursuant to Rule 52.02, subd. 3.~~

~~**Subd. 2. Content.** The order for continued placement shall be in writing and shall include the findings of fact pursuant to Rule 52.04, Subd. 6 (a) and (b), which support continued placement or conditions of release.~~

At the conclusion of the emergency protective care hearing the court shall issue a written order which shall include findings pursuant to Rules 31.08 and 31.09 and which shall order:

(a) that the child:

(i) continue in protective care;

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

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

(iv) return home with no conditions;

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

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

(d) where the child shall be placed;

(e) terms of visitation pending further proceedings; and

(f) the parent's responsibility for costs of care pursuant to Minnesota Statutes § 260.251.

Advisory Committee Comment

Minnesota Statutes § 260.172, subd. 1(c), provides as follows:

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

In compliance with the statutory mandate of section 260.172, Rules 31.08 and 31.09 require the court to elicit relevant evidence from the petitioner and make findings as to whether the child is in imminent danger, whether the county made reasonable efforts to prevent removal or eliminate the need for removal, and whether there are services the court could order to allow the child to safely return home. Rule 31.10 requires that the court to issue a written order which includes specific findings in support of the order.

Rule 31.11 ~~52.07~~. Protective Care ~~Placement~~ Review

~~**Subdivision 1. Informal Placement Review.**~~

~~**(A) Timing.** An informal placement review must be held every eight (8) days.~~

~~**(B) Change of Status.**~~

~~**(1) Without consen**t. The court by informal review may continue the child in placement without altered circumstances without the consent of the persons with the right to participate, their guardian(s) ad litem, or the county attorney.~~

~~**(2) With Consent.** The court by informal review may continue the child in placement with altered circumstances with the consent of the persons with the right to participate, their guardian(s) ad litem and the county attorney.~~

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

Subd. 2. Release from Protective Care on Consent of Parties and the County Attorney. The court may, with the consent of the parties and the county attorney, order that a child be released from protective care.

Subd. 3 ~~2~~. Formal ~~Placement~~ Review.

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

(b) **On Request of a Party ~~Person with the Right to Participate~~ or the County Attorney.** ~~Counsel for a~~ A party ~~person with the right to participate~~ or the county attorney may request a formal hearing ~~to present new evidence~~ concerning continued ~~placement~~ protective care by filing a motion ~~request~~ with the court. ~~If the court finds a substantial basis for the request t~~The court shall schedule a hearing and ~~notify persons entitled to notice of the time and place of the hearing~~ provide notice pursuant to Rule 33 ~~44~~ if the motion states:

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

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

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

(d) **Findings and Order ~~Finding Necessary for Continued Placement.~~** At the conclusion of the formal review hearing the court shall ~~may continue the child in placement if the court finds probable cause that:~~

~~(i) the child or others would be endangered by the child's actions if the child were released; or~~

~~(ii) the child would not appear for a court hearing or not respond to a summons or notice if released, or~~

~~(iii) the child would not remain in the care or control of the person to whose lawful custody the child is released, or~~

~~would be in surroundings or conditions which endanger the child's health, safety or welfare and require that the child's custody be immediately assumed by the court; or~~

~~(iv) release of the child would immediately endanger the child's health or welfare.~~

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

(ii) continue the child in protective care or release the child with conditions to assure the safety of the child or others if the court finds that the petition states a prima facie case to believe that a child protection matter exists and that the child is the subject of that matter, and

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

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

(iii) modify the conditions of release.

DELIBERATIONS REGARDING RULE 31

Changing the title of the Rule eliminates the delinquency (detention) language and more accurately reflects the nature of this proceeding. Procedures covered by existing Rules 52.02

and 52.03 were moved to new Rule 30 to distinguish procedures that cover the period between the emergency removal of a child and the Emergency Protective Care Hearing.

Rule 31.01. Timing

This rule permits the court to grant a continuance only if the court makes a finding pursuant to Rule 30s. Rule 30 permits the court to order emergency protective care of a child only if there is a prima facie showing that a child is in surroundings or conditions which endanger the child's health, safety or welfare and which require that the child's custody be immediately assumed by the court. The rule recognizes that parties may need time to prepare for the hearing, but assures that a child will not be held unnecessarily during the continuance.

Rule 31.03. Inspection of Reports

This rule places on the parties the burden of providing all other parties with all documentation they intend to introduce at the hearing. It is meant to assure that parties have that information before the hearing so they are prepared to respond. This rule is not intended to limit discovery.

Rule 31.08. Protective Care Determinations – Conditions of Release

Rule 31.08 is added to make the rules consistent with Minnesota Statutes § 260.172, subd. 1(c), which provides:

> *Unless there is reason to believe that the child would endanger self or others, not return for a court hearing, run away from the child's parent, guardian, or custodian, or otherwise not remain in the care or control of the person to whose lawful custody the child is released, or that the child's health or welfare would be immediately endangered, the child shall be released to the custody of a parent, guardian, custodian, or other suitable person, subject to reasonable conditions of release including, but not limited to, a requirement that the child undergo a chemical use assessment as provided in section 260.151, subdivision 1.*

The Rule distinguishes between conditions imposed to assure the child's safety and "reasonable conditions of release" referred to in the statute. The Committee determined that it would be a violation of due process for the court to impose conditions aimed at correcting the behavior alleged in the petition unless there had been a finding of endangerment pursuant to Rule 31.08. After such a finding, the court may impose conditions to assure the child's safety in the parent's home. The conditions would be aimed at preventing a recurrence of the behavior described in the petition.

Pursuant to Minnesota Statutes § 260.172, subd. 1(c), reasonable conditions of release may be imposed even though there has been no finding of endangerment. The Committee agreed that without a finding of endangerment these "reasonable conditions" could not be aimed at correcting the conditions alleged in the petition. The only example referred to in the statute is a requirement that the child undergo a chemical use assessment. Other examples discussed by the committee included conditions that the child attend school regularly, that the child not run away, and that the child and parent return to court for hearings.

Rule 31.10. Protective Care Findings and Order

Minnesota law requires the court to make findings as to whether the child is in imminent danger,

whether the county made reasonable efforts to prevent removal or eliminate the need for removal, and whether there are services the court could order to allow the child to safely return home. Pursuant to Minnesota Statutes § 260.172, subd. 1(c):

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

If the court finds the social services agency's preventive or reunification efforts have not been reasonable but further preventive or reunification efforts could not permit the child to safely remain at home, the court may nevertheless authorize or continue the removal of the child.

This rule requires that the court elicit relevant evidence from the petitioner and issue a written order which includes specific findings in support of the order.

Rule 31.11. Protective Care Review

Minnesota Statutes § 260.172 provides that if a child remains in detention the court must informally review the case every eight days to determine whether detention should continue. The proposed rule eliminates the automatic eight-day review and provides that parties or the county attorney may make a motion for review of protective care if there is new evidence or a change in circumstances.

PROPOSED RULE 32

RULE 32. METHODS OF FILING AND SERVICE

Rule 32.01. Filing by Facsimile Transmission

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

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

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

(b) the original signed document; and

(c) the applicable filing fee, if any.

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

Rule 32.02. Types of Service

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

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

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

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

Rule 32.03. Service by Facsimile Transmission

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

Rule 32.04. Service Upon Counsel; Social Services Agency

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

Rule 32.05. Service of Subpoena

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

Rule 32.06. Completion of Service

Service by mail is complete three (3) days after mailing to the last known address of the person to be served. Service by facsimile is complete upon completion of the facsimile transmission. Personal service or service by facsimile which is accomplished after 4:30 p.m. local time is considered completed the following day.

Rule 32.07. Proof of Service

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

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

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

DELIBERATIONS REGARDING RULE 32

Rule 5.02 of the Rules of Civil Procedure expressly provides for service by facsimile. The Committee agrees with the reasoning of the of the Civil Rules Committee and recommends adoption of a provision for service by facsimile in these Rules. As the Civil Rules Committee commented, service by facsimile has become widely accepted and is used in Minnesota either by agreement or presumption that it is acceptable under the Rules or at least has not been objected to by the parties. The Committee believes an express authorization for service by facsimile is appropriate and preferable to the existing silence on the subject.

The committee discussed concerns about the reliability of facsimile transmission. If the operator makes a mistake, for instance feeding the document into the machine upside down, the document might not be fully transmitted. To prevent such problems, the Committee decided that service may be made by facsimile only if the parties agree on that method of service. The agreement need not be in writing.

Service by facsimile is complete when the facsimile transmission is complete -- that is, when the

sender receives a confirmation copy. Since service by facsimile is only permitted when the parties agree, the recipient will be expecting to receive the papers and will know they must contact the sender if there is a problem with the transmission.

Filing is complete when a document is received by the court. The party bears the risk of a transmission error.

PROPOSED RULE 33

RULE 33 44. SUMMONS AND NOTICE

~~Rule 44.01. Notice, Summons, Court Orders~~

~~Subdivision 1. Notice.~~ ~~A notice is a document issued by the court which provides the information required by Rule 44.03.~~

~~Subd. 2. Summons.~~ ~~A summons is a document issued by the court which provides the information required by Rule 44.03 and orders the presence in court at a stated time and place of either:~~

~~(a) the person to whom it is directed, or~~

~~(b) the person to whom it is directed and others as set forth in the summons.~~

~~Subd. 3. Court Orders.~~ ~~An oral order on the record directed to person(s) in court which order either orally or with written supplementation contains the information required by Rule 44.03 may provide notice and compel the presence of the person(s) at a stated time and place.~~

~~Rule 44.02. Procedure~~

~~Subdivision 1. Generally.~~ ~~Summons or notice may be served by mail or by personal service.~~

~~Subd. 2. Discretionary Service~~. ~~At any time the court may require the service of summons or notice to be by personal service.~~

~~At any hearing the court may provide notice to those present of a future hearing by a court order pursuant to Rule 44.02, Subd. 3.~~

~~Except for a child who has reached twelve (12) years of age, a person properly served under these rules who does not attend the hearing for which notice was given or who was not served pursuant to Rule 44.02, Subd. 3. need not be served notice of future hearings in the matter unless that person requests notice in writing or on the record. However, that person may be served at the court's discretion.~~

~~Subd. 3. Minimum Required Initial Service.~~

~~(A) Child and Person(s) with Custody or Control~~. ~~The court shall issue and cause a summons to be served by personal service to the person(s) with custody or control of the child and to the child who has reached twelve (12) years of age.~~

(**~~B) Child's Counsel, County Attorney Parent, Guardian, Custodian and Spouse and Their Counsel.~~** ~~The court, unless it finds that notice would be ineffectual and it would be in the interest of the child to proceed without notice, shall issue and cause notice to be served to the persons with the right to participate, their counsel and guardian ad litem, and the child's custodian not served pursuant to Rule 44.02, Subd. 3(A), the child's spouse and the county attorney.~~

~~Subd. 4. Execution of Personal Service~~. ~~The summons or notice by personal service shall be served by any person authorized to serve process pursuant to Minnesota Statutes §~~

260.141, subd. 2, and Rule 4.02 of the Minnesota Rules of Civil Procedure.

Subd. 5. Place of Service. The summons or notice may be served at any place within the state except where prohibited by law. If personal service cannot be made within the state a copy of the summons or notice may be personally served on a person to whom it is directed outside the state.

Subd. 6. Manner of Service.

(A) Personal Service. The summons or notice shall be served on the person to whom it is directed by delivering a copy to that person personally or by leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion residing therein.

(B) Service by Mail. Initial service by mail to satisfy Rule 44.02, Subd. 3(B) shall be by certified mail to the last known address. All other service by mail shall be by ordinary mail to the last known address unless certified mail to the last known address is ordered by the court.

Subd. 7. Timing.

(A) Juvenile Protection Matters Except Termination of Parental Rights Matters. summons or notice by personal service and summons or notice by mail shall be served on the person to whom it is directed sufficiently in advance of the hearing to which it relates to afford the person a reasonable opportunity to prepare for the hearing. At the request of counsel the hearing shall not be held at the scheduled time if the summons or notice has been served less than three (3) days before the hearing.

If personal service is made outside the state, it shall be made at least five (5) days before the date fixed for the hearing to which the summons or notice relates.

If service is made by mail a copy of the summons or notice shall be sent at least five (5) days before the time of the hearing or fifteen (15) days before the hearing if mailed to addresses outside the state.

(B) Termination of Parental Rights Matters. Summons or notice by personal service or mail shall be made at least ten (10) days before the day of the hearing.

In addition to the requirements of statute and these rules, initial service by certified mail for a hearing for termination of parental rights shall also require publication as provided by Minnesota Statutes § 645.11 for three (3) weeks before the hearing with the last publication being at least ten (10) days before the day of the hearing.

~~**Subd. 8. Proof of Service.**~~

~~**(A) Personal Service.** On or before the date set for appearance, the person who served a summons or notice by personal service shall file a written statement with the court showing:~~

~~(i) that the summons or notice was served, and~~

~~(ii) the person on whom the summons or notice was served, and~~

~~(iii) the date and place of service.~~

~~**(B) Service by Mail.** On or before the date set for appearance, the person who served a summons or notice by mail shall file a written statement with the court showing:~~

~~(i) the name of the person to whom the summons or notice was mailed, and~~

~~(ii) the date the summons or notice was mailed, and~~

~~(iii) whether the summons or notice was sent by certified mail.~~

~~**Rule 44.03 Content of Summons or Notice**~~

~~Any summons or notice shall contain or have attached:~~

~~(a) a copy of the petition, court order, motion, affidavit or other legal documents, not previously provided, necessary to provide notice pursuant to Rule 44.02, and~~

~~(b) a statement of the time and place of the hearing, and~~

~~(c) a statement describing the purpose of the hearing and the possible consequence of the hearing that custody of the child maybe removed from the parent or legal custodian and placed with another, and~~

~~(d) a statement explaining the right to counsel, and~~

~~(e) a statement that:~~

~~(i) even with failure to appear in response to the notice or summons the hearing may still be conducted and appropriate relief granted on the petition, and~~

~~(ii) further information concerning the date and place of subsequent hearings, if any, may be obtained from the court by a request in writing, and~~

~~(f) such other matters as the court may direct.~~

~~**Rule 44.04. Waiver**~~

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

~~However, a waiver of notice in a termination of parental rights matter pursuant to Minnesota Statutes § 260.231, subd. 3, by a parent requires written concurrence by the parent's guardian ad litem if the parent is a minor or incompetent.~~

Rule 33.01. Commencement

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

Rule 33.02. Summons

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

Subd. 2. Upon Whom.

(a) **Generally.** The court shall serve a summons upon each party, the person with physical custody of the child, and any other person whose presence the court deems necessary to a determination concerning the best interests of the child.

(b) **Termination of Parental Rights Matters.** In addition to the requirements of subdivision 2(a), in any termination of parental rights matter a copy of the petition shall be served with the summons and shall be served upon the county attorney, any guardian ad litem for the child's legal custodian, the guardian ad litem for the child, and any attorney representing a party in an ongoing child in need of protection or services proceeding involving the subject child.

Subd. 3. Service

(a) **Personal Service Generally Required.** The summons shall be personally served in all juvenile protection matters unless the court orders service by publication pursuant to Rule 32.02, subd. 3.

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

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

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

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

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

Subd. 4. Content.

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

(1) a copy of the petition, court order, motion, affidavit or other legal documents not previously provided;

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

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

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

(5) a statement explaining the right to counsel and to appointment of counsel at state expense pursuant to Rule 25.

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

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

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

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

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

Subd. 5. Timing of Service.

(a) **Generally.** The summons shall be served either at or before the emergency protective care hearing held pursuant to Rule 31, or at least three (3) days prior to the admit/deny hearing, whichever is earlier. At the request of a party, the hearing shall not be held at the scheduled time if the summons has been served less than three (3) days before the hearing. If service is made outside the state or by publication, the summons shall be personally served, mailed, or last published at least twenty (20) days before the hearing.

(b) **Termination of Parental Rights Matters and Permanent Placement Matters.** In any termination of parental rights matter or permanent placement matter the summons shall be served upon all parties in a manner that will allow for completion of service at least ten (10) days prior to the date set for the admit/deny hearing. In cases where publication under Minnesota Statutes § 645.11 is required, published notice shall be made for three (3) weeks with the last publication at least ten (10) days before the date of the hearing.

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

Advisory Committee Comment

Rule 33.02 specifies the procedure for summoning a party to his or her first appearance in a case. Rule 33.03 specifies the procedure for providing initial notice to a participant.

While failure to notify a noncustodial parent does not create a jurisdictional defect, the best practice is to invite that parent to participate in the proceedings as failure to do so may create substantial barriers to permanency.

Rule 33.03. Notice of Hearing

Subdivision 1. Definition. A notice is a document issued by the court notifying the person to whom it is addressed of the specific time and place of a hearing. Failure to notify a participant of the proceedings is not a jurisdictional defect.

Subd. 2. Upon Whom. The court shall serve notice upon all participants identified in

Rule 22.

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

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

(b) describing the purpose of the hearing;

(c) explaining the right to counsel pursuant to Rule 25;

(d) explaining intervention as of right and permissive intervention pursuant to Rule 23;

(e) that if the person fails to appear at the hearing the court may still conduct the hearing and grant appropriate relief; and

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

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

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

Advisory Committee Comment

Rule 33.02 specifies the procedure for summoning a party to his or her first appearance in a case. Rule 33.03 specifies the procedure for providing initial notice to a participant.

While failure to notify a noncustodial parent does not create a jurisdictional defect, the best practice is to invite that parent to participate in the proceedings as failure to do so may create substantial barriers to permanency.

Rule 33.04. Orders on the Record

An oral order stated on the record directed to the parties which either separately or with written supplementation contains the information required by this rule is sufficient to provide notice and compel the presence of the parties at a stated time and place. Such an order shall be reduced to writing pursuant to Rule 10.

Rule 33.05. Indian Child

In any juvenile protection proceeding where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of the Indian child shall notify the parent or Indian custodian and the Indian child's tribe of the pending proceedings and of their right of intervention. 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 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.

Advisory Committee Comment

This rule specifies the procedure for summoning a party to their first appearance in a case and providing initial notice to a participant.

While failure to notify a noncustodial parent does not create a jurisdictional defect, the best practice is to invite that parent to participate in the proceedings as failure to do so may create substantial barriers to permanency.

DELIBERATIONS REGARDING RULE 33

Rule 33.01. Commencement of a Proceeding

What triggers the proceedings in juvenile protection matters -- the filing or the service of the petition? In these specialized cases, the proceeding should be triggered by the filing of the petition. The court controls the case and the calendar and the court administrator is responsible for much of the service. Furthermore, all of the parties are bound by the legislatively mandated permanency deadlines. To assure a time certain, the commencement date must be the date of filing.

Service of Petition.

The Committee discussed who should be responsible for service of the petition and subsequent orders and notices. That determination has cost implications. These rules place responsibility for service upon court administration. The Committee was concerned about the results of failure to serve the papers in a timely fashion. The Committee considered mandating that service be made within five days of filing, but decided that would be futile without a method of enforcement. Practically speaking, social workers inform the parents of the scheduled first hearing in child protection cases, and if the parents fail to appear, the court schedules a hearing and directs service. In private petitions, the court is required to set a hearing and serve parties with notice of that petition.

Rule 33.02. Summons.

Minnesota Statutes § 260.135 provides that the person with custody or control of the child must be summoned to appear with the child. The current rule provides that a person who fails to attend a hearing after being properly notified need not be notified of future hearings unless that person requests notice. The proposed Rule eliminates that provision. Under the proposed Rule, parties would have to be notified of each hearing.

Rule 33.03. Notice

While failure to notify a noncustodial parent does not create a jurisdictional defect, the best practice is to invite that parent to participate in the proceedings as failure to do so may create substantial barriers to permanency.

PROPOSED RULE 34

RULE 34 ~~53~~. PETITION

Rule ~~53.01~~. ~~Procedure~~

~~**Subdivision 1. Drafting and Filing.** All petitions shall be drafted and filed under the supervision of the county attorney unless Minnesota Statute or the court by rule or order permits counsel, other than the county attorney, to draft and file a petition with the court.~~

~~**Subd. 2. Verification.** The petition shall be verified by a person having knowledge of the facts or may be verified on information and belief.~~

Rule 34.01. Drafting and Filing

Subdivision 1. Generally. A petition may be drafted and filed by the county attorney or any responsible person.

Subd. 2. Habitual Truant and Runaway Matters. A matter based solely on grounds that a child is a habitual truant or a runaway may be initiated by citation issued by a peace officer or school attendance officer. A citation shall contain:

(a) the name, address, date of birth, and race of the child;

(b) the name and address of the parent or legal custodian of the child;

(c) the offense alleged and a reference to the statute which is the basis for the charge; and

(d) the time and place the alleged offense was committed. In the event the child is alleged to be a runaway, the place where the offense was committed may be stated in the notice as either the child's parent's residence or lawful placement or where the child was found by the officer. In the event the child is alleged to be a habitual truant, the place where the offense was committed may be stated as the school or the place where the child was found by the officer.

Subd. 3. Termination of Parental Rights Matters.

(a) **Generally.** Any termination of parental rights petition shall be filed in the child in need of protection or services file, if one exists.

(b) **Egregious Harm or Abandonment of an Infant.** The county attorney shall file a termination of parental rights petition within thirty (30) days of a child's placement in out-of-home care if the child:

(i) has been subjected to egregious harm as defined in Minnesota Statutes § 260.015, subd. 29;

(ii) is the sibling of another child who was subjected to egregious harm by the parent; or

(iii) is an abandoned infant as defined in Minnesota Statutes § 260.221, subd. 1a(a)(2).

The county attorney need not file a termination of parental rights petition if the county attorney determines and files with the court an affidavit that a transfer of permanent legal and physical custody to a relative is in the best interests of the child or there is a compelling reason documented by the local social services agency that filing a termination of parental rights petition is not in the best interests of the child.

Subd. 4. Permanent Placement Matters.

(a) **Generally.** Any permanent placement petition shall be filed in the child in need of protection or services file, if one exists.

(b) **Filing by Whom.** The county attorney shall file a permanent placement petition in juvenile court to determine the permanent placement of a child. Any party may also file a petition to establish the basis for a permanent placement order. A party, including a guardian ad litem for the child, shall file a permanent placement petition if the party disagrees with the permanent placement determination set forth in the petitions filed by other parties.

Advisory Committee Comment

If a child in need of protection or services matter is pending at the time a termination of parental rights matter is filed regarding the same child, the termination petition should be filed in the same file as the child in need of protection or services matter.

Rule 34.02 ~~53.02~~. Content

Subdivision 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 ~~would establish~~, if proven, would support the relief requested ~~that there is a need for protection or services for the child named~~ in the petition; ~~and~~

(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; ~~the name, date of birth, residence and post office address of the child; and~~

(c) the names, race, date of birth, residence, and post office addresses of the child's parents when known; ~~and~~

(d) the name, residence, and post office address of the child's legal custodian ~~guardian if there is one, of~~ the person having custody or control of the child, or ~~of~~ the nearest known relative if no parent or legal custodian ~~guardian~~ can be found; ~~and~~

(e) the name, residence and post office address of the spouse of the child; ~~and~~

(f) ~~a citation of the subdivision(s) of~~ the statutory grounds on which the petition is based, together with a recitation of the relevant portion of the subdivision(s);

(g) a statement regarding the applicability of the Indian Child Welfare Act; and

(h) the names and addresses of the participants identified in Rule 22.

Subdivision 2. Child in Need of Protection or Services Matters.

(a) **Petitions Drafted and Filed by County Attorney.** A child in need of protection or services matter is defined as set forth in Minnesota Statutes § 260.015, subd. 2a. All child in need of protection or services petitions shall be drafted and filed under the supervision of the county attorney except as provided in Minnesota Statutes § 260.131, subd. 1, and subdivision 2(b) of this rule.

(b) **Petitions Drafted and Filed By Others.**

(1) **Petition Form**. A child in need of protection or services petition filed by an individual who is not a county attorney or an agent of the commissioner of human services shall be filed on a form developed by the state court administrator. Copies of the form shall be available from the court administrator in each county.

(2) **Additional Content Requirements for Petitions Not Filed by County Attorney.** In addition to the content requirements set forth in subdivision 1, a petition filed by

an individual who is not a county attorney or an agent of the commissioner of human services shall contain:

(i) a statement that the petitioner has reported the circumstances underlying the petition to the local social services agency and that protection or services were not provided to the child;

(ii) a statement, including court file numbers where possible, of pending juvenile or family court proceedings and prior or present juvenile or family court orders relating to the child; and

(iii) a statement regarding the relationship of the petitioner to the child and to any other parties.

(3) **Review by Court Administrator.** Any petition filed by an individual who is not a county attorney or an agent of the commissioner of human services shall be reviewed by the court administrator before it is filed to determine whether it is complete. The court administrator may reject the petition as incomplete if it does not indicate that the petitioner has contacted the local social services agency.

(4) **Court Review.** Within three (3) days of the date a petition is filed by a person who is not a county attorney or an agent of the commissioner of human services, the court shall review the petition. If the court determines that the petition and attachments establish a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter, the court shall set the matter for an admit/deny hearing pursuant to Rule 35 and shall direct notice pursuant to Rule 33. The court shall not allow a petition to proceed if it appears that the sole purpose of the petition is to modify custody between the parents or if it fails to set forth the information required in subdivisions 1 and 2(b) of this rule.

(c) **Petition Based Upon Prima Facie Case.**

(1) **When Required.** In addition to the content requirements of subdivisions 1 and 2(b), a petition establishing a prima facie case shall be filed with the court:

(i) before the court may issue an ex parte order for emergency protective care pursuant to Rule 29.02; or

(ii) before an emergency protective care hearing is held pursuant to Rule 31 for a child taken into emergency protective care without a court order.

(2) **Manner.** The facts establishing a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter may be set forth in writing in or with the petition, or in supporting affidavits, and may be supplemented by sworn testimony of witnesses taken before the court. If such testimony is taken, a note stating this fact shall be made by the court on the petition. The testimony shall be recorded pursuant to Rule 10.

Subd. 3. Termination of Parental Rights Matters.

(a) **Generally.** A termination of parental rights matter shall be entitled "Petition to Terminate Parental Rights" and shall conform to the requirements of Minnesota Statutes § 260.131.

(b) **Petitions Seeking Alternative Permanent Placement Relief.** In addition to the content requirements set forth in subdivision 1, any termination of parental rights petition may seek alternative permanent placement relief, including transfer of permanent legal and physical custody to a relative or placement of the child in long-term foster care. A petition seeking alternative permanent placement relief shall identify which permanent placement option the petitioner believes is in the best interests of the child. A petition may seek separate permanent placement relief for each child named as a subject of the petition as long as the petition identifies which option(s) is sought for each child and why that option is in the best interests of the child. In answering a petition that seeks alternative permanent placement relief, a party shall identify on the record the permanent placement option the party believes is in the best interests of the child.

Subd. 4. Permanent Placement Matters.

(a) **Generally.** Every petition in a permanent placement matter, or a sworn affidavit accompanying such petition, shall contain a title denoting the permanency relief sought:

(1) A transfer of permanent legal and physical custody matter shall be entitled "Juvenile Protection Petition to Transfer Permanent Legal and Physical Custody" and shall conform to the requirements of Minnesota Statutes § 518.156 or § 257.0215 and, in cases where the local social services agency is the petitioner, the petition shall identify:

(i) the local social services agency as petitioner; and

(ii) the proposed relative custodian as co-petitioner when the local social services agency petitions on behalf of the proposed relative custodian.

(2) A request for long-term foster care shall be entitled "Juvenile Protection Petition for Long-term Foster Care."

(3) A request for foster care for a specified period of time for a child alleged to be a habitual truant, a runaway, incompetent to proceed, or a delinquent under age 10 shall be entitled "Juvenile Protection Petition for Foster Care for a Specific Period of Time."

(b) **Petitions Seeking Alternative Permanent Placement Relief.** Any permanent placement petition may seek alternative permanent placement relief, including termination of parental rights, transfer of permanent legal and physical custody to a relative, or placement of the child in long-term foster care. A petition seeking alternative permanent placement relief shall identify which permanent placement option the petitioner believes is in the best interests of the child. A petition may seek separate permanent placement relief for each child named as a subject of the petition as long as the petition identifies which option(s) is sought for each child and why that option is in the best interests of the child. In answering a petition that seeks alternative permanent placement relief, a party shall identify on the record the permanent placement option the party believes is in the best interests of the child.

Subd. 5. Out of State Party. If a party resides out of state, or if there is likelihood of interstate litigation, the petition or an attached affidavit shall include a statement regarding the whereabouts of the party and any other information required by the Uniform Child Custody Jurisdiction Act, Minnesota Statutes § 518A.09.

Subd. 6. Disclosure of Address – Endangerment. If there is reason to believe that an individual may be endangered by disclosure of an address required to be provided pursuant to this subdivision, that address may be provided to the court in a separate informational statement and shall not be accessible to the public or to the parties. Upon notice and motion, the court may disclose the address as it deems appropriate.

~~**Rule 53.03. Petition with Probable Cause**~~

~~**Subdivision 1. When Required.** In addition to the content requirements of Rule 53.02, a petition with probable cause shall be filed with the court:~~

~~(a) before the court may issue an order pursuant to Rule 51.01, subd. 1, or~~

~~(b) before a placement hearing is held for a child taken into custody without an order.~~

~~**Subd. 2. In or With Petition.** The facts establishing probable cause to believe that a juvenile protection matter exists and that the child is the subject of that matter may be set forth in writing in or with the petition, or in supporting affidavits, and may be supplemented by sworn testimony of witnesses taken before the court. If such testimony is taken, a note so stating shall be made of this fact on the petition by the court. The testimony shall be recorded by a reporter or recording instrument and shall be transcribed and filed.~~

Rule 34.03. Verification

A petition shall be verified by a person having knowledge of the facts and may be verified on information and belief.

Rule 34.04 ~~53.04~~. Amendment

Subdivision 1. Prior to Trial. The petition may be amended at any time prior to the commencement of the trial, including, in a child in need of protection or services matter, adding a child as the subject matter of the petition. The petitioner shall provide notice of the amendment to all parties and participants. When the petition is amended, the court shall grant all other parties sufficient time to respond to the amendment.

Subd. 2. After Trial Begins. The petition may be amended after the trial has commenced if:

(a) approved by the court;

(b) the amendment does not prejudice a party; and

(c) all parties are given sufficient time to respond to the amendment.

Upon receipt of approval from the court, the petitioner shall provide notice of the amendment to all parties and participants.

~~A juvenile protection petition may be amended by order of the court at any time.~~

~~Additional facts consistent with the allegations of the petition may be added to the petition at any time. However, facts consistent with the allegations of the petition which occur after the filing of the petition need not be added to the petition in order to be proved at trial.~~

~~Amendments shall be freely permitted in the interest of justice and the welfare of the child.~~

~~A juvenile protection petition may not be amended to a petition alleging a non-juvenile protection matter.~~

~~If the court orders amendment of the petition it shall grant all persons who have the right to participate such additional time to prepare for further proceedings in the matter as may be required to ensure a full and fair hearing.~~

Rule 34.05 ~~53.05~~. Timing

~~If a child is taken into custody and is placed out of the child's home a petition must be filed prior to the time a placement hearing must be commenced pursuant to Minnesota Statutes § 260.172.~~ If a child is in emergency protective care pursuant to Rule 29, the petition shall be filed at or prior to the time of the emergency protective care hearing held pursuant to Rule 31.

~~Rule 53.06. Determination to Proceed on Petition~~

~~Upon the filing of a petition the court shall promptly fix a time for a first appearance on the petition and issue notice of the hearing pursuant to Rule 44.~~

Advisory Committee Comment

Minnesota Statutes § 260.132 provides that a peace officer or school attendance officer may issue a notice to a child to appear in court and file the notice with the juvenile court.

DELIBERATIONS REGARDING RULE 34

Rule 34.01. Petitions Filed by County Attorney

Existing Rule 53.01 has been separated into two sections to distinguish between petitions filed by the county attorney and petitions filed by other individuals. The "contents" language previously found in Rule 53.02 has been moved to Rule 32.03. The verification language of subdivision 2 has been moved to rule 32.05.

Rule 34.04. Amendment

The Rule recognizes that amendment may be necessary and appropriate. A party has the right to have time to adequately prepare a response to the amended petition, even though that may delay a hearing.

PROPOSED RULE 35

RULE 35 ~~54~~. ADMIT/DENY HEARING ~~FIRST APPEARANCE~~

Rule 35.01 ~~54.01~~. Generally

An admit/deny hearing ~~First appearance~~ is a hearing at which ~~the child and the child's parent and guardian shall be required to admit or deny~~ the statutory grounds set forth in ~~allegations of~~ the petition are admitted or denied pursuant to Rule 36.

Rule 35.02 ~~54.02~~. Timing

Subdivision 1. Child in Placement.

(a) **Generally.** When the child is placed out of the child's home by court order, an admit/deny hearing ~~a first appearance~~ shall be held within ten (10) days of the date of the emergency protective care hearing ~~of the child being placed~~. Upon agreement of the parties, an admit/deny hearing ~~A first appearance~~ may be combined with ~~at~~ an emergency protective care ~~placement~~ hearing held pursuant to Rule 31 ~~52~~.

(b) **Termination of Parental Rights Matters.** In termination of parental rights matters the admit/deny hearing shall be held not less than ten (10) days after service is complete upon the party.

(c) **Permanent Placement Matters.** In permanent placement matters the admit/deny hearing shall be held at least twenty (20) days prior to the date set for the permanent placement hearing held pursuant to Rule 41.

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 ~~a first appearance~~ shall be held no sooner than five (5) days and no later than ~~within~~ twenty (20) days after the parties ~~child and the child's parent and guardian~~ have been served with the petition.

(b) **Habitual Truant and Runaway Matters.** In matters where the sole allegation is that the child is a habitual truant or runaway and the child is not in placement, an admit/deny hearing shall be commenced within a reasonable time after service upon the child.

Subd. 3. Possession of Petition. The parties ~~child and the child's parent and guardian their counsel and guardian ad litem~~ have the right to have a copy of the petition ~~for~~ at least three (3) days before the admit/deny hearing ~~a first appearance~~.

Rule 35.03 ~~54.03~~. Hearing Procedure

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

(a) verify the name, age, race, and current address ~~residence~~ 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; ~~and~~

(b) inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe has been notified;

(c~~b~~) determine whether all necessary persons are present and identify those present for the record; ~~and~~

(d~~c~~) determine whether any person entitled to counsel pursuant to Rule 25 is present

without counsel and, if so, explain the right to representation and the potential right to court-appointed counsel at state expense; ~~the child and the child's parent or legal custodian and guardian are either represented by counsel or waive counsel; and~~

(e~~d~~) determine whether notice requirements have been met and if not, whether the affected person waives notice; ~~and~~

(f~~e~~) if the child who is a party or the child's parent or legal custodian ~~and guardian~~ appear without counsel, explain ~~the right to counsel and other~~ basic trial rights; ~~and~~

(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~~f~~) ~~if the child or the child's parent and guardian appear without counsel,~~ explain the purpose of the hearing and the possible transfer of custody of the child from the parent or legal custodian ~~guardian~~ to another, when such transfer is permitted by law and the permanency requirements of Minnesota Statutes § 260.191, subd. 3b.

~~**Subd. 2. Reading of Allegations of Petition.** Unless waived by the child and the child's parent and guardian, the court shall read the allegations of the petition and determine that the child and the child's parent and guardian understand the allegations of the petition, and if not, provide an explanation.~~

Subd. 2. Child in Need of Protection or Services Matters. In addition to the initial procedures set forth in subdivision 1, in each child in need of protection or services matter the court shall also advise all persons present that if the petition is proven and the child is not returned home, a hearing to determine the permanent placement of the child will be held:

(a) within six (6) months of the date of the child's out-of-home placement if the child was under eight (8) years of age at the time of the filing of the petition; or

(b) within twelve (12) months of the date of the child's out-of-home placement if the child was eight (8) years or older at the time of the filing of the petition.

Subd. 3. Termination of Parental Rights Matters. In each termination of parental rights matter, after completing the initial inquiries set forth in subdivision 1 the court shall determine whether the petition states and prima facie case in support of termination of parental rights. If the court determines that the petition states a prima facie case in support of termination of parental rights, the court shall proceed pursuant to Rule 36. If the court determines that the petition fails to state a prima facie case in support of termination of parental rights, the court shall:

(a) return the child to the care of the parent or legal custodian;

(b) give the petitioner ten (10) days to file an amended petition or supplementary information if the petitioner represents there are additional facts which, if presented to the court, would establish a prima facie case in support of termination of parental rights; or

(c) give the petitioner ten (10) days to file a child in need of protection or services petition.

Subd. 4. Permanent Placement Matters. In each permanent placement matter, after completing the initial inquiries set forth in subdivision 1, the court shall review the facts set forth in the petition, consider such argument as the parties may make, and determine whether the petition states a prima facie case in support of one or more of the permanent placement options. If the court determines that the petition states a prima facie case, the court shall proceed pursuant to Rule 36.

If the court determines that the petition fails to state a prima facie case, the court may:

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

(b) give the petitioner ten (10) days to file an amended petition or supplementary information if the petitioner represents there are additional facts which, if presented to the court, would establish a prima facie case.

Subd. 5 ~~3~~ Motions. The court shall hear any motions, made pursuant to Rule 15 ~~49~~, addressed to the sufficiency of the petition or jurisdiction of the court without requiring any person to admit or deny the statutory grounds set forth in ~~allegations of~~ the petition prior to making a finding on the motion.

Advisory Committee Comment

Rule 35.03, subd. 2, is consistent with Minnesota Statutes § 260.191, subd. 3b, which becomes effective July 1, 1999, and provides that a permanent placement determination hearing must be held within six months of a child's removal from the home if the child is under eight years of age at the time the petition is filed.

DELIBERATIONS REGARDING RULE 35

Rule 35.02. Timing

Pursuant to Minnesota Statutes § 260.191, subd. 3b, effective July 1, 1999, a permanency hearing must be held within six months of the placement of a child who is under age eight (8) at the time of the placement.

PROPOSED RULE 36

RULE 36 ~~55~~. ADMISSION OR DENIAL

Rule 36.01 ~~55.01~~. Generally

Subdivision 1. Parent or Legal Custodian.

(a) **Generally.** Unless the child's parent or legal custodian is the petitioner, a parent who is a party or a legal custodian shall admit or deny the statutory grounds set forth in the petition or remain silent. ~~The child and the child's parent and guardian may admit or deny the allegations of the petition or remain silent.~~ If the parent or legal custodian ~~either the child, the child's parent or guardian who are present at the hearing~~ denies ~~deny~~ the statutory grounds set forth in ~~allegations of~~ the petition or remains silent, or if the court refuses to accept an admission, the court shall enter a denial of the petition on the record.

(b) **Habitual Truant, Runaway, and Prostitution Matters.** In cases where the child is alleged to be a habitual truant, runaway, or engaged in prostitution, the parent or legal custodian need not admit or deny the petition unless the parent or legal custodian wishes to contest the statutory grounds set forth in the petition.

(c) **Termination of Parental Rights Matters.** In a termination of parental rights matter, only the parents of the child are required to admit or deny the petition. A party who is not required to admit or deny the petition may object to the admission if that party has filed a petition pursuant to Rule 34.

(d) **Permanent Placement Matters.** In a permanent placement matter:

(1) only the legal custodian of the child is required to admit or deny the petition. A party who is not required to admit or deny the petition may object to the entry of the proposed permanent placement order if that party has filed a petition pursuant to Rule 34.

(2) When the county attorney petitions for transfer of permanent legal and physical custody on behalf of a relative who is not represented by counsel, the court may not enter an order granting the transfer of custody unless there is testimony from the proposed custodian establishing that the proposed custodian understands:

(i) the legal consequences of a transfer of permanent legal and physical custody;

(ii) the nature and amount of financial support and services that will be available to help care for the child;

(iii) how the custody order can be modified; and

(ii) any other permanent placement options available for the subject children.

Subd. 2. Child.

(a) **Generally.** The child shall not admit or deny the petition, unless the child wishes to contest the statutory grounds set forth in the petition.

(b) **Habitual Truant, Runaway, and Prostitution Matters.** In cases where the child is alleged to be a habitual truant, a runaway, or engaged in prostitution, the child shall admit or deny the statutory grounds set forth in the petition or remain silent.

Subd. 3. Contested Petition. Any party has the right to contest the basis of a petition

filed by an individual who is not a county attorney or an agent of the commissioner of human services.

Rule 36.02 ~~55.02~~. Denial

Subdivision 1. Denial Without Appearance. ~~By rule of the court or by court order in a particular matter, a~~ A written denial or a denial on the record of the statutory grounds set forth in a ~~the allegations of~~ petition may be entered by counsel without the personal appearance of the person represented by counsel.

Subd. 2. Further Proceedings After Denial. When a denial by any party is entered, the court shall schedule further proceedings pursuant to Rule 37 ~~58~~ or Rule 38 ~~59~~.

Rule 36.03 ~~55.03~~. Admission

Subdivision 1. Admission Under Oath. Any admission must be made under oath.

Subd. 2. ~~Subdivision 1.~~ Admission Without Appearance. ~~By rule of the court or by court order in a particular matter,~~ Upon approval of the court, a written admission ~~or an admission on the record~~ of the statutory grounds set forth in the ~~allegations of the~~ petition, made under oath, may be entered by counsel without personal appearance of the person represented by counsel.

Subd. 3~~2~~. Questioning of Person Making Admission ~~Admitting the Allegations of Petition~~.

(a) **Generally.** Before accepting an admission ~~on the record or by written documents~~ the court shall ~~on the record, or by written document signed by the person admitting and counsel, if any, and filed with the court,~~ determine on the record or by written document signed by the person admitting and the person's counsel, if represented, the following:

(1) whether the person admitting acknowledges an understanding of:

(i) the nature of the statutory grounds set forth in ~~allegations~~ of the petition; ~~and~~

(ii) if unrepresented, the right to counsel and, if provided by Rule 25, the right to appointment of counsel at state expense;

(iii) the right to a trial; ~~and~~

(iv) the right to testify; and

(v) the right to subpoena witnesses; and

(2) whether the person admitting acknowledges an understanding that the facts being admitted establish the statutory grounds set forth in ~~allegations of~~ the petition.

~~(3) whether the person admitting acknowledges an understanding that a possible effect of a finding that the allegations are proved may be the transfer of legal custody of the child to another, when such transfer is permitted by law.~~

(b) **Child in Need of Protection or Services Matters, and Habitual Truant, Runaway, and Prostitution Matters.** In addition to the questions set forth in subdivision 3(a), before accepting an admission in a child in need of protection or services matter or a matter alleging a child to be a habitual truant, a runaway, or engaged in prostitution, the court shall also determine on the record or by written document signed by the person admitting and the person's counsel, if represented, the following:

(1) whether the person admitting acknowledges an understanding that a possible effect of a finding that the statutory grounds are proved may be the transfer of legal custody of the child to another or termination of parental rights to the child; and

(2) whether the person admitting acknowledges an understanding that, if the child is not returned home, a hearing to determine the permanent placement of the child will be held within six (6) months of the date of the child's out-of-home placement if the child was under eight (8) years of age at the time of the filing of the petition, or within twelve (12) months of the date of the child's out-of-home placement if the child was eight (8) years or older at the time of the filing of the petition.

Subd. 43. ~~Factual~~ Basis for Admission. ~~The~~ Except as provided in (c), the court shall refuse to accept an admission unless there is a factual basis for the admission.

(a) **Full Admission.** A party may admit all of the statutory grounds set forth in the petition.

(b) **Partial Admission.** Pursuant to a Rule 19 settlement agreement, a person may admit some, but not all, of the statutory grounds set forth in the petition.

(c) **No Contest Admission**. Pursuant to a Rule 19 settlement agreement, a party may admit some or all of the statutory grounds set forth in the petition without entering an admission to the factual allegations in the petition. A no contest admission must include an admission of the need for specified services.

Subd. 54. Withdrawal of Admission. After filing a motion with the court:

(a) an admission may be withdrawn at any time upon a showing that withdrawal is necessary to correct a manifest injustice; or

(b) the court may allow a withdrawal of an admission before a finding on the petition for any fair and just reason.

Subd. 65. Acceptance or Non-Acceptance of Admission. At the time of the admission, the ~~The~~ court shall make a finding that ~~within fifteen (15) days of an admission~~:

(a) the admission has been accepted and the ~~allegations of the petition~~ statutory grounds admitted have been proved; ~~or~~

(b) the admission has been conditionally accepted pending the court's approval of a settlement agreement pursuant to Rule 19; or

(c~~b~~) the admission has not been accepted.

Subd. 76. Future Proceedings.

(a) **Generally.** If the court makes a finding that the admission is accepted and the ~~allegations of the petition~~ statutory grounds admitted are proved, or that the admission is conditionally accepted pending the court's approval of a settlement agreement pursuant to Rule 19, the court shall ~~schedule further proceedings pursuant to Rule 61~~ enter an adjudication and proceed to disposition. If the court makes a finding that the admission has not been accepted, the court shall schedule further proceedings pursuant to ~~Rule 51.01, Rule 51.02, and~~ Rule 37 ~~58~~ or Rule 38 ~~59~~.

Advisory Committee Comment

Generally, a person entering an admission must admit to facts that support the statutory grounds set forth in the petition. However, when a person enters a no-contest admission it is

sufficient to admit the statutory grounds that form the basis of the conclusions of law and the need for specific services pursuant to Rule 36.01, subd. 4(c). The intent of this rule is that a person entering a no contest admission would not be deemed to have admitted any of the specific factual allegations of the petition.

DELIBERATIONS REGARDING RULE 36

Rule 36.01, subd. 2. Admission by Child

The Committee discussed whether it was appropriate to allow or require a child who is the subject of a petition to admit or deny the petition. The proposed language of Rule 36.01, subd. 2, provides for the child to respond to the petition only if the child's their behavior is the basis of the allegations, but does not require the child's response unless the child wishes to contest the petition. Some children may want to appear and participate fully in the proceedings

Rule 36.02. Denial

The Committee discussed issues that arise when one parent admits the petition and the other parent enters a denial. The Committee included language in subdivision 2 providing that if any party enters a denial, the court must proceed to trial.

Rule 36.03, subd. 4(c). No Contest Admission

The Committee recommends adoption of the rule permitting a no contest admission to facilitate speedy resolution of cases. This type of admission could not be approved over the objection of the petitioner. The person entering the admission would be required to admit the need for specified services aimed at correcting the conditions identified in the petition. It is the Committee's intent that a person entering a no contest plea would not be deemed to have admitted to any of the specific allegations of the petition.

Acceptance or Non-Acceptance of Admission.

The Committee recommends that the court make initial findings regarding the acceptance of the admission at the time the admission is entered. That finding triggers scheduling time lines for subsequent hearings, and the Committee is mindful of the need to keep the proceedings moving in a way that will allow for compliance with the statutory time lines for permanency decisions.

Admissions Without Personal Appearance.

The Committee specifically included a provision allowing admissions in writing without a personal appearance. The Committee notes that the written instrument must include sufficient information for the court to make the findings required by Rule 32.03, subd. 3(A).

PROPOSED RULE 37

RULE 37 ~~58~~. PRETRIAL CONFERENCE

Rule 37.01 ~~58.01~~. Timing

The court may convene a pretrial conference on its own motion or upon the motion of any party. Any pretrial conference shall take place at least ten (10) days prior to trial. ~~Upon motion of a person with the right to participate or the county attorney or upon the court's own motion, the court may order a pretrial conference pursuant to rules of court adopted by the court.~~

~~Pretrial issues and motions shall be heard immediately prior to the trial whenever there has been no pretrial conference unless the court orders otherwise for good cause.~~

Rule 37.02. Purpose

The purposes of a pretrial conference shall be to:

(a) determine whether a settlement of any or all of the issues has occurred or is possible;

(b) determine whether all parties have been served and, if not, review the efforts that have taken place to date to serve all parties;

(c) advise each unrepresented party of the right to counsel and, if provided by Rule 25, the right to appointment of counsel at state expense. If counsel is appointed at the pretrial, the conference shall be reconvened at a later date;

(d) determine whether the child shall be present and testify at trial and, if so, under what circumstances;

(e) identify any unresolved discovery matters;

(f) resolve any pending pretrial motions;

(g) identify and narrow issues of law and fact for trial, including identification of:

(i) the factual allegations admitted or denied;

(ii) the statutory grounds admitted or denied;

(iii) any stipulations to foundation and relevance of documents; and

(iv) any other stipulations, admissions, or denials;

(h) exchange witness lists and a brief summary of each witness' testimony;

(i) exchange exhibit lists;

(j) confirm the trial date and estimate the length of trial; and

(k) determine any other relevant issues.

All admissions and denials shall be under oath. The pretrial order shall specify all factual allegations and statutory grounds admitted and denied.

From the date of the pretrial conference through the date of trial, the parties shall have a continuing obligation to update information provided during the pretrial conference.

Advisory Committee Comment

Rule 37.02(d) addresses the need to determine whether the child will testify. The intent of the rule is to provide that an order protecting the child from testifying or placing conditions on the child's testimony can only be made after notice of motion and hearing. The Committee intends that any such motion be heard and resolved at the pretrial conference.

DELIBERATIONS REGARDING RULE 37

The Committee recommends adoption of a pretrial conference rule as a tool for facilitating early resolution of cases. The Committee agreed that it would be preferable to have a pretrial conference in every case, but decided that the court should have the discretion to proceed without such a conference.

Rule 37.02(d) addresses the need to determine whether or not the child will testify. The intent of the rule is to provide that an order protecting the child from testifying or putting conditions on the child's testimony can only be made after notice of motion and hearing. The Committee intends that any such motion be heard and resolved at the pre-trial conference.

PROPOSED RULE 38

RULE 38 ~~59~~. TRIAL

Rule 38.01 ~~59.01~~. Generally

A trial is a hearing held to determine if the statutory grounds set forth in ~~allegations of~~ the petition are proved.

Rule 38.02 ~~59.02~~. Timing

Subdivision 1. Commencement of Trial. ~~A trial shall commence:~~

~~(a) for a child placed outside of child's home by court order, within ninety (90) days from the date of the denial of the allegations of the petition, or~~

~~(b) for a child not placed outside the child's home by court order, within one hundred twenty (120) days from the date of the denial of the allegations of the petition.~~

(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, which ever is earlier.

(b) **Permanent Placement Matters.** A trial regarding a permanent placement matter not involving a termination of parental rights matter shall commence on or before the three hundred and sixty-fifth (365^{th}) day after the child is ordered out of the care of the parent. In the case of a child under eight (8) years of age at the time the child in need of protection or services petition is filed, the permanent placement determination trial shall commence either within seven (7) months of the date the child is ordered out of the care of the parent or when the local social services agency demonstrates that the parent is not complying with the case plan and visiting the child and that the permanency plan for the child is transfer of legal custody to a relative.

(c) **Termination of Parental Rights Matters.** A trial regarding a termination of parental rights matter shall commence within ninety (90) days from the date of the admit/deny hearing.

(d) **Simultaneous Criminal Proceedings.** If criminal charges have been filed against a parent arising out of conduct alleged to constitute egregious harm, the county attorney shall determine whether the criminal matter or the juvenile court matter should proceed to trial first, consistent with the best interests of the child and subject to the defendant's right to a speedy trial.

(e) **Sufficient Time.** The court shall set aside sufficient time to avoid interruption of the trial.

Subd. 2. Continuance.

(a) **Generally.** The court may, either on its own motion or upon motion of a party or the county attorney, continue a trial to a later date upon written findings or oral findings made on the record that a continuance is necessary for the protection of the child, for accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown, so long as the permanency time requirements set forth in these rules are not delayed.

(b) **Child in Need of Protection or Services Matters and Termination of Parental Rights Matters.** In child in need of protection or services matters and termination of parental rights matters, a trial may not be continued or adjourned for more than one (1) week unless the court makes specific findings that the continuance or adjournment is in the best interests of the

child. In any event, the trial shall be commenced and completed within ninety (90) days of the denial of the statutory grounds.

~~**Subd. 2. Dismissal.** If the trial has not commenced within the time set forth in subdivision 1 above or a continuance has not been granted, the petition shall be dismissed without prejudice unless good cause is shown why the matter has not been brought to trial within the required time.~~

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) ~~sixty (60)~~ days of the order.

Rule 38.03 ~~59.03~~. Procedure

Subdivision 1. Initial Procedure. At the beginning of the trial~~, if the court has not previously determined the following information at a prior hearing,~~ the court shall on the record:

(a) verify the name, age, race, and current address ~~residence~~ 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; ~~and~~

(b) inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe has been notified;

(c~~b~~) determine whether all necessary persons are present and identify those present for the record; ~~and~~

(d~~c~~) determine whether any person entitled to counsel pursuant to Rule 25 is present without counsel and, if so, explain the right to representation and the potential right to court-appointed counsel at state expense; ~~the child and the child's parent or legal custodian and guardian are either represented by counsel or waive counsel; and~~

(e~~d~~) determine whether notice requirements have been met and if not, whether the affected person waives notice; ~~and~~

(f~~e~~) if the child who is a party or the child's parent or legal custodian ~~and guardian~~ appear without counsel, explain ~~the right to counsel and other~~ basic trial rights; ~~and~~

(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~~f~~) ~~if the child or the child's parent and guardian appear without counsel,~~ explain the purpose of the hearing and the possible transfer of custody of the child from the parent or legal custodian ~~guardian~~ to another when such transfer is permitted by law and the permanency requirements of Minnesota Statutes § 260.191, subd. 3b.

Subd. 2. Conduct and Procedure.

(a) **Trial Rights.** ~~The counsel for the persons with the right to participate~~ The parties and the county attorney shall have the right to:

(i) present evidence; ~~and~~

(ii) present witnesses; ~~and~~

(iii) cross-examine witnesses; and

(iv) present arguments in support of or against the statutory grounds set forth in ~~allegations of~~ the petition.

(b) **Trial Procedure ~~Order~~.** The ~~order of the hearing~~ trial shall proceed ~~be~~ as follows:

(i) the party that ~~counsel who~~ drafted and filed the petition pursuant to Rule 34 ~~53~~ may make an opening statement confining the statement to the facts expected to be proved; ~~and~~

(ii) the other ~~counsel~~ parties, in order determined by the court, may make an opening statement or may make the statement immediately before offering evidence, and the statement shall be confined to the facts expected to be proved; ~~and~~

(iii) the party that ~~counsel who~~ drafted and filed the petition pursuant to Rule 34 ~~53~~ shall offer evidence in support of the petition; ~~and~~

(iv) the other ~~counsel~~ parties, in order determined by the court, may offer evidence; ~~on behalf of the person they represent, and~~

(v) the party that ~~counsel who~~ drafted and filed the petition pursuant to Rule 34 ~~53~~ may offer evidence in rebuttal; ~~and~~

(vi) the other ~~counsel~~ parties, in order determined by the court, may offer evidence in rebuttal; ~~and~~

(vii) when evidence is presented, ~~by counsel, other counsel~~ other parties may, in order determined by the court, cross examine witnesses; ~~and~~

(viii) at the conclusion of the evidence the parties, ~~counsel~~ other than the party that ~~counsel who~~ drafted and filed the petition pursuant to Rule 32 ~~53~~, in order determined by the court, may make a closing statement;

(ix) the party that ~~counsel who~~ drafted and filed the petition pursuant to Rule 34 ~~53~~ may make a closing statement; and

(x) if written argument is to be submitted, it shall be submitted within fifteen (15) days of the conclusion of testimony.

~~**Rule 59.04. Evidence**~~

~~The court shall admit only such evidence as would be admissible in a civil trial.~~

Rule 38.04 ~~59.05~~. Standard of Proof

Subdivision 1. Generally. To be proved at trial, ~~allegations of~~ the statutory grounds set forth in the petition must be proved by clear and convincing evidence.

Subd. 2. Indian Child.

(a) **Foster Care Placement.** In the case of an Indian child, no foster care placement may be ordered in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, as defined in Minnesota Rules parts 9560.0221 and 9560.0500 to 9560.0670, that the continued custody of the child by the parent or legal

custodian or Indian custodian is likely to result in serious emotional or physical damage to the child.

(b) **Termination of Parental Rights.** In the case of an Indian child, no termination of parental rights may be ordered in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, as defined in Minnesota Rules parts 9560.0221 and 9560.0500 to 9560.0670, that the continued custody of the child by the parent or legal custodian or Indian custodian is likely to result in serious emotional or physical damage to the child.

Advisory Committee Comment

In *In Re the Matter of the Welfare of M.S.S.*, 465 N.W.2d 412 (Minn. App. 1991), the court held that the parental rights to an Indian child may not be terminated unless the county proves beyond a reasonable doubt that it has complied with section 1912(f) of the Indian Child Welfare Act, 25 U.S.C. § 1901 *et. seq.*, requiring the county to make active efforts to prevent or avoid placement.

Rule 38.05 ~~59.06~~. ~~Finding on Petition~~ Decision

Subdivision 1. Generally. Within fifteen (15) days of the conclusion of the trial, the court shall make a finding that the statutory grounds set forth in ~~allegations~~ of the petition have or have not been proved. For good cause, the court may extend this period for an additional fifteen (15) days. All findings shall be in writing or on the record. The court shall dismiss the petition if the statutory grounds ~~allegations~~ 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 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. The trial is not considered completed until written arguments, if any, are submitted. If the court makes a finding that the statutory grounds set forth in the petition have been proved, the court shall schedule the matter for further proceedings pursuant to Rule 39.

Subd. 3. Termination of Parental Rights Matters.

(a) **Generally.** Within fifteen (15) days of the conclusion of the trial, the court shall make a finding that the statutory grounds set forth in the petition have or have not been proved. If the court finds that the statutory grounds set forth in the petition are not proved, the court shall dismiss the petition or determine that the child is in need of protection or services and schedule further proceedings pursuant to Rule 35. If the court finds that the statutory grounds set forth in the petition are proved, the court shall terminate parental rights.

(b) **Particularized Findings.** The court may not enter an order terminating parental rights unless it finds that the statutory grounds have been proved by the applicable standard of proof and one of the following:

(1) **Reasonable Efforts and Remedial Services.** In any termination of parental rights matter, the court shall make specific findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent and reunite the family, including, where applicable, a statement that:

(i) reasonable efforts are not required because the facts demonstrate that the parent has subjected the child to egregious harm;

(ii) the provision of services or further services for the purpose of rehabilitation and reunification is futile and therefore unreasonable under the circumstances; or

(iii) reasonable efforts at reunification are not required as provided under Minnesota Statutes § 260.012.

(2) **Active Efforts – Indian Child.** In any termination of parental rights proceeding involving an Indian child, the court shall make specific findings that the petitioner has proven beyond a reasonable doubt that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

Subd. 4. Permanent Placement Matters. The court shall enter findings of fact consistent with the requirements of Minnesota Statutes § 260.241, § 518.17, § 518.18, or § 257.0215, whichever is applicable, and § 260.191, subd. 3b. The court shall enter the permanent placement order it determines to be in the best interests of the child and supported by the evidence. The findings and order shall be filed with the court administrator who shall serve the findings and order upon the parties and the county attorney. In the case of an order transferring permanent legal and physical custody of a child to a relative, the court shall include an order directing the juvenile court administrator to file the order with the family court administrator.

~~**Rule 59.07. Further Proceedings**~~

~~If the court makes a finding that the allegations of a petition alleging dependency, neglect, or neglected and in foster care have been proved, the court shall schedule further proceedings pursuant to Rule 61.~~

~~If the court terminates parental rights of both parents or of the only known living parent, the court shall make orders pursuant to Minnesota Statutes § 260.242.~~

~~If the matter is a review of out of home placement, the court shall make Findings and Orders pursuant to Minnesota Statutes § 260.192.~~

DELIBERATIONS REGARDING RULE 38

Rule 38.02. Timing

The Committee considered recommending a provision requiring that petitions be dismissed without prejudice if the matter is not brought to trial in 60 days. The practical result would be that the petitioner would just refile if the child still needed services, and the permanency time clock would continue to run during the delay. The Committee decided instead to include a standard which must be met before the court may grant a continuance.

PROPOSED RULE 39

RULE 39. ADJUDICATION

Rule 39.01. Adjudication

If the court makes a finding ~~finds~~ that the statutory grounds set forth in ~~allegations of~~ a petition alleging a child to be in need of protection or services ~~dependency, neglect, or neglected and in foster care~~ are proved, or if the court accepts a no contest admission pursuant to Rule 36, the court shall:

(a) adjudicate the child as in need of protection or services and proceed to disposition pursuant to Rule 40 ~~dependent, neglected, or neglected and in foster care~~; or

(b) withhold adjudication of the child pursuant to Rule 39.02.

Rule 39.02 ~~61.02~~. Withholding Adjudication

Subdivision 1. Generally. When it is in the best interests of the child to do so, the court may withhold an adjudication that the child is in need of protection or services. ~~The court may extend the withholding of adjudication for an additional successive period not to exceed ninety (90) days.~~ The court may withhold adjudication for a period not to exceed ninety (90) days from the finding that the statutory grounds set forth in the petition have been proved or the court approves a no contest admission. During the withholding of an adjudication, the court may enter a disposition order pursuant to Rule 40 ~~Minnesota Statutes section 260.191, subd. 1~~.

Subd. 2. ~~Rule 61.03~~. Further Proceedings. At a hearing which shall be held within ninety (90) days following the court's withholding of adjudication, the court shall either:

(a) dismiss the matter without an adjudication if both the child and the child's parent or legal custodian have complied with the terms of the continuance; or

(b) adjudicate the child in need of protection or services if either the child or the child's parent or legal custodian has not complied with the terms of the continuance. If the court enters an adjudication, the court shall proceed to disposition pursuant to Rule 40.

DELIBERATIONS REGARDING RULE 39

Rule 39.02. Withholding Adjudication

The language of Rule 39.02 is written to comply with recent state statutory changes.

PROPOSED RULE 40

RULE 40. DISPOSITION

Rule 40.01 ~~62.01~~. Disposition

~~The court shall make a disposition of the matter:~~

~~(a) (45) days from the finding of the allegations of the petition have been proved for a child not placed outside the home by court order pursuant to Minnesota Statutes § 260.172, and in no matter longer than thirty (30) days from the finding that the allegations of the petition have been proved, or~~

~~(b) within fifteen (15) days from the finding of the allegations of the petition have been proved for a child placed outside the home by court order pursuant to Minnesota Statutes § 260.172, and in no matter longer than thirty (30) days from the findings that the allegations of the petition have been proved.~~

After an adjudication that a child is in need of protection or services ~~of dependency, neglected, or neglected and in foster care or after terminating parental rights,~~ pursuant to Rule 39 ~~61~~, the court shall conduct a hearing to determine disposition ~~may conduct a disposition hearing immediately or may continue the matter for a disposition hearing at a later date~~. Dispositions in regard to review of out-of-home placement matters shall be pursuant to Minnesota Statutes § 260.192 and § 124A.036 ~~124.2129, subd. 4~~.

Rule 40.02 ~~62.02~~. Timing

To the extent practicable, the court shall conduct a disposition hearing and enter a disposition order the same day it makes a finding that the child is in need of protection or services. The disposition order must be issued within ten (10) days from the date of entry of adjudication.

Rule 40.03 ~~62.03~~. Pre-Disposition Reports

Subdivision 1. Investigations and Evaluations. At any time after the ~~filing of a petition~~ court accepts or conditionally accepts an admission pursuant to Rule 36 or finds that the statutory grounds set forth in the petition have been proved, the court may, upon its own motion or the motion of a party or the county attorney, ~~counsel for a person with a right to participate~~ order a pre-disposition report which may include:

(a) an investigation of the personal and family history and environment of the child; ~~and~~

(b) medical, psychological, or chemical dependency evaluations of the child and any ~~participant~~ parent who is a party; and

(c) information regarding the factors set forth in Rule 40.05.

Subd. 2. Advisory. The court shall advise the persons present in court that a pre-disposition investigation is being ordered, the nature of the evaluations to be included, the date when the reports resulting from the investigation are to be filed with the court, and the right of each party to present opposing evidence and reports.

Subd. 3. Filing and Inspection of Pre-Disposition Reports. The person ~~making~~ who intends to offer the pre-disposition report shall file the report with the court and serve the report

on all parties at least forty-eight (48) hours prior to the time scheduled for the hearing ~~and the report shall be available for inspection, copying, and release to the county attorney and counsel and guardian ad litem for persons with the right to participate~~. When the child or the child's parent or legal custodian ~~and guardian~~ is not represented by counsel, the court may limit the inspection of reports by the child or the child's parent and legal custodian ~~but not their counsel~~ if the court determines it is in the best interest of the child. Any party or the person making the pre-disposition report may by motion request a protective order limiting the release of confidential or sensitive information contained in the report.

Subd. 4. Discussion of Contents of Reports. The person making the pre-disposition report may ~~shall~~ discuss the contents of the report with all parties and the county attorney ~~persons who have exercised the right to participate who are capable of understanding the contents of the report~~.

Subd. 5. Discussion of Content of Report - Limitation by Court. The court may upon a showing of good cause limit the extent of the discussion of the contents of the pre-disposition report with the parties ~~the persons who have the right to participate~~ if the court finds the limitation to be in the best interests of the child. The limitation may be made:

(a) on the court's own motion; or

(b) upon the written or on-the-record motion of ~~objection in writing or on the record~~ by ~~counsel or guardian ad litem for~~ a party, the county attorney, or the person making the pre-disposition report. ~~person who has the right to participate, or~~

~~(iii) on the written request of the person making the pre-disposition report~~.

Rule 40.04 ~~62.04~~. Procedure; Evidence ~~Hearing~~

~~**Subdivision 1. Procedure.** Disposition hearings shall be separate from the trial pursuant to Rule 59 and the adjudication pursuant to Rule 61.~~ Disposition hearings shall be conducted in an informal manner designed to facilitate the opportunity for all parties ~~participants~~ to be heard.

~~**Subd. 2. Evidence.**~~ The court may admit any evidence, including reliable hearsay and opinion evidence, ~~receive any information, except privileged communications,~~ that is relevant to the disposition of the matter ~~cause including reliable hearsay and opinions~~. Privileged communications may be admitted in accordance with Minnesota Statutes § 626.556, subd. 8.

Rule 40.05 ~~62.05~~. Disposition Order

Subdivision 1. Findings. The disposition order made by the court shall contain written findings of fact to support the disposition ordered and shall also set forth in writing the following information:

~~(1) a disposition plan, and~~

(a) a statement explaining how the disposition serves the best interests of the child; ~~why the best interests of the child are served by the disposition ordered; and~~

(b) a statement of all ~~what~~ alternative dispositions ~~were~~ considered by ~~recommended to~~ the court and why such dispositions ~~recommendations were~~ are not appropriate for the child ~~ordered~~;

(c) if the disposition is out-of-home placement, how the court's disposition will serve the child's needs in placement. Among the factors to be considered in determining the needs of the child are:

(1) the child's current functioning and behaviors;

(2) the medical, educational, and developmental needs of the child;

(3) the child's history and past experience;

(4) the child's religious and cultural needs;

(5) the child's connection with a community, school, and faith community;

(6) the child's interests and talents;

(7) the child's relationship to current caretakers, parents, siblings, and relatives;

(8) the reasonable preference of the child, if the court deems the child to be of sufficient age to express a preference; and

(9) a brief description of the preventive and reunification 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.

The court may authorize or continue an award of legal custody to the local social services agency despite a finding that the agency's preventive or reunification efforts have not been reasonable if the court finds that further preventive or reunification efforts could not permit the child to safely remain at home.

Subd. 2. Content.

(a) **Mandatory Provisions.** The court shall enter an order making one or more of the following dispositions for the child:

(1) place the child under the protective supervision of the local social services agency or child-placing agency in the child's own home under conditions directed to correction of the child's need for protection or services;

(2) transfer legal custody to a child-placing agency or the local social services agency for placement in foster care;

(3) in the case of a child who needs special treatment and care for reasons of physical or mental health when the child's parent or legal custodian is unable to provide the treatment or care, order the child placed for care and treatment; or

(4) allow a child 16 years old or older to live independently under appropriate supervision, if the court determines that the child has sufficient maturity and judgement, and the local social services agency after consultation with the court has specifically authorized this alternative.

(b) **Additional Provisions.** As part of the disposition order the court shall also:

(1) set reasonable rules for supervised or unsupervised visitation for the child's parent or legal custodian and for an individual who is related to the child by blood, marriage or adoption or is an important friend with whom the child has resided or had significant contact;

(2) review the case plan, make modifications supported by the evidence, and incorporate the plan into the disposition order; and

(3) set the date and time for the permanency placement determination hearing.

(c) **Habitual Truant and Runaway Matters.** If the child is adjudicated in need of protection or services because the child is a runaway or habitual truant, the court may order any of the following dispositions in addition to or as alternatives to the dispositions ordered under subdivisions (a) and (b):

(1) counseling for the child or the child's parent or legal custodian;

(2) place the child under the supervision of a probation officer or other suitable person in the child's own home under conditions prescribed by the court, including reasonable rules for the child's conduct and the conduct of the parent or legal custodian designed for the physical, mental, and moral well-being and behavior of the child;

(3) with the consent of the commissioner of corrections, place the child in a group foster care facility which is under the commissioner's management and supervision;

(4) subject to the court's supervision, transfer legal custody of the child to one of the following:

(i) a reputable person of good moral character; or

(ii) a county probation officer for placement in a group foster home established under the direction of the juvenile court and licensed pursuant to Minnesota Statues § 241.021;

(5) require the child to pay a fine of up to $100, to be paid in a manner that will not impose undue financial hardship upon the child;

(6) require the child to participate in a community service project;

(7) order the child to undergo a chemical dependency evaluation and, if warranted by the evaluation, order participation by the child in a drug awareness program or an inpatient or outpatient chemical dependency treatment program;

(8) order the commissioner of public safety to cancel the child's diver's license or permit or, for a child who does not have a driver's license or permit, order a denial of driving privileges for any period up to the child's 18th birthday; or

(9) order the child's parent or legal custodian to deliver the child to school at the beginning of each school day for a period of time specified by the court.

Rule 40.06 ~~62.06~~. ~~Informal~~ Review Hearings

Subdivision 1. Timing. ~~The court shall review all disposition orders at least every six (6) months.~~ When disposition is an award of legal custody to the local social services agency, the court shall review the disposition in court at least every ninety (90) days. Any party may request a review hearing before ninety (90) days. When the disposition is protective supervision, the court shall review the disposition in court at least every six (6) months from the date of disposition.

Subd. 2. Procedure. Any party or the county attorney may seek modification of a disposition order by motion made pursuant to Rule 15. The motion may be heard at the scheduled review hearing or at an earlier date or may be considered by the court without hearing if no party objects.

Subd. 3. Modification of Disposition. ~~Upon review the~~ The court, on its own motion or

that of any party, may modify the disposition when all parties agree the modification is in the best interests of the child and:

(a) ~~there appears to be~~ a change of circumstances ~~sufficient to indicate that~~ requires a change ~~of~~ in the disposition ~~is necessary~~; or

(b) i~~t appears that a~~ the original disposition is inappropriate.

~~Within ten (10) days of a modification of a disposition, the court shall inform in writing those persons entitled to notice pursuant to Rule 44 of the modification of the disposition and the right to a formal review hearing pursuant to Rule 62.07, Subd. 1.~~

If a party objects to a proposed modification, the court shall schedule a hearing for the next available date.

~~**Rule 62.07. Formal Review**~~

~~**Subdivision 1. Formal Review Hearing Upon Written Objection to Modification.** Counsel for those persons with the right to participate and the county attorney may object in writing or on the record to a modification of disposition and demand a formal review hearing by filing a written objection with the court within ten (10) days of being informed of the modification.~~

~~Upon an objection to a modification of disposition being filed with the court, the court shall order a formal review hearing be held within ten (10) days of the filing of the objection.~~

~~**Subd. 2. Formal Review Hearing Upon Written Request.** Counsel for those persons with the right to participate and the county attorney may request a formal review hearing or the court may hold a formal review hearing on its own motion when:~~

~~(a) there appears to be a change of circumstances sufficient to indicate that a change of disposition is necessary, or~~

~~(b) it appears that the disposition is inappropriate.~~

~~A request for a formal review hearing shall be in writing and shall list the reasons supporting the request. Upon a request for a formal review hearing being filed with the court, the court shall within ten (10) days make a finding that there is good cause to believe that (a) or (b) above exists. If the court finds from the request for a formal review that there is good cause to believe that (a) or (b) above exists, the court shall hold a formal review hearing within (10) days of the finding. If the court finds from the request for a formal review that there is not good cause to believe that (a) or (b) above exists, the court shall inform the person making the request that the request has been denied.~~

Subd. 4 ~~3~~ Notice. Notice of the ~~formal~~ review hearing shall be given to all parties and participants ~~those persons entitled to notice pursuant to Rule 44~~.

Subd. 5 4. Procedure. ~~Formal review~~ Review hearings shall be conducted pursuant to Rule 40.04 ~~62.04~~.

Subd. 6. Findings and Order. In the event the disposition is modified, the court shall issue a disposition order in accordance with Rule 40.05.

DELIBERATIONS REGARDING RULE 40

Rule 40.05, subdivision 1, is taken from Minnesota Statutes § 260.

Rule 40.03. Pre-Disposition Reports

Rule 40.03 provides that a court may order pre-disposition reports only after determining that the statutory grounds set forth in the petition have been proved. If the court orders investigations before that point in the proceedings, the parties are forced to provide potentially self-incriminating information. The parents can voluntarily submit to testing and assessment at any time, and they may want to do so depending on their assessment of their chances of successfully defending against the allegations in the petition and given the expedited time table for permanency. Parents who determine they have a small chance of success on the adjudication may want to begin working on an effective case plan as soon as possible.

Rule 40.06. Review Hearings

This Rule eliminates the informal review process, requires that an in-court review be conducted every 90 days, and specifies the procedure parties must follow to seek a modification of the original disposition. The Rule recognizes the court's role in assuring these matters move expeditiously toward a permanent resolution of the child's placement.

PROPOSED RULE 41

RULE 41. PERMANENT PLACEMENT MATTERS

Rule 41.01. Timing

The date or deadline for the permanent placement determination hearing shall be set by the court in its disposition order. Not later than when the court sets the date or deadline for the permanent placement determination hearing the court shall notify the parties and participants of the following requirements of Minnesota Statutes § 260.191, subd. 3b:

(a) **Requirement of Six (6) Month Hearing for Child Under Eight (8) Years of Age.** For a child under eight (8) years of age at the time a petition is filed alleging the child to be in need of protection or services, unless a termination of parental rights petition has been filed, the court shall conduct a hearing to determine the permanent status of a child not later than six (6) months after the child is placed out of the home of the parent. If a termination of parental rights petition is not filed, the county attorney must file a notice that the local social services agency does not intend to file a termination of parental rights petition, together with an affidavit form the local social services agency that the parent or legal custodian is making progress on the case plan or that the permanency plan for the child is transfer of permanent legal and physical custody to a relative. Upon receipt of such a notice, the court may order the local social services agency to show cause why it should not file a termination of parental rights petition. If the court determines that the local social services agency has not shown cause why it should not file a termination of parental rights petition, the court may order the agency to file such a petition within a certain time in which case the matter will proceed according to rules governing termination of parental rights matters.

(b) **Requirement of Twelve (12) Month Hearing for Child Eight (8) Years of Age or Older.** For a child eight (8) years of age or older at the time a petition is filed alleging the child to be in need of protection or services, unless a termination of parental rights petition has been filed, the court shall conduct a hearing to determine the permanent status of a child not later than twelve (12) months after the child is placed out of the home of the parent.

Advisory Committee Comment

Rule 41.01 is consistent with Minnesota Statutes § 260.191, subd. 3b, which becomes effective July 1, 1999, and provides that a permanent placement determination hearing must be held within six months of a child's removal from the home if the child is under eight (8) years of age at the time the petition is filed.

Rule 41.02. Calculating the Time Period

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

(a) the date the child's placement out of the care of the parent was ordered by the court; or

(b) sixty (60) days after the date on which the child has been voluntarily placed out of the home as a result of a voluntary placement agreement between the parents and the local social services agency,

Rule 41.03. Cumulation of Out-of-Home Placement Time

The time period requiring court review of the permanent status of the child shall be calculated as follows:

(a) during the pendency of a petition alleging a child to be in need of protection or

services, all time periods when a child is placed out of the home of the parent are cumulated;

(b) if a child has been placed out of the home of the parent within the previous five years in connection with one or more prior petitions for a child in need of protection or services, the lengths of all prior time periods when the child was placed out of the home within the previous five years and under the current petition are cumulated. If a child under this clause has been out of the home for twelve (12) months or more, the court, if it is in the best interests of the child, 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 41.04. Permanent Placement Order

Upon finding that the permanent placement petition has been proved, the court shall enter a permanent placement order and proceed as follows:

(a) **Transfer of Permanent Legal and Physical Custody.** When the court transfers permanent legal and physical custody to a relative, juvenile court jurisdiction is terminated unless specifically retained by the court in its order. The order shall be entered in family court. Any further proceedings shall be brought in the family court pursuant to Minnesota Statutes § 518.18. Notice of such family court proceedings shall be provided to the county welfare board.

(b) **Long-term Foster Care.** When the court orders long-term foster care, the court shall order such further review as it determines appropriate or in the best interests of the child. If the long-term foster care placement disrupts, the local social services agency shall return to court within ten (10) days for further review of the permanent status of the child. An order for long-term foster care is reviewable upon motion and a showing by the parent of a substantial change in circumstances such that the parent could provide appropriate care of the child and that removal of the child from the child's permanent placement and return to the parent's care would be in the best interests of the child.

(c) **Foster Care for a Specified Period of Time.** When the court orders foster care for a specified period of time, the court shall order reviews at such time and manner as will serve the child's best interests.

(d) **Return of Child to Care of Parent.** When 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.

DELIBERATIONS REGARDING RULE 41

This Rule is consistent with the federal and state statutes concerning permanency timelines.

PROPOSED RULE 42

RULE 42. TERMINATION OF PARENTAL RIGHTS MATTERS

Rule 42.01. 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, subdivision 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 46.

Rule 42.02. Order for Guardianship

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.

Rule 42.03. Further Proceedings

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. The court shall notify the county welfare board, the child's guardian ad litem, the child's attorney, and the child's foster parent or other relative who has asked for notice of the date and time of the hearing.

Rule 42.04. Voluntary Termination of Parental Rights Matters

The court shall conduct a hearing when a parent voluntarily consents to the termination of his or her parental rights. At the hearing, petitioner shall make a prima facie showing that there is good cause for termination of parental rights and that it is in the best interests of the child to terminate parental rights.

If the parent is present in court, the court shall advise the parent of the right to trial, the right to representation by counsel, and shall determine whether the parent fully understands the consequences of termination of parental rights and the alternatives to termination.

If the parent is not present in court but has signed a voluntary consent to termination of parental rights, the court shall determine whether there has been compliance with all statutory requirements regarding a written consent to termination of parental rights and whether the parent was thoroughly advised of and understood the right to trial, the right to representation by counsel, the consequences of termination of parental rights, and the alternatives to termination.

If the child is an Indian child, the consent of the parent or Indian custodian shall not be valid unless:

(a) executed in writing;

(b) recorded before the judge; and

(c) accompanied by the presiding Judge's certificate that the terms and consequences of the consent were explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, the birth of the Indian child shall not be valid.

DELIBERATIONS REGARDING RULE 42

Rule 42.03. Further Proceedings/Effect of Termination of Parental Rights

Minnesota Statutes § 260.242, subd. 2(d), provides that for state wards who are in foster care the court shall conduct a dispositional hearing within 18 months of the child's initial foster care placement and once every 12 months thereafter. These Rules provide for a number of hearings that occur within 18 months of placement and address the child's placement and case plan, including Rule 42.03 requiring 90-day hearings post-termination to review progress toward adoption.

Indian Child

In In Re the Matter of the Welfare of M.S.S., 465 N.W.2d 412 (Minn. Ct. App. 1991) the court held that the parental rights to an Indian child may not be terminated unless the county proves beyond a reasonable doubt that it has complied with the Indian Child Welfare Act, 25 U.S.C. § 1912(f) requiring that the county make active efforts to prevent or avoid placement.

The Committee discussed the mechanics of filing termination of parental rights and other permanency matters when there is a previous child protection case concerning the same child. Practice differs around the state on how this is handled. The Committee recommends that the best practice would be to physically file everything in the existing child protection file. It is important that this practice be uniform around the state to allow better tracking of cases.

PROPOSED RULE 43

RULE 43. REVIEW OF VOLUNTARY PLACEMENT MATTERS

Rule 43.01. Generally

Subdivision 1. Scope of Review. This rule governs review of all placements made pursuant to Minnesota Statutes § 257.071, subds. 3 and 4.

Subd. 2. Jurisdiction. The court assumes jurisdiction to review a voluntary placement of a child pursuant to Minnesota Statutes § 257.071, subds. 3 or 4, upon the filing of a petition alleging the child to be in need of protection or services pursuant to the requirements of Minnesota Statutes § 260.131.

Advisory Committee Comment

The practitioner should note the application of the Indian Child Welfare Act, 25 U.S.C. § 1913(a).

Rule 43.02. Petition and Hearing

Subdivision 1. Child in Placement Due to Child's Status as Developmentally Delayed or Emotionally Handicapped.

(a) **Petition.** In the case of a child in voluntary placement pursuant to Minnesota Statutes § 257.071, subd. 4, the petition shall be filed within six (6) months of the date of the voluntary placement agreement. The petition shall state the date of the voluntary placement agreement, the nature of the child's developmental delay or emotional handicap, the plan for the ongoing care of the child and the parent's participation in that plan, and the statutory basis for the petition.

(b) **Decision.** Based upon on the contents of the petition, and the agreement of all parties, including the child, where appropriate, the court may find the voluntary arrangement in the best interests of the child, approve the voluntary arrangement, and dismiss the matter from further jurisdiction of the court.

(c) **Further Proceedings.**

(1) The court shall give notice to the local social services agency that the matter must be returned to court for further review if the child remains in placement after twelve (12) months.

(2) If any party, including the child, disagrees with the voluntary arrangement or the sufficiency of the services offered by the local social services agency, the court shall direct the parties to answer the petition and set the matter for further hearing pursuant to Rule 35.

(d) In the case of a voluntary placement agreement pursuant to Minnesota Statutes § 257.071, subd. 4, the provisions of Minnesota Statutes § 260.191, subd. 3b, do not apply unless custody of the child is transferred to the local social services agency pursuant to Minnesota Statutes § 260.191 subd. 1.

Subd. 2. Other Voluntary Placements.

(a) **Petition.** In the case of a child in voluntary placement pursuant to Minnesota Statutes § 257.071, subd. 3, the petition shall be filed within ninety (90) days of the date of the voluntary placement agreement and shall state the reasons why the child is in placement, the

progress on the case plan required pursuant to Minnesota Statutes § 257.071, subd. 1, and the statutory basis for the petition pursuant to Minnesota Statutes § 260.015, subd. 2a.

(b) **Hearing.** The matter shall be set for hearing within twenty (20) days of service.

(c) **Findings.** If all parties agree and the court finds that it is in the best interests of the child, the court may find the petition states a prima facie case that:

(1) the child's needs are being met;

(2) the placement of the child in foster care is in the best interests of the child; and

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

(d) **Approval of Placement.** If the court makes findings required pursuant to subdivision 2(c), the court shall approve the voluntary placement arrangement and continue the matter for ninety (90) days to assure the child returns to the parent's home.

(e) **Further Proceedings.**

(1) The local social services agency shall report to the court when the child returns home and the progress made by the parent on the case plan required pursuant to Minnesota Statutes § 257.071. If the child does not return home within the ninety (90) days approved by the court, the matter shall be returned to court for further proceedings pursuant to Rule 35.

(2) If the court or any party, including the child, disagrees with the voluntary placement or the sufficiency of the services offered by the local social services agency, or if the court finds that the placement or case plan is not in the best interests of the child, the court shall direct the parties to admit or deny the petition and set the matter for further proceedings pursuant to Rule 37 or 38. If the court makes required findings pursuant to Rule 31, the court may order the child in protective care.

(f) **Calculating Time Period.** When a child is placed pursuant to a voluntary placement agreement pursuant to Minnesota Statutes § 257.071, subd. 3, the time period the child is considered to be in placement for purposes of determining whether to proceed pursuant to Minnesota Statutes § 260.191, subd. 3b, is sixty (60) days after the voluntary placement agreement is signed, the date court approves the placement of the child, or the date the court orders the child in protective care, whichever is earlier.

Subd. 3. Child Determined to be in Need of Protection or Services.

(a) **Further Proceedings After Adjudication.** Pursuant to subdivision 2(e) or subdivision 1(c)(2), 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 39.

(b) If the court determines that the child is in need of protection or services or withholds adjudication, and the court issues an order pursuant to Minnesota Statutes § 260.191, subdivision 1(3), the provisions of Minnesota Statutes § 260.191 subdivision 3b, shall not apply.

(c) When the court determines the child is in need of protection or services, the court may make orders pursuant to Minnesota Statutes § 260.191 or § 260.192.

(d) When the court determines the child in need of protection or services or withholds such a determination, further proceedings shall be pursuant to Rule 40.

DELIBERATIONS REGARDING RULE 43

This rule is an attempt to conform practice regarding the implementation of the review of children who are in placement pursuant to voluntary release by their parents to statutory requirements.

Generally, the statute divides children in placement pursuant to voluntary release into two categories:

(1) Children who are in care due to the circumstances of their parents. This includes children whose parents are receiving treatment for chemical dependency or mental illness who, temporarily, cannot provide day-to-day care for the child; this category also includes children whose needs or behaviors are such that the parent, temporarily, cannot meet the child's needs.

(2) Children who are in care due solely to their diagnosis as developmentally delayed or emotionally handicapped.

The rule is intended to implement the statutory scheme as the Committee interpreted it. This interpretation includes the following:

(1) Parents who voluntarily place their children in order to obtain needed services or treatment, either for themselves or their children, are limited to a total of 6 months before the arrangement with the responsible social services agency may become other than voluntary. A child protection petition must be filed at 90 days and the court can continue the matter for 90 days upon approval of the voluntary arrangement. If the child is not returned home, the matter is returned to the court for the court to make appropriate findings and orders that protect the parents interests in receiving sufficient services to assure timely reunification and to protect the child's interest in an appropriate, timely permanency determination.

(2) Parents who voluntarily place their children for the sole reason that the child is developmentally delayed or emotionally handicapped, generally, do not need reunification services regarding their parenting abilities, nor does it appear to be Minnesota public policy that the parent's right to custody of the child should be severed. For this reason, the permanency deadlines and requirements do not apply. To assure continued delivery of appropriate services and to assure the child's rights as the child gets older, review every 12 months is required pursuant to Minnesota Statutes § 257.071 subdivision 4.

A child protection petition for review of voluntary placement must allege appropriate child protection grounds. Such child protection grounds may be a s simple as the "…parent… for good cause desires to be relieved of the child's care and custody." (Minn. Stat. § 260.015, subd. 2a (6))

In the event the child cannot be returned home within the 90 days permitted for a voluntary placement due to the parent's condition or the child with the handicapping condition is not having his needs met in such a way the child is in need of protection or services, the juvenile court may assume full jurisdiction over the child an parents and make orders it determines is in the best interests of the child.

PROPOSED RULE 44

RULE 44 ~~60~~. POST-TRIAL MOTIONS ~~NEW TRIAL~~

~~Rule 60.01. New Trial~~

~~Subdivision 1. Generally.~~ ~~In granting a new trial the court may either:~~

~~(a) conduct a completely new trial, or~~

~~(b) open the previous trial and take additional testimony or evidence.~~

~~Subd. 2. Stay of Previous Finding.~~ ~~If the court grants a new trial, the court shall stay the finding that the allegations of the petition have been proved.~~

~~Subd. 3. Finding~~~~.~~ ~~Upon conclusion of the trial, the court shall make a finding pursuant to Rule 59.06.~~

~~Rule 60.02. Grounds~~

~~The court on written motion of counsel for a participant or the county attorney may grant a new trial on any of the following grounds:~~

~~(a) irregularity in the proceedings of the court, any court order or court abuse of discretion, whereby a person was deprived of a fair trial, or~~

~~(b) misconduct of counsel, or~~

~~(c) fraud, misrepresentation or other conduct of any person with the right to participate, their counsel, guardian ad litem or the county attorney, or~~

~~(d) accident or surprise which could not have been prevented by ordinary prudence, or~~

~~(e) material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the trial, or~~

~~(f) errors of law occurring at the trial and objected to at the time or if no objection is required, assigned in the motion, or~~

~~(g) the finding that the allegations of the petition are proved is not justified by the evidence or is contrary to law, or~~

~~(h) if required in the interests of justice.~~

~~Rule 60.03. Procedure~~

~~Subdivision 1. Basis of Motion.~~ ~~A motion for a new trial shall be made and heard 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 on the hearing of the motion.~~

~~Subd. 2. Time for Motion.~~ ~~Notice of a motion for a new trial shall be served pursuant to Rule 44 within fifteen (15) days after the finding that the allegations of the petition are proved. The motion shall be heard within thirty (30) days after the finding that the allegations of the petition are proved, unless the time for the hearing is extended by the court for cause shown within the thirty (30) day period.~~

~~Subd. 3. Time for Serving Affidavits.~~ ~~When a motion for new trial is based on affidavits, they shall be served with the notice of motion. The county attorney and any person~~

~~with the right to participate shall have ten (10) days after such service in which to serve opposing affidavits pursuant to Rule 45. 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.~~

~~**Subd. 4. Joinder of Motions.** Any motion to vacate the findings that the allegations are proved shall be joined with a motion for a new trial.~~

~~**Rule 60.04. New Trial on Court's Own Motion**~~

~~The court on its own motion within fifteen (15) days after the findings that the allegations are proved, with the consent of counsel for the persons with the right to participate and the county attorney, may order a new trial upon any of the grounds specified in Rule 60.02.~~

Rule 44.01. Procedure and Timing

Subdivision 1. Scope. This rule applies only to non-dispositional post-trial matters. It does not apply to matters concerning disposition.

Subd. 2. Timing. All non-dispositional post-trial motions shall be filed within fifteen (15) days after first service upon a party by any party, the county attorney, the court, or a court administrator of written notice of the order finding that the statutory grounds set forth in the petition are or are not proved. The motion shall be heard by the court within thirty (30) days after service of the order finding that the statutory grounds set forth in the petition are or are not proved unless the time for the hearing is extended by the court for good cause shown within the thirty (30) day period. If no notice of filing is served, the time for filing a post-trial motion shall be ninety (90) days from the date of filing of the order by the court.

Subd. 3. Basis of Motion. A post-trial motion shall be made and heard on the files, exhibits, and minutes of the court. Pertinent facts substantiating the grounds set forth in Rule 38.03 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 on the hearing of the motion.

Subd. 4. Time for Serving Affidavits. When a post-trial motion is based upon affidavits, they shall be served with the notice of motion. The parties and the county attorney shall have ten (10) days after such service in which to serve opposing affidavits pursuant to Rule 15. 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.

Advisory Committee Comment

Subdivision 1 clarifies that this rule applies to all non-dispositional post-trial motions; it does not apply to matters concerning adjudication.

Subdivision 2 clarifies that service of the written notice of the order by a party upon all other parties commences the period within which all post-trial motions must be served by the parties.

Rule 44.02. New Trial on Court's Own Motion

Not later than fifteen (15) days after finding that the statutory grounds set forth in the

petition are or are not proved, the court may upon its own initiative order a new trial for any reason for which it might have granted a new trial on a motion. After giving appropriate notice and an opportunity to be heard, the court may grant a motion for a new trial, timely served, for reasons not stated in the motion. In either case, the court shall specify in the order the basis for ordering a new trial.

Rule 44.03. Grounds for New Trial

A new trial may be granted on all or some of the issues for any of the following reasons:

(a) irregularity in the proceedings of the court, referee, or prevailing party, or any order or abuse of discretion whereby the moving party was deprived of a fair trial;

(b) misconduct of counsel;

(c) fraud, misrepresentation, or other misconduct of the county attorney, any party, their counsel, or their guardian ad litem;

(d) accident or surprise which could not have been prevented by ordinary prudence;

(e) material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the trial;

(f) errors of law occurring at the trial and objected to at the time or if no objection need have been made plainly assigned in the motion;

(g) a finding that the statutory grounds set forth in the petition are proved is not justified by the evidence or is contrary to law; or

(h) if required in the interests of justice.

Rule 44.04. Decision

The court shall rule on all post-trial motions within fifteen (15) days of submission. For good cause shown, the court may extend this period for an additional fifteen (15) days. All findings shall be stated orally on the record or in writing.

Rule 44.05. Relief

In response to any post-trial motion, including a motion for a new trial, the court may:

(a) conduct a new trial;

(b) reopen the proceedings and take additional testimony;

(c) amend the findings of fact and conclusions of law; or

(d) make new findings and conclusions as required.

DELIBERATIONS REGARDING RULE 44

Rule 44.01. Post-Trial Motion Procedure and Timing

Service of the order by a party upon all other parties commences the period within which all post-trial motions must be served by the parties. Because of the interests of the child in finality, the Committee decided to recommend a ninety day limit after which no one could file a motion for relief from the order for any reason.

Rule 44.02. New Trial on Court's Own Motion

This rule is changed to correspond to Rule 59.05 of the Rules of Civil Procedure.

PROPOSED RULE 45

RULE 45. RELIEF FROM ORDER

Rule 45.01. Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time upon its own initiative or upon motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected with leave of the appellate court.

Rule 45.02. Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud

Upon motion and upon such terms as are just, the court may relieve a party or the party's legal representatives from a final order or proceeding and may order a new trial or grant such other relief as may be just for any of the following reasons:

(a) mistake, inadvertence, surprise, or excusable neglect;

(b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial;

(c) fraud (whether denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(d) the judgment is void; or

(e) any other reason justifying relief from the operation of the order.

The motion shall be made within a reasonable time, but in no event not more than ninety (90) days following the filing of the court's order.

DELIBERATIONS REGARDING RULE 45

This Rule is taken from the Rule 60 of the Minnesota Rules of Civil Procedure.

PROPOSED RULE 46

RULE 46 ~~63~~. APPEAL

~~**Rule 63.01. Appeal**~~

~~**Subdivision 1. Appealable Orders.** Any person with the right to participate may appeal to the Court of Appeals from a final order of the court.~~

~~**Subd. 2. Procedure. The procedure upon appeal shall be as follows:**~~

~~**(A) Stay.** An appeal does not stay the order of the court but the Court of Appeals may in its discretion and upon application stay the order.~~

~~**(B) Notice of Appeal.** Within thirty (30) days of the filing of the appealable order, the person appealing shall file a notice of appeal with the clerk of appellate courts together with proof of service upon all other persons who exercised their right to participate and upon the court administrator for the district court. 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.~~

~~**(C) Transcript, Affidavits, Papers, Files, Exhibits.** The Minnesota Rules of Civil Appellate Procedure to the extent applicable shall govern the transcript of the proceedings and the transmission of the transcript and record to the Court of Appeals.~~

~~(**D) Attorneys Fees.** Upon appeal if the child or the child's parent or guardian cannot afford the costs of appeal, these costs shall be paid at public expense in whole or in part depending on the ability of the child, and the child's parent to pay.~~

~~**Subd. 3. Cross-Appeal.** Upon appeal by a person with the right to participate, any other person with the right to participate may obtain review of any pretrial order which will adversely affect that person by filing a notice of cross-appeal with the clerk of the appellate courts together with proof of service upon counsel for the other persons who exercised their right to participate and the person who appealed and the court administrator of the district court within ten (10) days after service of notice of appeal. Failure to serve the notice does not deprive the Court of Appeals of jurisdiction over the child's cross-appeal, but is grounds only for such action as the Court of Appeals deems appropriate, including a dismissal of the cross-appeal.~~

~~**Rule 63.02. Court Hearing Appeal**~~

~~An appeal from a district court juvenile court is taken directly to the Court of Appeals in the same manner in which appeals are taken in civil actions.~~

Rule 46.01. Generally

All appeals of juvenile protection matters shall be in accordance with the requirements of the Rules of Civil Appellate Procedure, except as specified or clarified in these rules.

Rule 46.02. Time for Appeal

Any appeal shall be taken from an appealable order within thirty (30) days after first service upon a party by any party, the county attorney, the court, or the court administrator of written notice of the filing of the order. Upon service of the notice of filing of the trial court's order, the time for appeal shall begin to run for all parties served and the person serving notice. If no notice of filing is served, the time for appeal shall expire ninety (90) days from the filing of

the trial court's order.

Advisory Committee Comment

The intent of the rule is to allow any party, participant, or court administrator to start the appeal time running by serving written notice of the filing of the order. Participants are included because a participant may have the right to appeal from certain orders, including an order denying intervention.

Rule 46.03. Stay of Trial Court Order

The service and filing of a notice of appeal does not automatically stay the order of the trial court. A motion for a stay must be made to the trial court. If the trial court denies the motion, the appellant may make a motion for stay to the appellate court.

Rule 46.04. 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 notice of appeal, and shall contain proof of service.

Rule 46.05. 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. A party shall be responsible for the cost of preparation of the transcript except as provide by Rule 11.03.

Rule 46.06. Time for Rendering Decisions

All decisions regarding juvenile protection matters shall be issued by the appellate court within thirty (30) days of the date the case is deemed submitted pursuant to the Rules of Civil Appellate Procedure.

Rule 46.07. Attorneys Fees

If the child or the child's parent or legal custodian cannot afford the costs of appeal, these costs shall be paid at public expense in whole or in part depending on the ability of the child's parent or legal custodian to pay.

DELIBERATIONS REGARDING RULE 46

This Rule represents an effort to weigh a number of competing interests. The Committee wanted to assure that parties have a fair chance to appeal any order affecting their rights. To that end, the Committee included Rule 46.02 providing that the time for appeal runs not only for the party served, but also for the serving party, from service of notice of filing of the order in question.
The Committee is also aware that permanent arrangements must be made for the care of the subject children, and it would not be in the best interests of those children if orders could be undone months after they had been filed and gone into effect. Therefore, the Committee included language in Rule 46.02 requiring that the appeal period begins to run as to an individual party when they have been served with notice, whether or not all of the other parties
have been properly served. It also provides a maximum appeal time limit of 90 days from filing.

The intent is to require parties to maintain some vigilance concerning the actions of the court, and to inquire about entry of orders, and to foreclose appeal if they do not find out about an order and perfect an appeal within 90 days of the filing of the order.

Some members of the Committee believe this rule would require a statutory change because it makes some appeals timely that are not now timely.

The Committee has recommended several provisions to expedite appeals from juvenile protection matters. The Committee recognizes that the appellate courts must prioritize the variety of cases that come before them, and other classes of cases may compete for expedited status. However, the Committee believes that cases concerning child protection matters are uniquely time sensitive. State and federal statutory timelines for making decisions on permanency may be frustrated by a lengthy appeal process. More importantly, the developmental needs of the subject children may be frustrated by unnecessarily delay in resolving these issues.

The Committee understands that the Court of Appeals routinely expedites appeals in juvenile protection matters and orders briefs submitted within fifteen days. An appellant may be surprised by this expedited timeline, since the appellate rule provides thirty days for service and filing of briefs. The court may want to consider shortening that time period to fifteen days in the Juvenile Protection Rules and in the Rules of Civil Appellate Procedure.

The Rules of Civil Appellate Procedure and Minnesota Statutes § 480A.08, subd. 3, require that the court render its decision within 90 days. In Rule 46.06 the Committee recommends that the court expedite these cases by shortening the time for decision making to 30 days. The Committee also recommends that the current law be changed to allow filing of appeals 30 days from service of notice of filing instead of 30 days from filing.

The Committee recommends including a provision in Rule providing for service by the Court administrator. The Court controls the calendar, and under the current Rules the Court frequently serves notices and orders on the parties. The intent of this rule is to shorten the time for appeals when there has been actual notice.

RECOMMENDATIONS TO THE MINNESOTA SUPREME COURT

1. The Minnesota Supreme Court should adopt the Proposed Juvenile Protection Rules set forth in Part IV of this report. The effective date of the Proposed Rules should be January 1, 2001, to allow time for the bench and bar to receive training regarding the proposed rules.

2. The Minnesota Supreme Court should establish an Adoption Rules Committee to draft rules relating specifically to adoption matters.

3. The Minnesota Supreme Court should establish an Alternative Dispute Resolution Rules Committee to draft rules relating to use of alternative dispute resolution, including mediation, in juvenile protection proceedings. Such rules should then be incorporated as Rule 18 of the Juvenile Protection Rules.

4. The Minnesota Supreme Court should establish a uniform method for tracking juvenile protection matters (e.g., one file per child or one file per family; a new file when a permanency petition or a termination of parental rights petition is filed, etc.).

RECOMMENDATIONS TO THE MINNESOTA LEGISLATURE

1. The Legislature should fully fund the guardian ad litem system.

2. The Legislature should fully fund appointment of counsel for children and parents.

3. With respect to juvenile protection matters (as opposed to juvenile delinquency matters) throughout Minnesota Statutes Chapter 260 and other statutes, the Legislature should change “detention” to "placed pursuant to court order” to reflect that child protection matters are not criminal in nature.

4. With respect to juvenile protection matters (as opposed to juvenile delinquency matters) throughout Minnesota Statutes Chapter 260 and other statutes, the Legislature should change “probable cause” to “prima facie showing” to reflect that child protection matters are not criminal in nature.

5. The Legislature should delete the phrase “neglected and in foster care” found in Minnesota Statutes § 260.015, subd. 18; § 260.011, and § 260.131 as any child who meets that statutory definition would also meet one of the other definitions of “child in need of protection or services” found in Minnesota Statutes § 260.015, subd. 21, and the "neglected and in foster care" statutory language no longer describes a unique type of juvenile protection matter.

~~Subd. 18. “Neglected and in foster care” means a child~~
~~(a) Who has been placed in foster care by court order; and~~
~~(b) Whose parents’ circumstances, condition, or conduct are such that the child cannot be returned to them; and~~
~~(c) Whose parents, despite the availability of needed rehabilitative services, have failed to make reasonable efforts to~~

~~adjust their circumstances, condition, or conduct, or have willfully failed to meet reasonable expectations with regard to visiting the child or providing financial support for the child.~~

6. The Legislature should amend the definition of "parent" in Minnesota Statues § 260.015, subd. 11, to provide as follows:

> **"Parent"** means the birth, legally adjudicated, or adoptive parent of a minor child. For an Indian child, parent includes any Indian person who has adopted a child by tribal law or custom, as provided in section 257.351, subd. 11.

7. The Legislature should amend Minnesota Statutes § 260.291 to provide that the time for appeal shall be thirty (30) days from the date of service, but in no event more than ninety (90) days from the date of filing.

8. The Legislature should amend Minnesota Statutes § 259.52, subd. 1(a), as follows to authorize use of the putative father's registry for the purpose of determining potential fathers in termination of parental rights cases:

> **Subdivision 1. Establishment of registry; purpose; fees.** (a) The commissioner of health shall establish a fathers' adoption registry for the purpose of:
>
> (a) determining the identify and location of a putative father interested in a minor child who is, or is expected to be, the subject of an adoption proceeding, in order to provide notice of the adoption proceeding to the putative father who is not otherwise entitled to notice under section 259.49, subd. 1, paragraph (a) or (b) clauses (1) to 17), or
>
> (b) determining the identify and location of a putative father interested in a minor child who is, or is expected to be, the subject of a juvenile protection matter, in order to provide notice of the adoption proceeding to the putative father who is not otherwise entitled to notice under section 260.
>
> The commissioner of health may establish informational material and public service announcements necessary to implement this section. Any limitation on a putative father's right to assert an interest in the child as provided in this section applies only in adoption and juvenile protection proceedings and only to putative fathers not entitled to notice and consent under section 259.24 and 259.49, subd. 1, paragraph (a) or (b) clauses (1) to 17) or section 260. The commissioner of health has no independent obligation to gather or update the information to be maintained on the registry. It is the registrant's responsibility to update his personal information on the registry.

9. The Legislature should amend Minnesota Statutes § 260.191, subd. 3b(b), regarding

permanent placement determination hearings to lengthen from ten (10) days to thirty (30) days the time period for submitting pleadings as follows:

> (b) Not later than thirty ~~ten~~ days prior to this hearing, the responsible social service agency shall file pleadings to establish the basis for the permanent placement determination. Notice of the hearing and copies of the pleadings must be provided pursuant to section 260.141. If a termination of parental rights petition is filed before the date required for the permanency planing determination, no hearing need be conducted under this subdivision. The court shall determine whether the child is to be returned home or, if not, what permanent placement is consistent with the child's best interests. The "best interests of the child" means all relevant factors to be considered and evaluated.

10. The Legislature should amend Minnesota Statutes § 260.031, subdivision 4 and 5, regarding referees to change "hearing" to "review" as follows:

> **Subd. 4. Review ~~Hearing~~ request.** The minor and the minor's parents, guardians, or custodians are entitled to a review ~~hearing~~ by the judge of the juvenile court if, within three days after receiving notice of the findings of the referee, they file a request with the court for a review ~~hearing~~. The court may allow such a review ~~hearing~~ at any time.
>
> **Subd. 5. Referee findings; decree of court**. In case no review ~~hearing~~ before the judge is requested, or when the right to a review ~~hearing~~ is waived, the findings and recommendations of the referee become the decree of the court when confirmed by an order of the judge. The final order of the court shall, in any event, be proof of such confirmation, and also of the fact that the matter was duly referred to the referee.

11. The Legislature should amend Minnesota Statutes § 260.241m subd. 3(c), to provide that the child's guardian ad litem and the child's attorney shall not be terminated when the permanency disposition is long-term foster care.

> **260.241. Termination of Parental Rights; Effect.**
> * * * * *
> **Subd. 3. Order; Retention of Jurisdiction.**
> * * * * *
> (c) The court shall retain jurisdiction in a case where long term foster care is the permanent disposition. ~~The guardian ad litem and counsel for the child must be dismissed from the case on the effective date of the permanent placement order. However, the foster parent and the child, if of sufficient age, must be informed of how they may contact a guardian ad litem if the matter is subsequently returned to court.~~

12. The Legislature should delete Minnesota Statutes § 260.155, subd. 4(c), so that in compliance with the federal Child Abuse Prevention and Treatment Act of 1974 the court must always appoint a guardian ad litem for a child, even when counsel has been appointed for the child, as follows:

> **Subd. 4. Guardian ad litem.** (a) The court shall appoint a guardian ad litem to protect the interests of the minor when it appears, at any stage of the proceedings, that the minor is without a parent or guardian, or that the minor's parent is a minor or incompetent, or that the parent or guardian is indifferent or hostile to the minor's interests, and in every proceeding alleging a child's need for protection or services under section 260.015, subdivision 2a. In any other case the court may appoint a guardian ad litem to protect the interests of the minor when the court feels that such an appointment is desirable. The court shall appoint the guardian ad litem on its own motion or in the manner provided for the appointment of a guardian ad litem in the district court. The court may appoint separate counsel for the guardian ad litem if necessary.
>
> (b) A guardian ad litem shall carry out the following responsibilities:
>
> (1) conduct an independent investigation to determine the facts relevant to the situation of the child and the family, which must include, unless specifically excluded by the court, reviewing relevant documents; meeting with and observing the child in the home setting and considering the child's wishes, as appropriate; and interviewing parents, caregivers, and others with knowledge relevant to the case;
>
> (2) advocate for the child's best interests by participating in appropriate aspects of the case and advocating for appropriate community services when necessary;
>
> (3) maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child;
>
> (4) monitor the child's best interests throughout the judicial proceeding; and
>
> (5) present written reports on the child's best interests that include conclusions and recommendations and the facts upon which they are based.
>
> ~~(c) The court may waive the appointment of a guardian ad litem pursuant to clause (a), whenever counsel has been appointed pursuant to subdivision 2 or is retained otherwise, and the court is satisfied that the interests of the minor are protected.~~

(d) In appointing a guardian ad litem pursuant to clause (a), the court shall not appoint the party, or any agent or employee thereof, filing a petition pursuant to section 260.131.

13. Throughout the child protection statutes, the Legislature should replace "custody" with "emergency protective care" or "protective care."

14. The Legislature should expand Minnesota Statutes section 546.43, subd. 1, to require for the appointment of qualified interpreters in juvenile protection matters as follows:

546.43. Proceedings Where Interpreter Appointed

Subdivision 1. In a civil or juvenile protection 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.

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A. SCOPE; PURPOSE

RULE 1. SCOPE; PURPOSE

Rule 1.01. Scope

These rules govern the procedure for juvenile protection matters in the juvenile courts in Minnesota. Juvenile protection matters include all matters defined in Rule 2(h).

Rule 1.02. Purpose

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

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

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

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

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

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

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

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

(h) ensure a coordinated decision-making process;

(i) reduce unnecessary delays in court proceedings; and

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

Advisory Committee Comment

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

The purpose statement reflects the policy set forth in the federal Adoption and Safe Families Act, P.L. 95-108 (Nov. 19, 1997), which emphasizes that the overriding objective in any juvenile protection matter is to timely provide a safe, permanent home for the child. The purpose statement also reflects the policy set forth in Minnesota Statutes § 260.011, subd. 2(a), which provides, in pertinent part, as follows:

> The paramount consideration in all proceedings concerning a child alleged or found to be in need of protection or services is the health, safety, and best interests of the child. . . . The purpose of the laws relating to juvenile courts is to secure for each child alleged or adjudicated in need of protection or services

and under the jurisdiction of the court, the care and guidance, preferably in the child's own home, as will best serve the spiritual, emotional, mental, and physical welfare of the child; to provide judicial procedures which protect the welfare of the child; to preserve and strengthen the child's family ties whenever possible and in the child's best interests, removing the child from the custody of parents only when the child's welfare or safety cannot be adequately safeguarded without removal; and, when removal from the child's own family is necessary and in the child's best interests, to secure for the child custody, care and discipline as nearly as possible equivalent to that which should have been given by the parents.

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

RULE 2. DEFINITIONS

Rule 2.01. Definitions

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

(a) "**Child placing agency**" means any agency licensed pursuant to Minnesota Statutes § 245A.03, subd. 1(3), or § 252.28, subd. 2.

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

(1) taken into custody by a peace officer pursuant to Minnesota Statutes § 260.135, subd. 5, or § 260.145;

(2) ordered into placement by the court pursuant to Minnesota Statutes § 260.172 or § 260.185 before a disposition; or

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

(c) **"Foster care"** as defined in Minnesota Statutes § 260.015, subd. 7, means the 24-hour-a-day care of a child in any facility which for gain or otherwise regularly provides one or more children, when unaccompanied by their parents, with a substitute for the care, food, lodging, training, education, supervision, or treatment they need but which for any reason cannot be furnished by their parent or legal custodian in their homes.

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

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

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

(g) **"Juvenile protection case records"** means all records of a particular case or

controversy, including all records filed with the court, all records maintained by the court, and all reporter's notes and tapes, electronic recordings, and transcripts of hearings and trials. See also "records" defined in subdivision (q).

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

(1) child in need of protection or services matters as defined in Minnesota Statutes § 260.015, subd. 2a, including habitual truant and runaway matters;

(2) neglected and in foster care matters as defined in Minnesota Statutes § 260.015, subd. 18;

(3) review of foster care matters and review of out-of-home placement matters as defined in Minnesota Statutes § 257.071 and § 260.131, subd. 1a;

(4) termination of parental rights matters as defined in Minnesota Statutes § 260.221 to § 260.245; and

(5) permanent placement matters as defined in Minnesota Statutes § 260.191, subd. 3b, including transfer of permanent legal and physical custody to a relative matters and long-term foster care matters.

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

(j) **"Legal guardian"** means a person who is the court-appointed legal guardian of the child pursuant to Minnesota Statutes § 260.242 or Minnesota Statutes Chapter 525 or an equivalent law in another jurisdiction.

(k) **"Parent"** as adapted from Minnesota Statutes § 260.015, subd. 11, means the birth, legally adjudicated, or adoptive parent of a minor child. For an Indian child, parent includes any Indian person who has adopted a child by tribal law or custom as provided in Minnesota Statutes § 257.351, subdivision 11.

(l) **"Person"** as defined in Minnesota Statutes § 260.015, subd. 12, means any individual, association, corporation, partnership and the state or any of its political subdivisions, departments, or agencies.

(m) **"Placement facility"** as defined in to Minnesota Statutes § 260.015, subd. 17, means a physically unrestricing 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. "Placement facility" does not include a secure detention facility.

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

(o) **"Protective supervision"** as defined in Minnesota Statutes § 260.191, subd. 1(a)(1), means the right and duty of the local social services agency or child-placing agency to monitor the conditions imposed by the court directed to the correction of the child's need for protection or services while in the care of the child's parent or legal custodian.

(p) **"Reasonable efforts"** as defined in Minnesota Statutes § 260.012(b) means the exercise of due diligence by the responsible social services agency to use appropriate and available services to meet the needs of the child and the child's family to prevent removal of the child from the child's parent or legal custodian or, upon removal, services to eliminate the need for removal and reunite the family. Reasonable efforts includes efforts by the local social services agency to secure for the child a legally permanent home in a timely fashion when

reunification effort are no longer applicable.

(q) **"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 (g).

(r) **"Relative"** as adapted from Minnesota Statutes § 260.015, subd. 13, and § 260.181, subd. 3, means a parent, stepparent, grandparent, brother, sister, uncle or aunt of the minor, or an important friend with whom the child has resided or had significant contact. This relationship may be by blood, marriage, or adoption. For an Indian child, relative includes members of the extended family as defined by the law or custom of the Indian child's tribe or, in the absence of laws or custom, nieces, nephews, or first or second cousins, as provided in the Indian Child Welfare Act, 25 U.S.C. § 1903.

(s) **"Removed from Home"** means taking the child out of the care of the parent or legal custodian, including a substitute caregiver, and placing the child in foster care or in a placement facility.

RULE 3. APPLICABILITY OF OTHER RULES AND STATUTES

Rule 3.01. Applicability of Rules of Civil Procedure

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

Advisory Committee Comment

The Rules of Civil Procedure continue to apply in transfer of permanent legal and physical custody matters and in adoption matters.

Rule 3.02. Applicability of Rules of Evidence

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

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

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

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

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

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

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

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

(c) the court finds that the time, content, and circumstances of the statement and the

reliability of the person to whom the statement is made provide sufficient indicia of reliability; and

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

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

Subd. 3. Judicial Notice. The court upon its own motion or the motion of any party may take judicial notice of any finding of fact and court order in any other proceeding in any other court involving the child or the child's parent or legal custodian.

Rule 3.03. Applicability of Indian Child Welfare Act

Juvenile protection matters concerning an Indian child shall be governed by the Indian Child Welfare Act, 25 U.S.C. § 1901 to § 1963; the Minnesota Indian Family Preservation Act, Minnesota Statutes § 257.35 to § 257.3579; and by these rules when these rules are not inconsistent with the Indian Child Welfare Act or the Minnesota Indian Family Preservation Act.

Rule 3.04. Applicability of the Rules of Guardian Ad Litem Procedure

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

Rule 3.05. Applicability of Court Interpreter Statutes and Rules

The statutes and court rules 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. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and in the discretion of the court may be taxed ultimately as a cost.

B. GENERAL OPERATING RULES

RULE 4. TIME; TIMELINE

Rule 4.01. Computation of Time

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

Rule 4.02. Additional Time After Service by Mail

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

Rule 4.03. Timeline

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

(a) **Emergency Protective Care Hearing.** If a child has been removed from the home of the parent or legal custodian, the court shall hold an emergency protective care hearing within seventy-two (72) hours of the child's removal. However, in proceedings where the sole statutory ground alleged in the petition is that the child is a habitual truant or runaway, the emergency protective care hearing shall be held within thirty-six (36) hours of the child's removal.

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

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

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

(e) **Findings/Adjudication.** The court shall issue its findings and order concerning adjudication within fifteen (15) days of the date 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. The trial is not considered completed until written arguments, if any, are submitted.

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

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

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

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

(a) within six (6) months of the date the child is removed from the home of the parent or legal custodian if the child is under eight (8) years of age at the time the petition is filed, or

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

Subd. 3. Termination of Parental Rights Matters.

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

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

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

(d) **Findings/Adjudication.** The court shall issue its findings and order concerning adjudication within fifteen (15) days of the date 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. The trial is not considered completed until written arguments, if any, are submitted.

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

Advisory Committee Comment

The timeline set forth in Rule 4.03 is based upon the requirements of Minnesota Statutes § 260.171, subd. 2; § 260.171; § 260.191, subds. 3a and 3b; and the Adoption and Safe Families Act, 42 U.S.C. § 5106a.

Rule 4.03, subd. 1, sets forth the timeline for child in need of protection or services matters. The following schedule is intended as an example of how that timeline applies to a non-Indian child over eight years of age who has been removed from the child's home:

Day	Event
1	Child removed from home
3	Emergency Protective Care Hearing
3-13	Admit/Deny Hearing
14-53	Pretrial Conference
63	Trial
79	Findings/Adjudication
78-88	Disposition Hearing
168-178	Review Hearing
258-268	Review Hearing
348-358	Review Hearing
365	Permanent Placement Determination Hearing

Rule 4.03, subd. 2, complies with Minnesota Statutes § 260.191, subd. 3b, which becomes effective July 1, 1999, and provides that a permanent placement determination hearing must be held within six (6) months of a child's removal from the home if the child is under eight (8) years of age at the time the petition is filed.

Rule 4.04. 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 5 and any other timing provisions set forth in each specific rule.

RULE 5. CONTINUANCES

Rule 5.01. Findings

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

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

interests of the child.

Advisory Committee Comment

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

Rule 5.02. Notice of Continuance

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

Rule 5.03. Existing Orders; Interim Orders

Unless otherwise ordered, existing orders shall remain in full force and effect during a continuance. When a continuance is ordered, the court may make any interim orders it deems to be in the best interests of the child in accordance with the provisions of Minnesota Statutes § 260.011 to § 260.301.

RULE 6. SCHEDULING ORDER

Rule 6.01. Purpose

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

Rule 6.02. Order

Subdivision 1. When Issued. The court shall issue a scheduling order at the admit/deny hearing held pursuant to Rule 35 or within five (5) days of the admit/deny hearing.

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

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

Advisory Committee Comment

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

Rule 6.03. Amendment

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

RULE 7. REFEREES AND JUDGES

Rule 7.01. Referee Authorization to Hear Matter

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

Rule 7.02. Objection to Referee Presiding Over Matter

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

Rule 7.03. Removal of Particular Referee

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

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

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

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

Advisory Committee Comment

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

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

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

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

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

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

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

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

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

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

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

Advisory Committee Comment

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

Rule 7.06. Order of the Court

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

Rule 7.07. Removal of Judge

Subdivision 1. Disability of Judge. If by reason of death, sickness, or other disability a judge before whom a proceeding in the matter has been tried is unable to perform judicial duties after a decision is made or findings of fact and conclusions of law are filed, any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties; but if such other judge is satisfied that the duties cannot be performed because that judge did not preside at the trial or for any other reason, that judge may exercise discretion to grant a new trial.

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

Subd. 3. Motion to Remove. A party or the county attorney may file with the court and serve upon all other parties a motion to remove. The motion shall be served and filed within ten (10) days of the date the party receives notice of the name of the judge who is to preside at the hearing or trial, but not later than the commencement of the hearing or trial.

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

After a party has once disqualified a presiding judge as a matter of right pursuant to Minnesota Statutes § 542.16, that party may disqualify the substitute judge, but only by making an affirmative showing of prejudice. A showing that the judge might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice.

Upon the filing of a motion to remove, or if a litigant makes an affirmative showing of prejudice against a substitute judge, the chief judge of the judicial district shall assign any other judge of any court within the district to hear the matter.

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

RULE 8. ACCESSIBILITY OF JUVENILE PROTECTION CASE RECORDS

Rule 8.01. Availability of Juvenile Protection Case Records

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

Advisory Committee Comment

"Juvenile protection case records" is defined at Rule 2.01(g) and specifically excludes judicial work product and drafts.

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

Rule 8 applies in counties that are not part of the pilot project.

Rule 8.02. No Order Required

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

(a) the court and court personnel;
(b) any party;
(c) counsel for any party; and

(d) the county attorney.

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

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

Subd. 4. Counsel Sharing Record with Client. Unless the court otherwise orders, counsel for a party may only share juvenile protection case records with that party consistent with state and federal access rules.

Advisory Committee Comment

Minnesota Statutes § 260.161, subd. 1(a), mandates that "unless otherwise provided by law, all court records shall be open at all reasonable times to the inspection of any child to whom the records relate and to the child's parent or guardian." Rule 8.02 reflects the statutory language and provides that parties may have direct access to juvenile protection case records. The court may at any time issue a protective order regarding specific juvenile protection case records. If a party feels that certain documents are particularly sensitive, the party may ask the court to issue a protective order.

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

Rule 8.03. Court Order Required

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

(a) a representative of a state or private agency providing supervision or having custody of the child under order of the court;

(b) any individual for whom such record is needed to assist or to supervise the child or parent in fulfilling a court order; or

(c) any other person having a legitimate interest in the child or in the operation of the court.

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

(a) in the best interests of the child;

(b) in the interests of public safety; or

(c) necessary for the functioning of the juvenile court system.

Rule 8.04. Disclosure to Employer and Military Prohibited

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

Rule 8.05. Protective Order

Upon motion pursuant to Rule 15, and for good cause shown, the court may at any time issue a protective order regarding any record or portion of a record. The court may require an ex parte showing that inspection, disclosure, copying, or release of the record is necessary and in the best interest of the child, public safety, or the functioning of the juvenile court system. Pursuant to Minnesota Statutes § 260.161, subdivision 3a, the court may issue a protective order prohibiting an attorney from sharing a record or portion of a record with a client other than a guardian ad litem.

Rule 8.06. Procedure for Requesting Access

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

Advisory Committee Comment

Rule 8.06 refers to the Rules of Public Access to the Records of the Judicial Branch. Those rules set forth the procedures for requesting access to records and for determining fees when copies are requested.

RULE 9. EX PARTE COMMUNICATION

Rule 9.01. Ex Parte Communication Prohibited

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

Advisory Committee Comment

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

Rule 9.02. Disclosure

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

RULE 10. ORDERS

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. An order shall remain in full force and effect until the first occurrence of one of the following:

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

Rule 10.02. Immediate Effect of Oral Order

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

Rule 10.03. Delivery; Mailing

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

RULE 11. RECORDING AND TRANSCRIPTS

Rule 11.01. Procedure

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

Rule 11.02. Availability of Transcripts

Transcripts shall be available only to the county attorney, parties, and participants for further use in the hearing or subsequent hearings, appeal, habeas corpus actions, or for other use as the court deems proper. Any request for a transcript shall be made to the court in writing or on the record.

Rule 11.03. Expense

Except as otherwise provided in this rule, a party or participant requesting a copy of a transcript shall pay for the preparation cost of the transcript. If a party requests a transcript of all or part of a hearing for an authorized use pursuant to Rule 11.02, and that party is unable to pay the preparation cost of the transcript, the court shall direct the preparation and delivery of the transcript to that party, at public expense, in whole or in part, depending on the ability of the person to pay.

RULE 12. TELEPHONE AND INTERACTIVE VIDEO CONFERENCES

Rule 12.01. Motions and Conferences

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

Advisory Committee Comment

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

Rule 12.02. Hearings and Taking Testimony

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

Advisory Committee Comment

Rule 12.02 authorizes the court to hold hearings or take testimony by telephone or interactive video conference only upon agreement of the parties or in exceptional circumstances upon motion. Generally, emergency protective care hearings conducted pursuant to Rule 31 and trials should not be held by telephone conference or interactive video conference.

The intent of this rule is to ensure that parties are permitted to fully participate in hearings and to be present when testimony is offered. The rule provides that the court has the opportunity, in all but the most exceptional cases, to personally observe witnesses in order to effectively weigh credibility. However, it also gives the court some flexibility in those exceptional cases.

Rule 12.03. In Court Appearance Not Precluded

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

RULE 13. SUBPOENAS

Rule 13.01. Subpoena for a Hearing or Trial

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

Rule 13.02. Form; Issuance; Notice

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

Subd. 2. Issuance. A subpoena shall be issued only for appearance at a hearing, a deposition pursuant to Rule 17, a trial pursuant to Rule 38, or to produce books, papers, documents, or other tangible things designated in the subpoena.

Subd. 3. Notice. Every subpoena shall contain a notice to the person to whom it is directed advising that person of the right to reimbursement for certain expenses pursuant to Rule 15.

Rule 13.03. Service

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

Rule 13.04. Motion to Quash a Subpoena

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

(a) direct compliance with the subpoena;

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

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

(d) quash the subpoena.

Rule 13.05. Objection

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

Rule 13.06. Production of Documentary Evidence

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

Rule 13.07. Subpoena for Taking Depositions; Place of Examination

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

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

Rule 13.08. Expenses

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

Subd. 2. Expenses of Experts. Subject to the provisions of Rule 17, a witness who is not a party to the action or an employee of a party and who is required to give testimony or produce documents relating to a profession, business, or trade, or relating to knowledge, information, or facts obtained as a result of activities in such profession, business, or trade, is entitled to reasonable compensation for the time and expense involved in preparing for and giving such testimony or producing such documents. The party serving the subpoena shall make arrangements for such reasonable compensation prior to the time of the taking of the testimony. If such reasonable arrangements are not made, the person subpoenaed may proceed pursuant to Rule 13.04 or Rule 13.05, subd. 2. If the deponent has moved to quash or otherwise objected to the subpoena, the party serving the subpoena may, upon notice and motion to the deponent and all parties, move for an order directing the amount of such compensation at any time before the taking of the deposition.

Rule 13.09. Failure to Appear

If any person personally served with a subpoena fails, without reasonable cause, to appear or bring the child if ordered to do so, or if the court has reason to believe the person is avoiding personal service, the court may sua sponte or upon the motion of a party or the county attorney pursuant to Rule 15 proceed against the person for civil contempt of court pursuant to Rule 14 or the court may issue a warrant for the person's arrest, or both. When it appears to the court that service will be ineffectual, or that the welfare of the child requires that the child be immediately brought into the custody of the court, the court may issue a warrant for immediate custody of the child. The child shall not be placed in secure detention.

RULE 14. CONTEMPT

Rule 14.01. Initiation

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

following:

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

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

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

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

Rule 14.02. Supporting and Responsive Affidavits

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

Rule 14.03. Hearing

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

Rule 14.04. Sentencing

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

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

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

Subd. 4. Failure to Appear. If any person personally served with a summons or subpoena fails, without reasonable cause, to appear or bring the child if ordered to do so, or if the court has reason to believe the person is avoiding personal service, the court may sua sponte or upon the motion of a party or the county attorney pursuant to Rule 16 proceed against the person for contempt of court or the court may issue a warrant for the person's arrest, or both. When it appears to the court that service will be ineffectual, or that the welfare of the child requires that the child be immediately brought into the custody of the court, the court may issue a warrant for immediate custody of the child. The child shall not be placed in secure detention.

RULE 15. MOTIONS

Rule 15.01. Form

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

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

(a) set forth the relief or order sought;

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

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

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

(e) be accompanied by a supporting affidavit or other supporting documentation or a memorandum of law.

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

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

Rule 15.02. Service and Notice of Motions

Subdivision 1. Upon Whom. The moving party shall serve the notice of motion and motion, along with any supporting affidavit or other supporting documentation or a memorandum of law, on all parties, the county attorney, and any other persons designated by the court. The moving party shall serve notice of the hearing on all participants, except a child under age 12.

Subd. 2. How Made. Service of a motion may be made by personal service, by mail, or by transmitting a copy by facsimile transmission pursuant to Rule 32.

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

Rule 15.03. Ex Parte Motion and Hearing

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

jurisdiction.

Subd. 2. Hearing. When the court issues an ex parte order removing a child from the care of a parent, the court shall schedule a hearing to review the order within seventy-two (72) hours of the child's removal. Upon issuance of an ex parte order in cases of domestic child abuse, the court shall schedule a hearing pursuant to the requirements of Minnesota Statutes § 260.133. Upon issuance of any other ex parte order, a hearing shall be scheduled on the request of a party at the earliest possible date.

Rule 15.04. Motion to Dismiss Petition

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

(a) lack of jurisdiction over the subject matter;

(b) lack of jurisdiction over the child; or

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

Rule 15.05. Motion to Strike Pleadings

Any party or the county attorney may bring a motion to strike pleadings or portions of pleadings not authorized by statutes or these rules. If the motion to strike a pleading is granted, the pleading shall be physically removed from the court file. If a motion to strike a portion of a pleading is granted, that portion of the pleading shall be redacted from the court file.

Advisory Committee Comment

When the court grants a motion to strike pleadings or portions of pleadings, the objectionable matter should be physically removed from the court file and should not be considered by any fact finder with jurisdiction over the case.

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

Rule 16.01. Signing of Pleadings, Motions and Other Papers

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

Subd. 2. Party Not Represented by an Attorney. A party who is not represented by an attorney shall personally sign the pleading, motion, or other paper and shall state the party's address and telephone number.

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

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

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

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

Rule 16.02. Sanctions

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

RULE 17. DISCOVERY

Rule 17.01. Disclosure by Petitioner Without Court Order

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

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

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

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

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

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

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

Rule 17.02. Disclosure by Other Parties Without Court Order

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

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

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

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

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

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

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

Rule 17.03. Information Not Discoverable

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

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

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

Rule 17.04. Discovery Upon Court Order

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

Subdivision 1. Physical and Mental Examinations.

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

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

Subd. 2. Depositions.

(a) **Agreement of Parties.** A deposition may be taken upon agreement of the parties, or if ordered by the court, pursuant to subdivision 2(b).

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

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

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

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

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

(d) **Notice.** A party taking a deposition shall give reasonable notice of the deposition. The deposition shall be taken before an officer authorized to administer oaths by the laws of the United States, or before a person appointed by the court in which the matter is pending. The parties shall agree on or the court shall order the manner of recording of the deposition. A stenographic transcription may be made at a party's request. Examination and cross-examination of witnesses shall be as permitted at trial. However, the deponent shall answer any otherwise objectionable question, except that which would reveal privileged material unless the privilege does not apply pursuant to Minnesota Statutes § 626.556, subd. 8, so long as it leads to or is reasonably calculated to lead to the discovery of any relevant data.

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

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

(a) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions concerning fees and expenses as the court may deem appropriate.

(b) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35.02 or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(c) Unless manifest injustice would result, (1) the court shall require the party seeking discovery to pay the expert a reasonable fee for time spent in responding to discovery pursuant to this rule, and (2) with respect to discovery obtained pursuant to this rule, the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

Rule 17.05. Time, Place, and Manner of Discovery

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

Rule 17.06. Regulation of Discovery

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

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

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

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

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

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

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

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

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

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

Rule 17.07. Expenses

The costs of discovery shall be at the expense of the requesting party. However, when the party is unable to afford the costs of discovery, the costs shall be at public expense in whole or in part, depending on the ability of the party to pay.

RULE 18. DEFAULT

Rule 18.01. Procedure

If a party fails to appear after being properly served with a summons and notice that failure to appear may result in (a) a finding that the statutory grounds set forth in the petition have been proved and (b) an order granting the relief requested, the court shall take testimony in support of the petition. If the petition is proved by the applicable burden of proof, the court shall enter an order granting the relief sought in the petition. The court shall not grant a default if a party was served with a summons less than three (3) days prior to the hearing.

RULE 19. SETTLEMENT

Rule 19.01. Generally

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

Rule 19.02. Content of Settlement Agreement

Any settlement agreement shall include a statement of:

(a) the statutory grounds to be admitted;

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

(c) the factual allegations to be admitted;

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

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

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

Rule 19.03. Procedure

Every settlement agreement shall be filed with the court or stated and agreed to on the record by the settling parties. Before approving a settlement agreement, the court shall determine that each party to the agreement understands the content and consequences of the admission or settlement agreement and voluntarily consents to the agreement. When a party makes an admission, the court may accept or reject the admission based upon the terms of the settlement agreement or may conditionally accept or reject the admission pending receipt of a predisposition report prepared for the disposition hearing. The court may accept a settlement agreement that resolves the issues with respect to the petitioner and one or more but not all parties, and proceed with the matter with respect to the non-settling parties. If the court approves the settlement agreement, it shall proceed pursuant to Rule 39. If the court rejects the settlement agreement, it shall advise the parties and the county attorney of this decision in writing or on the record and shall call upon the parties to either affirm or withdraw the admission. If the admission is withdrawn, the court shall make a finding that the admission is not accepted and proceed pursuant to Rule 38.

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

If a party objects to a settlement agreement in a termination of parental rights matter or a permanent placement matter, that party shall within five (5) days of service of notice of the proposed settlement agreement adopt the existing pleadings and assume the burden of proof or file pleadings in support of an alternative. The matter shall be set for trial within the timelines set forth in Rule 38.

RULE 20. ALTERNATIVE DISPUTE RESOLUTION

[Reserved for future use.]

Advisory Committee Comment

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

C. PARTIES AND PARTICIPANTS

RULE 21. PARTIES

Rule 21.01. Party Status

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

(a) the child, if the child is age 12 or older, is represented by counsel, or is made a party pursuant to court order;

(b) the child's guardian ad litem;

(c) the child's legal custodian;

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

(e) the local social services agency;

(f) the petitioner;

(g) in the case of an Indian child as defined in the Indian Child Welfare Act, 42 U.S.C. § 1901to § 1906, the Indian custodian of the child and the Indian child's tribe through the tribal representative;

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

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

(j) any other person, including a child under age 12, 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 and Runaway Matters. In addition to the parties identified in subdivision 1, in any matter alleging a child to be a habitual truant or a runaway, 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) any other person who is deemed by the court to be important to a resolution that is in the best interests of the child.

Rule 21.02. Rights of Parties

A party shall have the right to:

(a) receive notice pursuant to Rule 33;

(b) legal representation pursuant to Rule 25;

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

(d) conduct discovery pursuant to Rule 17;

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

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

(g) subpoena witnesses pursuant to Rule 13;

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

(i) present evidence;

(j) cross-examine witnesses;

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

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

(n) bring post-trial motions pursuant to Rule 44;

(o) appeal from orders of the court pursuant to Rule 46; and

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

Rule 21.03. Address

It shall be the responsibility of the petitioner to set forth in the petition the names and addresses of all parties if known to the petitioner after reasonable inquiry. It shall be the responsibility of each party to inform the court administrator of any change of address.

RULE 22. PARTICIPANTS

Rule 22.01. Participant Status

Unless already a party pursuant to Rule 21, or unless otherwise specified, participants to all juvenile protection matters shall include:

(a) all parents of the child, including any noncustodial parents and any alleged, adjudicated, or presumed father;

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

(c) relatives providing care for the child and other relatives who request notice;

(d) current foster parents and persons proposed as long-term foster care parents;

(e) the spouse of the child, if any; and

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

Advisory Committee Comment

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

Rule 22.02. Rights of Participants

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

(a) receiving notice pursuant to Rule 33;
(b) attending hearings pursuant to Rule 27; and
(c) offering information at the discretion of the court.

Subd. 2. Foster Parents and Relatives. Notwithstanding subdivision 1, the foster parents, if any, of a child and any preadoptive parent or relative providing care for the child shall be provided an opportunity to be heard in any hearing regarding the child. Any other relative may also request, and shall be granted, an opportunity to be heard. This subdivision does not require that a foster parent, preadoptive parent, or relative providing care for the child be made a party to the matter.

Rule 22.03. Participant Address

It shall be the responsibility of the petitioner to set forth in the petition the names and addresses of all participants if known to the petitioner after reasonable inquiry. It shall be the responsibility of each participant to inform the court administrator of any change of address.

RULE 23. INTERVENTION

Rule 23.01. Intervention of Right

Subdivision. 1. Indian Child. In any proceeding for the foster care placement of, or the termination of parental rights regarding, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene as a party at any point in the proceeding. An Indian tribe and an Indian custodian shall file with the court and serve on all parties a notice of intervention in order to exercise party status in proceedings involving an Indian child.

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

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

Rule 23.02. Permissive Intervention

Any person may be permitted to intervene as a party at any point in the proceeding if the court finds that such intervention is in the best interests of the child.

Rule 23.03. Procedure

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

Subd. 2. Permissive Intervention. A person seeking permissive intervention pursuant to Rule 23.02 shall file with the court and serve upon all parties and the county attorney a notice of motion and motion to intervene pursuant to Rule 15. The notice shall state the nature and extent of the person's interest in the child and the reason(s) that the person's intervention would be in the best interests of the child. A hearing on a motion to intervene shall be held within ten (10) days of the filing of the motion to intervene.

Rule 23.04. Effect of Intervention

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

RULE 24. JOINDER

Rule 24.01. Procedure

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

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

(b) in the best interests of the child.

The moving party shall serve the motion upon the person proposed to be joined.

Advisory Committee Comment

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

RULE 25. RIGHT TO COUNSEL

Rule 25.01. Right to Representation

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

Advisory Committee Comment

Rule 25.01 sets forth the basic principle that each person appearing in court has the right to be represented by counsel. That person, however, does not necessarily have the right to appointment of counsel at state expense, which is provided in Rule 25.02.

Rule 25.02. Appointment of Counsel

Subdivision 1. Mandatory Appointment for Child Age 12 or Over. The court shall appoint counsel at state expense for a child who cannot afford to retain counsel if the child is age

12 or older.

Subd. 2. Mandatory Appointment for Child Alleged to be a Habitual Truant, a Runaway, or Engaged in Prostitution. The court shall appoint counsel at state expense for a child who cannot afford to retain counsel if the child, regardless of age, is the subject of a petition based solely on the statutory grounds that the child is a habitual truant, a runaway, or engaged in prostitution.

Subd. 3. Discretionary Appointment for Child Under Age 12. The court may, sua sponte or upon the written or on-the-record request of a party, the county attorney, the child, or a participant, appoint counsel for a child under age 12. When the child cannot afford to retain counsel, the appointment shall be made at state expense. If the court denies a request to appoint counsel for a child under age 12, the court shall make written findings as to the reason for the denial.

Subd. 4. Appointment for Child's Parent or Legal Custodian.

(a) **Mandatory Appointment -- Generally.** When the child's parent who is a party, the legal custodian, or, in the case of an Indian child, the child's Indian custodian, cannot afford to retain counsel, the court shall appoint counsel at state expense. Such representation shall include all juvenile protection matters as defined in Rule 2.01(h), except that it shall not include representation for the purpose of establishment or enforcement of child support pursuant to Minnesota Statutes § 518.551 or cost of care pursuant to Minnesota Statutes § 260.251.

(b) **Habitual Truant, Runaway, and Prostitution Matters.** The parent or legal custodian of a child who is the subject of a petition where the sole allegation is that the child is a habitual truant, a runaway, or engaged in prostitution has the right to assistance of counsel after the court has found that the statutory grounds set forth in the petition have been proved. The court has discretion to appoint counsel to represent the parent or legal custodian at state expense if the parent or legal custodian is financially unable to obtain counsel and in any other case in which the court finds such appointment desirable.

Subd. 5. Right of Guardian Ad Litem to Counsel. Upon request of the guardian ad litem, the court shall appoint counsel for the guardian ad litem at state expense. Counsel for the guardian ad litem shall not be counsel for the child or for any other party or participant.

Advisory Committee Comment

The Committee contemplates that one attorney may represent all siblings in any given matter and a separate attorney may represent both parents. In either case, the attorney would be bound by Minnesota Rules of Professional Conduct 1.7 through 1.10 concerning conflict of interest.

Rule 25.03. Reimbursement

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

Rule 25.04. Notice of Right to Representation

Subdivision 1. Written Notice. Written notice of the right to be represented by counsel and the right to court-appointed counsel pursuant to this rule shall be provided to the child and the child's parent or legal custodian with:

(a) notice that the child has been placed in emergency protective care pursuant to Rule 29;

(b) notice or summons served with a petition;

(c) notice of the disposition hearing; and

(d) notice of a review hearing.

Subd. 2. In-Court Advisory. Any child, parent, or legal custodian who appears in court and is not represented by counsel shall be advised by the court on the record of the right to representation pursuant to Rule 25.01 and the right to court-appointed counsel pursuant to Rule 25.02.

Rule 25.05. Certificate of Representation

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

Rule 25.06. Withdrawal of Counsel

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

(a) all proceedings in the matter have been completed;

(b) the attorney has been discharged by the client in writing or on the record;

(c) the court grants the attorney's ex parte motion for withdrawal; or

(d) the court approves the attorney's ex parte written substitution of counsel.

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

RULE 26. GUARDIAN AD LITEM

Rule 26.01. Mandatory Appointment for Child

Subdivision 1. Generally. The court shall appoint a guardian ad litem to advocate for the best interests of each child who is the subject of a juvenile protection matter, except in cases where the sole allegation is that a habitual truant or a runaway. The court may appoint a person to serve as guardian ad litem for more than one child in a proceeding. The appointment of a guardian ad litem shall be made pursuant to Rule 904 of the Rules of Guardian ad Litem Procedure. The guardian ad litem shall carry out the responsibilities set forth in Rule 908 of the Rules of Guardian ad Litem Procedure. The guardian ad litem shall have the rights and powers set forth in Rule 909 of the Rules of Guardian Ad Litem Procedure.

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

Advisory Committee Comment

The federal Child Abuse Prevention and Treatment Act (CAPTA), 42 U.S.C. § 5106a(b)(2)(A)(ix), mandates that for a state to qualify to receive federal grants for child protection prevention and treatment services, the state must have in place:

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

Minnesota has complied with CAPTA by enacting the following language at Minnesota Statutes § 260.155, subd. 4(a):

> The court shall appoint a guardian ad litem to protect the interests of the minor . . . in every proceeding alleging a child's need for protection or services under § 260.015, subd. 2a.

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

Rule 26.02. Discretionary Appointment in Habitual Truant and Runaway Matters

Upon a finding that it is in the best interest of the child to do so, the court may, sua sponte or upon a written or on-the-record request of a party or participant, appoint a guardian ad litem to advocate for the best interest of the child where the sole statutory ground alleged in the petition is that the child is a habitual truant or a runaway.

Rule 26.03. Discretionary Appointment for Child's Parent or Legal Custodian

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

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

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

Upon request of the guardian ad litem for the parent or legal custodian, the court shall appoint counsel for the guardian ad litem at state expense. Counsel for the guardian ad litem shall not be counsel for the child or for any other party or participant. Appointment of a guardian ad litem for a parent shall not result in discharge of counsel for the parent.

RULE 27. PRESENCE AT PROCEEDINGS

Rule 27.01. Right to Attend Hearing

Any person who is entitled to summons or notice pursuant to these rules or who is summoned or given notice shall have the right to attend the hearing to which the summons or notice relates.

Advisory Committee Comment

Pursuant to Rule 21, a party has the right to be present in person at any hearing. For a child who is a party, the person with physical custody of the child should generally be responsible for assuring the child's attendance at hearings. When a child is in emergency protective care or protective care, the local social services agency is responsible for ensuring the child's presence in court. If the child is in the custody of the county in out-of-home placement, the social services agency should transport the child to the hearing. If the agency fails to make arrangements for the child to attend the hearing, the child's attorney or guardian ad litem may need to ask for a continuance and for an order requiring the child to be brought to the next hearing.

Rule 27.02. Absence Does not Bar Hearing

The absence from a hearing of a person who has the right to attend shall not prevent the hearing from proceeding provided appropriate notice has been served or the court finds that notice would be ineffectual and that it is in the best interests of the child to proceed without notice.

Rule 27.03. Exclusion of Persons Who Have Right to Attend Hearings

In any hearing the court may temporarily exclude the presence of any person other than counsel or guardian ad litem when it is in the best interest of the child to do so. If a person other than counsel or guardian ad litem engages in conduct which disrupts the court, the person may be excluded from the courtroom. The exclusion of the person shall not prevent the court from proceeding with the hearing.

Rule 27.04. Record of Exclusion and Right to Continued Participation

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

RULE 28. CLOSED PROCEEDINGS

Rule 28.01. Attendance at Hearings

Only the following may attend hearings:

(a) all parties pursuant to Rule 22;

(b) all participants pursuant to Rule 23;

(c) the county attorney;

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

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

Advisory Committee Comment

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

D. COURSE OF CASE

RULE 29. EMERGENCY PROTECTIVE CARE ORDER AND NOTICE

Rule 29.01. Emergency Protective Care Defined

A child is in "emergency protective care" when:

(a) taken into custody by a peace officer pursuant to Minnesota Statutes § 260.135, subd. 5, § 260.145 or § 260.165;

(b) the court orders placement of the child pursuant to Minnesota Statutes § 260.172 or § 260.185 before a disposition; or

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

Advisory Committee Comment

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

Rule 29.02 Ex Parte Order for Emergency Protective Care

Subdivision 1. Generally. The court may issue an ex parte order for emergency protective care if it finds from the facts set forth in the petition or any supporting affidavits or sworn testimony that:

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

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

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

(a) there is a prima facie showing that the child has engaged in prostitution as defined in Minnesota Statutes § 260.015, subd. 11; is a habitual truant as defined in Minnesota Statutes § 260.015, subd. 19; or is a runaway as defined in Minnesota Statutes § 260.015, subd. 20; and

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

Rule 29.03. Contents of Order

An order for emergency protective care shall be signed by a judge and shall:

(a) order the child to be taken to an appropriate relative, a designated caregiver pursuant to Minnesota Statutes § 257A, or a placement facility designated by the court pending an emergency protective care hearing pursuant to Rule 31;

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

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

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

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

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

Rule 29.04. Execution of Order

An order for emergency protective care:

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

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

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

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

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

Rule 29.05. Notice

When an order for emergency protective care is executed, the peace officer shall notify

the child and the child's parent or legal custodian:

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

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

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

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

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

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

Rule 29.06. Enforcement of Order

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

RULE 30. PROCEDURES DURING PERIOD OF EMERGENCY PROTECTIVE CARE

Rule 30.01. Release from Emergency Protective Care

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

(a) **Release Prohibited.** A child taken into emergency protective care pursuant to a court order shall be held for seventy-two (72) hours pursuant to the timing provisions set forth in Rule 4 unless the court issues an order authorizing release.

(b) **Release Required.** A child taken into emergency protective care pursuant to a court order shall not be held in emergency protective care for more than seventy-two (72) hours pursuant to the timing provisions set forth in Rule 4 unless an emergency protective care hearing has commenced pursuant to Rule 31 and the court has ordered continued protective care.

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

(a) **Release Required.** A child taken into emergency protective care without a court order shall be released unless an emergency protective care a hearing pursuant to Rule 31 has commenced within seventy-two (72) hours of the time the child was removed from home and the court has ordered continued protective care.

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

Rule 30.02. Discretionary Release by Court; Custodial Conditions

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

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

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

Any conditions terminate after seventy-two (72) hours unless a hearing has commenced pursuant to Rule 31 and the court has ordered continuation of the conditions(s).

Rule 30.03. Release to Custody of Parent or Other Suitable Person

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

Rule 30.04. Reports

Subdivision 1. Report by Peace Officer. Any report required by Minnesota Statutes § 260.171, subd. 5, shall be filed with the court on or before the first court day following placement of the child and the report shall include at least:

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

(b) the time the child was delivered for transportation to the placement facility,

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

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

(e) a statement that the child and the child's parent or legal custodian have received the advisory required by Minnesota Statutes § 260.171, subd. 4, or the reasons why the advisory has not been made, and

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

Subd. 2. Report by Supervisor of Placement Facility. Any report required by Minnesota Statutes § 260.171, subd. 6, shall be filed with the court on or before the first court day following placement. The report shall include, at least, acknowledgement of receipt of the child and state the time the child arrived at the placement facility.

RULE 31. EMERGENCY PROTECTIVE CARE HEARING

Rule 31.01. Timing

Subdivision 1. Generally. The court shall hold an emergency protective care hearing within seventy-two (72) hours of the child being taken into emergency protective care unless the child is released pursuant to Rule 30. The purpose of the hearing shall be to determine whether the child shall be returned home or placed in protective care.

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

(a) upon a determination by the court that there is a prima facie showing that the child should be held in emergency protective care pursuant to Rule 30; and

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

Advisory Committee Comment

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

Rule 31.02. Notice of Hearing

The court shall inform the county attorney, the child, and the child's counsel, guardian ad litem, parent, legal custodian, spouse, and school district of residence as required by Minnesota Statutes § 124A.036, subd. 4, of the time and place of the emergency protective care hearing. Failure to inform the child's parent, legal custodian, school district, or spouse or their non-attendance at the hearing shall not prevent a hearing from being conducted and shall not invalidate the proceeding or any order for protective care resulting from the hearing.

Rule 31.03. Inspection of Reports

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

Advisory Committee Comment

Rule 31.03 places upon each party the burden of providing to opposing parties all documentation the party intends to introduce at the hearing. The rule is intended to ensure that the parties have the relevant information before the hearing so they are prepared to respond. This rule is not intended to limit discovery allowed by Rule 17.

Rule 31.04. Determination Regarding Notice

During the hearing, the court shall determine whether notice has been provided in compliance with Rule 33 and what further efforts, if any, must be taken to notify all parties and participants as rapidly as possible of the pendency of the matter and the date and time of the next hearing.

Rule 31.05. Advisory

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

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

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

(c) the purpose and scope of the hearing;

(d) the possible consequences of the proceedings;

(e) the right of the child and the child's parent or legal custodian to be represented by counsel at the hearing and at every subsequent hearing and, where applicable, of the right to court-appointed counsel;

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

(g) that failure to appear at future hearings could result in a finding that the petition has been proved and an order adjudicating the child in need of protection or services or terminating parental rights.

Rule 31.06. Evidence

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

Rule 31.07. Filing and Service of Petition

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

Rule 31.08. Protective Care Determinations

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

Subd. 2. Endangerment. 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:

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

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

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.

Advisory Committee Comment

Rule 31.08 is consistent with Minnesota Statutes § 260.172, subd. 1(c), which provides: Unless there is reason to believe that the child would endanger self or others, not return for a court hearing, run away from the child's parent, guardian, or custodian, or otherwise not remain in the care or control of the person to whose lawful custody the child is released, or that the child's health or welfare would be immediately endangered, the child shall be released to the custody of a parent, guardian, custodian, or other suitable person, subject to reasonable conditions of release including, but not limited to, a requirement that the child undergo a chemical use assessment as provided in section 260.151, subd. 1.

Rule 31.09. Factors

Subdivision 1. Generally. Except in cases described in subdivision 2, or when the parental rights of the parent to a sibling of the child have been terminated involuntarily, or the child is an abandoned infant as defined in Minnesota Statutes § 260.221, subd. 1a(a)(2), at the emergency protective care hearing the court shall require petitioner to present evidence regarding the following issues:

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

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

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

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

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

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

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

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

Subd. 2. Egregious Harm. The court may determine at the emergency protective care hearing, or at any time prior to adjudication in a child in need of protection or services matter, that reasonable efforts are not required because the facts, if proved, demonstrate that the parent has subjected the child to egregious harm as defined in Minnesota Statutes § 260.015, subd. 29, or the parental rights of the parent to a sibling of the child have been terminated involuntarily, or the child is an abandoned infant as defined in Minnesota Statutes § 260.221, subd. 1a(a)(2).

Rule 31.10. Protective Care Findings and Order

At the conclusion of the emergency protective care hearing the court shall issue a written order which shall include findings pursuant to Rules 31.08 and 31.09 and which shall order:

(a) that the child:

(i) continue in protective care;

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

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

(iv) return home with no conditions;

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

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

(d) where the child shall be placed;

(e) terms of visitation pending further proceedings; and

(f) the parent's responsibility for costs of care pursuant to Minnesota Statutes § 260.251.

Advisory Committee Comment

Minnesota Statutes § 260.172, subd. 1(c), provides as follows:

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

In compliance with the statutory mandate of section 260.172, Rules 31.08 and 31.09 require the court to elicit relevant evidence from the petitioner and make findings as to whether the child is in imminent danger, whether the county made reasonable efforts to prevent removal or eliminate the need for removal, and whether there are services the court could order to allow the child to safely return home. Rule 31.10 requires that the court to issue a written order which includes specific findings in support of the order.

Rule 31.11. Protective Care Review

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

Subd. 2. Release from Protective Care on Consent of Parties and the County Attorney. The court may, with the consent of the parties and the county attorney, order that a child be released from protective care.

Subd. 3. Formal Review.

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

(b) **On Request of a Party or the County Attorney.** A party or the county attorney may request a formal hearing concerning continued protective care by filing a motion with the court. The court shall schedule a hearing and provide notice pursuant to Rule 33 if the motion states:

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

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

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

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

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

(ii) continue the child in protective care or release the child with conditions to assure the safety of the child or others if the court finds that the petition states a prima facie case to believe that a child protection matter exists and that the child is the subject of that matter, and

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

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

(iii) modify the conditions of release.

RULE 32. METHODS OF FILING AND SERVICE

Rule 32.01. Filing by Facsimile Transmission

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

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

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

(b) the original signed document; and
(c) the applicable filing fee, if any.

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

Rule 32.02. Types of Service

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

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

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

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

Rule 32.03. Service by Facsimile Transmission

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

Rule 32.04. Service Upon Counsel; Social Services Agency

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

Rule 32.05. Service of Subpoena

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

Rule 32.06. Completion of Service

Service by mail is complete three (3) days after mailing to the last known address of the person to be served. Service by facsimile is complete upon completion of the facsimile transmission. Personal service or service by facsimile which is accomplished after 4:30 p.m. local time is considered completed the following day.

Rule 32.07. Proof of Service

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

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

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

RULE 33. SUMMONS AND NOTICE

Rule 33.01. Commencement

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

Rule 33.02. Summons

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

Subd. 2. Upon Whom.

(a) **Generally.** The court shall serve a summons upon each party, the person with physical custody of the child, and any other person whose presence the court deems necessary to a determination concerning the best interests of the child.

(b) **Termination of Parental Rights Matters.** In addition to the requirements of subdivision 2(a), in any termination of parental rights matter a copy of the petition shall be served with the summons and shall be served upon the county attorney, any guardian ad litem for the child's legal custodian, the guardian ad litem for the child, and any attorney representing a party in an ongoing child in need of protection or services proceeding involving the subject child.

Subd. 3. Service

(a) **Personal Service Generally Required.** The summons shall be personally served in all juvenile protection matters unless the court orders service by publication pursuant to Rule 32.02, subd. 3.

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

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

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

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

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

Subd. 4. Content.

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

(1) a copy of the petition, court order, motion, affidavit or other legal documents not previously provided;

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

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

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

(5) a statement explaining the right to counsel and to appointment of counsel at state expense pursuant to Rule 25.

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

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

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

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

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

Subd. 5. Timing of Service.

(a) **Generally.** The summons shall be served either at or before the emergency protective care hearing held pursuant to Rule 31, or at least three (3) days prior to the admit/deny hearing, whichever is earlier. At the request of a party, the hearing shall not be held at the scheduled time if the summons has been served less than three (3) days before the hearing. If service is made outside the state or by publication, the summons shall be personally served, mailed, or last published at least twenty (20) days before the hearing.

(b) **Termination of Parental Rights Matters and Permanent Placement Matters.** In any termination of parental rights matter or permanent placement matter the summons shall be served upon all parties in a manner that will allow for completion of service at least ten (10) days prior to the date set for the admit/deny hearing. In cases where publication under Minnesota Statutes § 645.11 is required, published notice shall be made for three (3) weeks with the last publication at least ten (10) days before the date of the hearing.

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

Advisory Committee Comment

Rule 33.02 specifies the procedure for summoning a party to his or her first appearance in a case. Rule 33.03 specifies the procedure for providing initial notice to a participant.

While failure to notify a noncustodial parent does not create a jurisdictional defect, the best practice is to invite that parent to participate in the proceedings as failure to do so may create substantial barriers to permanency.

Rule 33.03. Notice of Hearing

Subdivision 1. Definition. A notice is a document issued by the court notifying the person to whom it is addressed of the specific time and place of a hearing. Failure to notify a participant of the proceedings is not a jurisdictional defect.

Subd. 2. Upon Whom. The court shall serve notice upon all participants identified in Rule 22.

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

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

(b) describing the purpose of the hearing;

(c) explaining the right to counsel pursuant to Rule 25;

(d) explaining intervention as of right and permissive intervention pursuant to Rule 23;

(e) that if the person fails to appear at the hearing the court may still conduct the hearing and grant appropriate relief; and

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

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

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

Advisory Committee Comment

Rule 33.02 specifies the procedure for summoning a party to his or her first appearance in a case. Rule 33.03 specifies the procedure for providing initial notice to a participant.

While failure to notify a noncustodial parent does not create a jurisdictional defect, the best practice is to invite that parent to participate in the proceedings as failure to do so may create substantial barriers to permanency.

Rule 33.04. Orders on the Record

An oral order stated on the record directed to the parties which either separately or with written supplementation contains the information required by this rule is sufficient to provide notice and compel the presence of the parties at a stated time and place. Such an order shall be reduced to writing pursuant to Rule 10.

Rule 33.05. Indian Child

In any juvenile protection proceeding where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of the Indian child shall notify the parent or Indian custodian and the Indian child's tribe of the pending proceedings and of their right of intervention. 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 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.

Advisory Committee Comment

This rule specifies the procedure for summoning a party to their first appearance in a case and providing initial notice to a participant.

While failure to notify a noncustodial parent does not create a jurisdictional defect, the best practice is to invite that parent to participate in the proceedings as failure to do so may create substantial barriers to permanency.

RULE 34. PETITION

Rule 34.01. Drafting and Filing

Subdivision 1. Generally. A petition may be drafted and filed by the county attorney or any responsible person.

Subd. 2. Habitual Truant and Runaway Matters. A matter based solely on grounds that a child is a habitual truant or a runaway may be initiated by citation issued by a peace officer or school attendance officer. A citation shall contain:

(a) the name, address, date of birth, and race of the child;

(b) the name and address of the parent or legal custodian of the child;

(c) the offense alleged and a reference to the statute which is the basis for the charge; and

(d) the time and place the alleged offense was committed. In the event the child is alleged to be a runaway, the place where the offense was committed may be stated in the notice as either the child's parent's residence or lawful placement or where the child was found by the

officer. In the event the child is alleged to be a habitual truant, the place where the offense was committed may be stated as the school or the place where the child was found by the officer.

Subd. 3. Termination of Parental Rights Matters.

(a) **Generally.** Any termination of parental rights petition shall be filed in the child in need of protection or services file, if one exists.

(b) **Egregious Harm or Abandonment of an Infant.** The county attorney shall file a termination of parental rights petition within thirty (30) days of a child's placement in out-of-home care if the child:

(i) has been subjected to egregious harm as defined in Minnesota Statutes § 260.015, subd. 29;

(ii) is the sibling of another child who was subjected to egregious harm by the parent; or

(iii) is an abandoned infant as defined in Minnesota Statutes § 260.221, subd. 1a(a)(2).

The county attorney need not file a termination of parental rights petition if the county attorney determines and files with the court an affidavit that a transfer of permanent legal and physical custody to a relative is in the best interests of the child or there is a compelling reason documented by the local social services agency that filing a termination of parental rights petition is not in the best interests of the child.

Subd. 4. Permanent Placement Matters.

(a) **Generally.** Any permanent placement petition shall be filed in the child in need of protection or services file, if one exists.

(b) **Filing by Whom.** The county attorney shall file a permanent placement petition in juvenile court to determine the permanent placement of a child. Any party may also file a petition to establish the basis for a permanent placement order. A party, including a guardian ad litem for the child, shall file a permanent placement petition if the party disagrees with the permanent placement determination set forth in the petitions filed by other parties.

Advisory Committee Comment

If a child in need of protection or services matter is pending at the time a termination of parental rights matter is filed regarding the same child, the termination petition should be filed in the same file as the child in need of protection or services matter.

Rule 34.02. Content

Subdivision 1. Generally. Every petition filed with the court in a juvenile protection matter, or a sworn affidavit accompanying such petition, shall contain:

(a) a statement of facts that, if proven, would support the relief requested in the petition;

(b) the child's name, date of birth, race, gender, and current address unless stating the address would endanger the child or seriously risk disruption of the current placement;

(c) the names, race, date of birth, residence, and post office addresses of the child's parents when known;

(d) the name, residence, and post office address of the child's legal custodian, the person having custody or control of the child, or the nearest known relative if no parent or legal custodian can be found;

(e) the name, residence and post office address of the spouse of the child;

(f) the statutory grounds on which the petition is based, together with a recitation of the relevant portion of the subdivision(s);

(g) a statement regarding the applicability of the Indian Child Welfare Act; and

(h) the names and addresses of the participants identified in Rule 22.

Subdivision 2. Child in Need of Protection or Services Matters.

(a) **Petitions Drafted and Filed by County Attorney.** A child in need of protection or services matter is defined as set forth in Minnesota Statutes § 260.015, subd. 2a. All child in need of protection or services petitions shall be drafted and filed under the supervision of the county attorney except as provided in Minnesota Statutes § 260.131, subd. 1, and subdivision 2(b) of this rule.

(b) **Petitions Drafted and Filed By Others.**

(1) **Petition Form**. A child in need of protection or services petition filed by an individual who is not a county attorney or an agent of the commissioner of human services shall be filed on a form developed by the state court administrator. Copies of the form shall be available from the court administrator in each county.

(2) **Additional Content Requirements for Petitions Not Filed by County Attorney.** In addition to the content requirements set forth in subdivision 1, a petition filed by an individual who is not a county attorney or an agent of the commissioner of human services shall contain:

(i) a statement that the petitioner has reported the circumstances underlying the petition to the local social services agency and that protection or services were not provided to the child;

(ii) a statement, including court file numbers where possible, of pending juvenile or family court proceedings and prior or present juvenile or family court orders relating to the child; and

(iii) a statement regarding the relationship of the petitioner to the child and to any other parties.

(3) **Review by Court Administrator.** Any petition filed by an individual who is not a county attorney or an agent of the commissioner of human services shall be reviewed by the court administrator before it is filed to determine whether it is complete. The court administrator may reject the petition as incomplete if it does not indicate that the petitioner has contacted the local social services agency.

(4) **Court Review.** Within three (3) days of the date a petition is filed by a person who is not a county attorney or an agent of the commissioner of human services, the court shall review the petition. If the court determines that the petition and attachments establish a

prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter, the court shall set the matter for an admit/deny hearing pursuant to Rule 35 and shall direct notice pursuant to Rule 33. The court shall not allow a petition to proceed if it appears that the sole purpose of the petition is to modify custody between the parents or if it fails to set forth the information required in subdivisions 1 and 2(b) of this rule.

(c) **Petition Based Upon Prima Facie Case.**

(1) **When Required.** In addition to the content requirements of subdivisions 1 and 2(b), a petition establishing a prima facie case shall be filed with the court:

(i) before the court may issue an ex parte order for emergency protective care pursuant to Rule 29.02; or

(ii) before an emergency protective care hearing is held pursuant to Rule 31 for a child taken into emergency protective care without a court order.

(2) **Manner.** The facts establishing a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter may be set forth in writing in or with the petition, or in supporting affidavits, and may be supplemented by sworn testimony of witnesses taken before the court. If such testimony is taken, a note stating this fact shall be made by the court on the petition. The testimony shall be recorded pursuant to Rule 10.

Subd. 3. Termination of Parental Rights Matters.

(a) **Generally.** A termination of parental rights matter shall be entitled "Petition to Terminate Parental Rights" and shall conform to the requirements of Minnesota Statutes § 260.131.

(b) **Petitions Seeking Alternative Permanent Placement Relief.** In addition to the content requirements set forth in subdivision 1, any termination of parental rights petition may seek alternative permanent placement relief, including transfer of permanent legal and physical custody to a relative or placement of the child in long-term foster care. A petition seeking alternative permanent placement relief shall identify which permanent placement option the petitioner believes is in the best interests of the child. A petition may seek separate permanent placement relief for each child named as a subject of the petition as long as the petition identifies which option(s) is sought for each child and why that option is in the best interests of the child. In answering a petition that seeks alternative permanent placement relief, a party shall identify on the record the permanent placement option the party believes is in the best interests of the child.

Subd. 4. Permanent Placement Matters.

(a) **Generally.** Every petition in a permanent placement matter, or a sworn affidavit accompanying such petition, shall contain a title denoting the permanency relief sought:

(1) A transfer of permanent legal and physical custody matter shall be entitled "Juvenile Protection Petition to Transfer Permanent Legal and Physical Custody" and shall conform to the requirements of Minnesota Statutes § 518.156 or § 257.0215 and, in cases where the local social services agency is the petitioner, the petition shall identify:

(i) the local social services agency as petitioner; and

(ii) the proposed relative custodian as co-petitioner when the local social services agency petitions on behalf of the proposed relative custodian.

(2) A request for long-term foster care shall be entitled "Juvenile Protection Petition for Long-term Foster Care."

(3) A request for foster care for a specified period of time for a child alleged to be a habitual truant, a runaway, incompetent to proceed, or a delinquent under age 10 shall be entitled "Juvenile Protection Petition for Foster Care for a Specific Period of Time."

(b) **Petitions Seeking Alternative Permanent Placement Relief.** Any permanent placement petition may seek alternative permanent placement relief, including termination of parental rights, transfer of permanent legal and physical custody to a relative, or placement of the child in long-term foster care. A petition seeking alternative permanent placement relief shall identify which permanent placement option the petitioner believes is in the best interests of the child. A petition may seek separate permanent placement relief for each child named as a subject of the petition as long as the petition identifies which option(s) is sought for each child and why that option is in the best interests of the child. In answering a petition that seeks alternative permanent placement relief, a party shall identify on the record the permanent placement option the party believes is in the best interests of the child.

Subd. 5. Out of State Party. If a party resides out of state, or if there is likelihood of interstate litigation, the petition or an attached affidavit shall include a statement regarding the whereabouts of the party and any other information required by the Uniform Child Custody Jurisdiction Act, Minnesota Statutes § 518A.09.

Subd. 6. Disclosure of Address – Endangerment. If there is reason to believe that an individual may be endangered by disclosure of an address required to be provided pursuant to this subdivision, that address may be provided to the court in a separate informational statement and shall not be accessible to the public or to the parties. Upon notice and motion, the court may disclose the address as it deems appropriate.

Rule 34.03. Verification

A petition shall be verified by a person having knowledge of the facts and may be verified on information and belief.

Rule 34.04. Amendment

Subdivision 1. Prior to Trial. The petition may be amended at any time prior to the commencement of the trial, including, in a child in need of protection or services matter, adding a child as the subject matter of the petition. The petitioner shall provide notice of the amendment to all parties and participants. When the petition is amended, the court shall grant all other parties sufficient time to respond to the amendment.

Subd. 2. After Trial Begins. The petition may be amended after the trial has commenced if:

(a) approved by the court;
(b) the amendment does not prejudice a party; and
(c) all parties are given sufficient time to respond to the amendment.

Upon receipt of approval from the court, the petitioner shall provide notice of the amendment to all parties and participants.

Rule 34.05. Timing

If a child is in emergency protective care pursuant to Rule 29, the petition shall be filed at or prior to the time of the emergency protective care hearing held pursuant to Rule 31.

Advisory Committee Comment

Minnesota Statutes § 260.132 provides that a peace officer or school attendance officer may issue a notice to a child to appear in court and file the notice with the juvenile court.

RULE 35. ADMIT/DENY HEARING

Rule 35.01. Generally

An admit/deny hearing is a hearing at which the statutory grounds set forth in the petition are admitted or denied pursuant to Rule 36.

Rule 35.02. Timing

Subdivision 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 31.

(b) **Termination of Parental Rights Matters.** In termination of parental rights matters the admit/deny hearing shall be held not less than ten (10) days after service is complete upon the party.

(c) **Permanent Placement Matters.** In permanent placement matters the admit/deny hearing shall be held at least twenty (20) days prior to the date set for the permanent placement hearing held pursuant to Rule 41.

Subd. 2. Child Not in Placement.

(a) **Generally.** When the child is not placed outside the child's home by court order, an admit/deny hearing shall be held no sooner than five (5) days and no later than twenty (20) days after the parties have been served with the petition.

(b) **Habitual Truant and Runaway Matters.** In matters where the sole allegation is that the child is a habitual truant or runaway and the child is not in placement, an admit/deny hearing shall be commenced within a reasonable time after service upon the child.

Subd. 3. Possession of Petition. The parties have the right to have a copy of the petition at least three (3) days before the admit/deny hearing.

Rule 35.03. Hearing Procedure

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

(a) verify the name, age, race, and current address of the child who is the subject of the matter, unless stating the address would endanger the child or seriously risk disruption of the current placement;

(b) inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe has been notified;

(c) determine whether all necessary persons are present and identify those present for the record;

(d) determine whether any person entitled to counsel pursuant to Rule 25 is present without counsel and, if so, explain the right to representation and the potential right to court-appointed counsel at state expense;

(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 appear 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 § 260.191, subd. 3b.

Subd. 2. Child in Need of Protection or Services Matters. In addition to the initial procedures set forth in subdivision 1, in each child in need of protection or services matter the court shall also advise all persons present that if the petition is proven and the child is not returned home, a hearing to determine the permanent placement of the child will be held:

(a) within six (6) months of the date of the child's out-of-home placement if the child was under eight (8) years of age at the time of the filing of the petition; or

(b) within twelve (12) months of the date of the child's out-of-home placement if the child was eight (8) years or older at the time of the filing of the petition.

Subd. 3. Termination of Parental Rights Matters. In each termination of parental rights matter, after completing the initial inquiries set forth in subdivision 1 the court shall determine whether the petition states and prima facie case in support of termination of parental rights. If the court determines that the petition states a prima facie case in support of termination of parental rights, the court shall proceed pursuant to Rule 36. If the court determines that the petition fails to state a prima facie case in support of termination of parental rights, the court shall:

(a) return the child to the care of the parent or legal custodian;

(b) give the petitioner ten (10) days to file an amended petition or supplementary

information if the petitioner represents there are additional facts which, if presented to the court, would establish a prima facie case in support of termination of parental rights; or

(c) give the petitioner ten (10) days to file a child in need of protection or services petition.

Subd. 4. Permanent Placement Matters. In each permanent placement matter, after completing the initial inquiries set forth in subdivision 1, the court shall review the facts set forth in the petition, consider such argument as the parties may make, and determine whether the petition states a prima facie case in support of one or more of the permanent placement options. If the court determines that the petition states a prima facie case, the court shall proceed pursuant to Rule 36.

If the court determines that the petition fails to state a prima facie case, the court may:

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

(b) give the petitioner ten (10) days to file an amended petition or supplementary information if the petitioner represents there are additional facts which, if presented to the court, would establish a prima facie case.

Subd. 5 Motions. The court shall hear any motions, made pursuant to Rule 15, addressed to the sufficiency of the petition or jurisdiction of the court without requiring any person to admit or deny the statutory grounds set forth in the petition prior to making a finding on the motion.

Advisory Committee Comment

Rule 35.03, subd. 2, is consistent with Minnesota Statutes § 260.191, subd. 3b, which becomes effective July 1, 1999, and provides that a permanent placement determination hearing must be held within six months of a child's removal from the home if the child is under eight years of age at the time the petition is filed.

RULE 36. ADMISSION OR DENIAL

Rule 36.01. Generally

Subdivision 1. Parent or Legal Custodian.

(a) **Generally.** Unless the child's parent or legal custodian is the petitioner, a parent who is a party or a legal custodian shall admit or deny the statutory grounds set forth in the petition or remain silent. If the parent or legal custodian denies the statutory grounds set forth in the petition or remains silent, or if the court refuses to accept an admission, the court shall enter a denial of the petition on the record.

(b) **Habitual Truant, Runaway, and Prostitution Matters.** In cases where the child is alleged to be a habitual truant, runaway, or engaged in prostitution, the parent or legal custodian need not admit or deny the petition unless the parent or legal custodian wishes to contest the statutory grounds set forth in the petition.

(c) **Termination of Parental Rights Matters.** In a termination of parental rights matter, only the parents of the child are required to admit or deny the petition. A party who is not required to admit or deny the petition may object to the admission if that party has filed a petition pursuant to Rule 34.

(d) **Permanent Placement Matters.** In a permanent placement matter:

(1) only the legal custodian of the child is required to admit or deny the petition. A party who is not required to admit or deny the petition may object to the entry of the proposed permanent placement order if that party has filed a petition pursuant to Rule 34.

(2) When the county attorney petitions for transfer of permanent legal and physical custody on behalf of a relative who is not represented by counsel, the court may not enter an order granting the transfer of custody unless there is testimony from the proposed custodian establishing that the proposed custodian understands:

(i) the legal consequences of a transfer of permanent legal and physical custody;

(ii) the nature and amount of financial support and services that will be available to help care for the child;

(iii) how the custody order can be modified; and

(ii) any other permanent placement options available for the subject children.

Subd. 2. Child.

(a) **Generally.** The child shall not admit or deny the petition, unless the child wishes to contest the statutory grounds set forth in the petition.

(b) **Habitual Truant, Runaway, and Prostitution Matters.** In cases where the child is alleged to be a habitual truant, a runaway, or engaged in prostitution, the child shall admit or deny the statutory grounds set forth in the petition or remain silent.

Subd. 3. Contested Petition. Any party has the right to contest the basis of a petition filed by an individual who is not a county attorney or an agent of the commissioner of human services.

Rule 36.02. Denial

Subdivision 1. Denial Without Appearance. A written denial or a denial on the record of the statutory grounds set forth in a petition may be entered by counsel without the personal appearance of the person represented by counsel.

Subd. 2. Further Proceedings After Denial. When a denial by any party is entered, the court shall schedule further proceedings pursuant to Rule 37 or Rule 38.

Rule 36.03. Admission

Subdivision 1. Admission Under Oath. Any admission must be made under oath.

Subd. 2. Admission Without Appearance. Upon approval of the court, a written admission of the statutory grounds set forth in the petition, made under oath, may be entered by counsel without personal appearance of the person represented by counsel.

Subd. 3. Questioning of Person Making Admission.

(a) **Generally.** Before accepting an admission the court shall determine on the record or by written document signed by the person admitting and the person's counsel, if represented, the following:

(1) whether the person admitting acknowledges an understanding of:

(i) the nature of the statutory grounds set forth in the petition;

(ii) if unrepresented, the right to counsel and, if provided by Rule 25, the right to appointment of counsel at state expense;

(iii) the right to a trial;

(iv) the right to testify; and

(v) the right to subpoena witnesses; and

(2) whether the person admitting acknowledges an understanding that the facts being admitted establish the statutory grounds set forth in the petition.

(b) **Child in Need of Protection or Services Matters, and Habitual Truant, Runaway, and Prostitution Matters.** In addition to the questions set forth in subdivision 3(a), before accepting an admission in a child in need of protection or services matter or a matter alleging a child to be a habitual truant, a runaway, or engaged in prostitution, the court shall also determine on the record or by written document signed by the person admitting and the person's counsel, if represented, the following:

(1) whether the person admitting acknowledges an understanding that a possible effect of a finding that the statutory grounds are proved may be the transfer of legal custody of the child to another or termination of parental rights to the child; and

(2) whether the person admitting acknowledges an understanding that, if the child is not returned home, a hearing to determine the permanent placement of the child will be held within six (6) months of the date of the child's out-of-home placement if the child was under eight (8) years of age at the time of the filing of the petition, or within twelve (12) months of the date of the child's out-of-home placement if the child was eight (8) years or older at the time of the filing of the petition.

Subd. 4. Basis for Admission. Except as provided in (c), the court shall refuse to accept an admission unless there is a factual basis for the admission.

(a) **Full Admission.** A party may admit all of the statutory grounds set forth in the petition.

(b) **Partial Admission.** Pursuant to a Rule 19 settlement agreement, a person may admit some, but not all, of the statutory grounds set forth in the petition.

(c) **No Contest Admission**. Pursuant to a Rule 19 settlement agreement, a party may admit some or all of the statutory grounds set forth in the petition without entering an admission to the factual allegations in the petition. A no contest admission must include an admission of the need for specified services.

Subd. 5. Withdrawal of Admission. After filing a motion with the court:

(a) an admission may be withdrawn at any time upon a showing that withdrawal is necessary to correct a manifest injustice; or

(b) the court may allow a withdrawal of an admission before a finding on the petition for any fair and just reason.

Subd. 6. Acceptance or Non-Acceptance of Admission. At the time of the admission,

the court shall make a finding that:

(a) the admission has been accepted and the statutory grounds admitted have been proved;

(b) the admission has been conditionally accepted pending the court's approval of a settlement agreement pursuant to Rule 19; or

(c) the admission has not been accepted.

Subd. 7. Future Proceedings.

(a) **Generally.** If the court makes a finding that the admission is accepted and the statutory grounds admitted are proved, or that the admission is conditionally accepted pending the court's approval of a settlement agreement pursuant to Rule 19, the court shall enter an adjudication and proceed to disposition. If the court makes a finding that the admission has not been accepted, the court shall schedule further proceedings pursuant to Rule 37 or Rule 38.

Advisory Committee Comment

Generally, a person entering an admission must admit to facts that support the statutory grounds set forth in the petition. However, when a person enters a no-contest admission it is sufficient to admit the statutory grounds that form the basis of the conclusions of law and the need for specific services pursuant to Rule 36.01, subd. 4(c). The intent of this rule is that a person entering a no contest admission would not be deemed to have admitted any of the specific factual allegations of the petition.

RULE 37. PRETRIAL CONFERENCE

Rule 37.01. Timing

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

Rule 37.02. Purpose

The purposes of a pretrial conference shall be to:

(a) determine whether a settlement of any or all of the issues has occurred or is possible;

(b) determine whether all parties have been served and, if not, review the efforts that have taken place to date to serve all parties;

(c) advise each unrepresented party of the right to counsel and, if provided by Rule 25, the right to appointment of counsel at state expense. If counsel is appointed at the pretrial, the conference shall be reconvened at a later date;

(d) determine whether the child shall be present and testify at trial and, if so, under what circumstances;

(e) identify any unresolved discovery matters;

(f) resolve any pending pretrial motions;

(g) identify and narrow issues of law and fact for trial, including identification of:

(i) the factual allegations admitted or denied;

(ii) the statutory grounds admitted or denied;

(iii) any stipulations to foundation and relevance of documents; and

(iv) any other stipulations, admissions, or denials;

(h) exchange witness lists and a brief summary of each witness' testimony;

(i) exchange exhibit lists;
(j) confirm the trial date and estimate the length of trial; and
(k) determine any other relevant issues.

All admissions and denials shall be under oath. The pretrial order shall specify all factual allegations and statutory grounds admitted and denied.

From the date of the pretrial conference through the date of trial, the parties shall have a continuing obligation to update information provided during the pretrial conference.

Advisory Committee Comment

Rule 37.02(d) addresses the need to determine whether the child will testify. The intent of the rule is to provide that an order protecting the child from testifying or placing conditions on the child's testimony can only be made after notice of motion and hearing. The Committee intends that any such motion be heard and resolved at the pretrial conference.

RULE 38. TRIAL

Rule 38.01. Generally

A trial is a hearing held to determine if the statutory grounds set forth in the petition are proved.

Rule 38.02. Timing

Subdivision 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, which ever is earlier.

(b) **Permanent Placement Matters.** A trial regarding a permanent placement matter not involving a termination of parental rights matter shall commence on or before the three hundred and sixty-fifth (365^{th}) day after the child is ordered out of the care of the parent. In the case of a child under eight (8) years of age at the time the child in need of protection or services petition is filed, the permanent placement determination trial shall commence either within seven (7) months of the date the child is ordered out of the care of the parent or when the local social services agency demonstrates that the parent is not complying with the case plan and visiting the child and that the permanency plan for the child is transfer of legal custody to a relative.

(c) **Termination of Parental Rights Matters.** A trial regarding a termination of parental rights matter shall commence within ninety (90) days from the date of the admit/deny hearing.

(d) **Simultaneous Criminal Proceedings.** If criminal charges have been filed against a parent arising out of conduct alleged to constitute egregious harm, the county attorney shall determine whether the criminal matter or the juvenile court matter should proceed to trial first, consistent with the best interests of the child and subject to the defendant's right to a speedy trial.

(e) **Sufficient Time.** The court shall set aside sufficient time to avoid interruption of the trial.

Subd. 2. Continuance.

(a) **Generally.** The court may, either on its own motion or upon motion of a party or the county attorney, continue a trial to a later date upon written findings or oral findings made on the record that a continuance is necessary for the protection of the child, for accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown, so long as the permanency time requirements set forth in these rules are not delayed.

(b) **Child in Need of Protection or Services Matters and Termination of Parental Rights Matters.** In child in need of protection or services matters and termination of parental rights matters, a trial may not be continued or adjourned for more than one (1) week unless the court makes specific findings that the continuance or adjournment is in the best interests of the child. In any event, the trial shall be commenced and completed within ninety (90) days of the denial of the statutory grounds.

Subd. 3. Effect of Mistrial; Order For New Trial. Upon a declaration of a mistrial, or an order of the trial court or a reviewing court granting a new trial, a new trial shall be commenced within thirty (30) days of the order.

Rule 38.03. Procedure

Subdivision 1. Initial Procedure. At the beginning of the trial the court shall on the record:

(a) verify the name, age, race, and current address of the child who is the subject of the matter, unless stating the address would endanger the child or seriously risk disruption of the current placement;

(b) inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe has been notified;

(c) determine whether all necessary persons are present and identify those present for the record;

(d) determine whether any person entitled to counsel pursuant to Rule 25 is present without counsel and, if so, explain the right to representation and the potential right to court-appointed counsel at state expense;

(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 appear 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 § 260.191, subd. 3b.

Subd. 2. Conduct and Procedure.

(a) **Trial Rights.** The parties and the county attorney shall have the right to:

(i) present evidence;

(ii) present witnesses;

(iii) cross-examine witnesses; and

(iv) present arguments in support of or against the statutory grounds set forth in the petition.

(b) **Trial Procedure.** The trial shall proceed as follows:

(i) the party that drafted and filed the petition pursuant to Rule 34 may make an opening statement confining the statement to the facts expected to be proved;

(ii) the other parties, in order determined by the court, may make an opening statement or may make the statement immediately before offering evidence, and the statement shall be confined to the facts expected to be proved;

(iii) the party that drafted and filed the petition pursuant to Rule 34 shall offer evidence in support of the petition;

(iv) the other parties, in order determined by the court, may offer evidence;

(v) the party that drafted and filed the petition pursuant to Rule 34 may offer evidence in rebuttal;

(vi) the other parties, in order determined by the court, may offer evidence in rebuttal;

(vii) when evidence is presented, other parties may, in order determined by the court, cross examine witnesses;

(viii) at the conclusion of the evidence the parties, other than the party that drafted and filed the petition pursuant to Rule 32, in order determined by the court, may make a closing statement;

(ix) the party that drafted and filed the petition pursuant to Rule 34 may make a closing statement; and

(x) if written argument is to be submitted, it shall be submitted within fifteen (15) days of the conclusion of testimony.

Rule 38.04. Standard of Proof

Subdivision 1. Generally. To be proved at trial, the statutory grounds set forth in the petition must be proved by clear and convincing evidence.

Subd. 2. Indian Child.

(a) **Foster Care Placement.** In the case of an Indian child, no foster care placement may be ordered in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, as defined in Minnesota Rules parts 9560.0221 and 9560.0500 to 9560.0670, that the continued custody of the child by the parent or legal custodian or Indian custodian is likely to result in serious emotional or physical damage to the child.

(b) **Termination of Parental Rights.** In the case of an Indian child, no termination

of parental rights may be ordered in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, as defined in Minnesota Rules parts 9560.0221 and 9560.0500 to 9560.0670, that the continued custody of the child by the parent or legal custodian or Indian custodian is likely to result in serious emotional or physical damage to the child.

Advisory Committee Comment

In *In Re the Matter of the Welfare of M.S.S.*, 465 N.W.2d 412 (Minn. App. 1991), the court held that the parental rights to an Indian child may not be terminated unless the county proves beyond a reasonable doubt that it has complied with section 1912(f) of the Indian Child Welfare Act, 25 U.S.C. § 1901 *et. seq.*, requiring the county to make active efforts to prevent or avoid placement.

Rule 38.05. Decision

Subdivision 1. 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. For good cause, the court may extend this period for an additional fifteen (15) days. All findings shall be in writing or on the record. 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 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. The trial is not considered completed until written arguments, if any, are submitted. If the court makes a finding that the statutory grounds set forth in the petition have been proved, the court shall schedule the matter for further proceedings pursuant to Rule 39.

Subd. 3. Termination of Parental Rights Matters.

(a) **Generally.** Within fifteen (15) days of the conclusion of the trial, the court shall make a finding that the statutory grounds set forth in the petition have or have not been proved. If the court finds that the statutory grounds set forth in the petition are not proved, the court shall dismiss the petition or determine that the child is in need of protection or services and schedule further proceedings pursuant to Rule 35. If the court finds that the statutory grounds set forth in the petition are proved, the court shall terminate parental rights.

(b) **Particularized Findings.** The court may not enter an order terminating parental rights unless it finds that the statutory grounds have been proved by the applicable standard of proof and one of the following:

(1) **Reasonable Efforts and Remedial Services.** In any termination of parental rights matter, the court shall make specific findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent and reunite the family, including, where applicable, a statement that:

(i) reasonable efforts are not required because the facts demonstrate that the parent has subjected the child to egregious harm;

(ii) the provision of services or further services for the purpose of rehabilitation and reunification is futile and therefore unreasonable under the circumstances; or

(iii) reasonable efforts at reunification are not required as provided under Minnesota Statutes § 260.012.

(2) **Active Efforts – Indian Child.** In any termination of parental rights proceeding involving an Indian child, the court shall make specific findings that the petitioner has proven beyond a reasonable doubt that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

Subd. 4. Permanent Placement Matters. The court shall enter findings of fact consistent with the requirements of Minnesota Statutes § 260.241, § 518.17, § 518.18, or § 257.0215, whichever is applicable, and § 260.191, subd. 3b. The court shall enter the permanent placement order it determines to be in the best interests of the child and supported by the evidence. The findings and order shall be filed with the court administrator who shall serve the findings and order upon the parties and the county attorney. In the case of an order transferring permanent legal and physical custody of a child to a relative, the court shall include an order directing the juvenile court administrator to file the order with the family court administrator.

RULE 39. ADJUDICATION

Rule 39.01. Adjudication

If the court makes a finding that the statutory grounds set forth in a petition alleging a child to be in need of protection or services are proved, or if the court accepts a no contest admission pursuant to Rule 36, the court shall:

(a) adjudicate the child as in need of protection or services and proceed to disposition pursuant to Rule 40; or

(b) withhold adjudication of the child pursuant to Rule 39.02.

Rule 39.02. Withholding Adjudication

Subdivision 1. Generally. When it is in the best interests of the child to do so, the court may withhold an adjudication that the child is in need of protection or services. The court may withhold adjudication for a period not to exceed ninety (90) days from the finding that the statutory grounds set forth in the petition have been proved or the court approves a no contest admission. During the withholding of an adjudication, the court may enter a disposition order pursuant to Rule 40.

Subd. 2. Further Proceedings. At a hearing which shall be held within ninety (90) days following the court's withholding of adjudication, the court shall either:

(a) dismiss the matter without an adjudication if both the child and the child's parent or legal custodian have complied with the terms of the continuance; or

(b) adjudicate the child in need of protection or services if either the child or the child's parent or legal custodian has not complied with the terms of the continuance. If the court enters an adjudication, the court shall proceed to disposition pursuant to Rule 40.

RULE 40. DISPOSITION

Rule 40.01. Disposition

After an adjudication that a child is in need of protection or services pursuant to Rule 39, the court shall conduct a hearing to determine disposition. Dispositions in regard to review of out-of-home placement matters shall be pursuant to Minnesota Statutes § 260.192 and § 124A.036.

Rule 40.02. Timing

To the extent practicable, the court shall conduct a disposition hearing and enter a disposition order the same day it makes a finding that the child is in need of protection or services. The disposition order must be issued within ten (10) days from the date of entry of adjudication.

Rule 40.03. Pre-Disposition Reports

Subdivision 1. Investigations and Evaluations. At any time after the court accepts or conditionally accepts an admission pursuant to Rule 36 or finds that the statutory grounds set forth in the petition have been proved, the court may, upon its own motion or the motion of a party or the county attorney, or a pre-disposition report which may include:

(a) an investigation of the personal and family history and environment of the child;

(b) medical, psychological, or chemical dependency evaluations of the child and any parent who is a party; and

(c) information regarding the factors set forth in Rule 40.05.

Subd. 2. Advisory. The court shall advise the persons present in court that a pre-disposition investigation is being ordered, the nature of the evaluations to be included, the date when the reports resulting from the investigation are to be filed with the court, and the right of each party to present opposing evidence and reports.

Subd. 3. Filing and Inspection of Pre-Disposition Reports. The person who intends to offer the pre-disposition report shall file the report with the court and serve the report on all parties at least forty-eight (48) hours prior to the time scheduled for the hearing. When the child or the child's parent or legal custodian is not represented by counsel, the court may limit the inspection of reports by the child or the child's parent and legal custodian if the court determines it is in the best interest of the child. Any party or the person making the pre-disposition report may by motion request a protective order limiting the release of confidential or sensitive information contained in the report.

Subd. 4. Discussion of Contents of Reports. The person making the pre-disposition report may discuss the contents of the report with all parties and the county attorney.

Subd. 5. Discussion of Content of Report - Limitation by Court. The court may upon

a showing of good cause limit the extent of the discussion of the contents of the pre-disposition report with the parties if the court finds the limitation to be in the best interests of the child. The limitation may be made:

(a) on the court's own motion; or

(b) upon the written or on-the-record motion of by a party, the county attorney, or the person making the pre-disposition report.

Rule 40.04. Procedure; Evidence

Disposition hearings shall be conducted in an informal manner designed to facilitate the opportunity for all parties to be heard.

The court may admit any evidence, including reliable hearsay and opinion evidence, that is relevant to the disposition of the matter. Privileged communications may be admitted in accordance with Minnesota Statutes § 626.556, subd. 8.

Rule 40.05. Disposition Order

Subdivision 1. Findings. The disposition order made by the court 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 of the child;

(b) a statement of all alternative dispositions considered by the court and why such dispositions are not appropriate for the child;

(c) if the disposition is out-of-home placement, how the court's disposition will serve the child's needs in placement. Among the factors to be considered in determining the needs of the child are:

(1) the child's current functioning and behaviors;

(2) the medical, educational, and developmental needs of the child;

(3) the child's history and past experience;

(4) the child's religious and cultural needs;

(5) the child's connection with a community, school, and faith community;

(6) the child's interests and talents;

(7) the child's relationship to current caretakers, parents, siblings, and relatives;

(8) the reasonable preference of the child, if the court deems the child to be of sufficient age to express a preference; and

(9) a brief description of the preventive and reunification 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.

The court may authorize or continue an award of legal custody to the local social services agency despite a finding that the agency's preventive or reunification efforts have not been reasonable if the court finds that further preventive or reunification efforts could not permit the child to safely remain at home.

Subd. 2. Content.

(a) **Mandatory Provisions.** The court shall enter an order making one or more of the

following dispositions for the child:

(1) place the child under the protective supervision of the local social services agency or child-placing agency in the child's own home under conditions directed to correction of the child's need for protection or services;

(2) transfer legal custody to a child-placing agency or the local social services agency for placement in foster care;

(3) in the case of a child who needs special treatment and care for reasons of physical or mental health when the child's parent or legal custodian is unable to provide the treatment or care, order the child placed for care and treatment; or

(4) allow a child 16 years old or older to live independently under appropriate supervision, if the court determines that the child has sufficient maturity and judgement, and the local social services agency after consultation with the court has specifically authorized this alternative.

(b) **Additional Provisions.** As part of the disposition order the court shall also:

(1) set reasonable rules for supervised or unsupervised visitation for the child's parent or legal custodian and for an individual who is related to the child by blood, marriage or adoption or is an important friend with whom the child has resided or had significant contact;

(2) review the case plan, make modifications supported by the evidence, and incorporate the plan into the disposition order; and

(3) set the date and time for the permanency placement determination hearing.

(c) **Habitual Truant and Runaway Matters.** If the child is adjudicated in need of protection or services because the child is a runaway or habitual truant, the court may order any of the following dispositions in addition to or as alternatives to the dispositions ordered under subdivisions (a) and (b):

(1) counseling for the child or the child's parent or legal custodian;

(2) place the child under the supervision of a probation officer or other suitable person in the child's own home under conditions prescribed by the court, including reasonable rules for the child's conduct and the conduct of the parent or legal custodian designed for the physical, mental, and moral well-being and behavior of the child;

(3) with the consent of the commissioner of corrections, place the child in a group foster care facility which is under the commissioner's management and supervision;

(4) subject to the court's supervision, transfer legal custody of the child to one of the following:

(i) a reputable person of good moral character; or

(ii) a county probation officer for placement in a group foster home established under the direction of the juvenile court and licensed pursuant to Minnesota Statues § 241.021;

(5) require the child to pay a fine of up to $100, to be paid in a manner that will not impose undue financial hardship upon the child;

(6) require the child to participate in a community service project;

(7) order the child to undergo a chemical dependency evaluation and, if warranted by the evaluation, order participation by the child in a drug awareness program or an inpatient or outpatient chemical dependency treatment program;

(8) order the commissioner of public safety to cancel the child's diver's

license or permit or, for a child who does not have a driver's license or permit, order a denial of driving privileges for any period up to the child's 18th birthday; or

(9) order the child's parent or legal custodian to deliver the child to school at the beginning of each school day for a period of time specified by the court.

Rule 40.06. Hearings

Subdivision 1. Timing. When disposition is an award of legal custody to the local social services agency, the court shall review the disposition in court at least every ninety (90) days. Any party may request a review hearing before ninety (90) days. When the disposition is protective supervision, the court shall review the disposition in court at least every six (6) months from the date of disposition.

Subd. 2. Procedure. Any party or the county attorney may seek modification of a disposition order by motion made pursuant to Rule 15. The motion may be heard at the scheduled review hearing or at an earlier date or may be considered by the court without hearing if no party objects.

Subd. 3. Modification of Disposition. The court, on its own motion or that of any party, may modify the disposition when all parties agree the modification is in the best interests of the child and:

(a) a change of circumstances requires a change in the disposition; or

(b) the original disposition is inappropriate.

If a party objects to a proposed modification, the court shall schedule a hearing for the next available date.

Subd. 4 Notice. Notice of the review hearing shall be given to all parties and participants.

Subd. 5. Procedure. Review hearings shall be conducted pursuant to Rule 40.04.

Subd. 6. Findings and Order. In the event the disposition is modified, the court shall issue a disposition order in accordance with Rule 40.05.

RULE 41. PERMANENT PLACEMENT MATTERS

Rule 41.01. Timing

The date or deadline for the permanent placement determination hearing shall be set by the court in its disposition order. Not later than when the court sets the date or deadline for the permanent placement determination hearing the court shall notify the parties and participants of the following requirements of Minnesota Statutes § 260.191, subd. 3b:

(a) **Requirement of Six (6) Month Hearing for Child Under Eight (8) Years of Age.** For a child under eight (8) years of age at the time a petition is filed alleging the child to be in need of protection or services, unless a termination of parental rights petition has been filed, the court shall conduct a hearing to determine the permanent status of a child not later than

six (6) months after the child is placed out of the home of the parent. If a termination of parental rights petition is not filed, the county attorney must file a notice that the local social services agency does not intend to file a termination of parental rights petition, together with an affidavit form the local social services agency that the parent or legal custodian is making progress on the case plan or that the permanency plan for the child is transfer of permanent legal and physical custody to a relative. Upon receipt of such a notice, the court may order the local social services agency to show cause why it should not file a termination of parental rights petition. If the court determines that the local social services agency has not shown cause why it should not file a termination of parental rights petition, the court may order the agency to file such a petition within a certain time in which case the matter will proceed according to rules governing termination of parental rights matters.

(b) **Requirement of Twelve (12) Month Hearing for Child Eight (8) Years of Age or Older.** For a child eight (8) years of age or older at the time a petition is filed alleging the child to be in need of protection or services, unless a termination of parental rights petition has been filed, the court shall conduct a hearing to determine the permanent status of a child not later than twelve (12) months after the child is placed out of the home of the parent.

Advisory Committee Comment

Rule 41.01 is consistent with Minnesota Statutes § 260.191, subd. 3b, which becomes effective July 1, 1999, and provides that a permanent placement determination hearing must be held within six months of a child's removal from the home if the child is under eight (8) years of age at the time the petition is filed.

Rule 41.02. Calculating the Time Period

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

(a) the date the child's placement out of the care of the parent was ordered by the court; or

(b) sixty (60) days after the date on which the child has been voluntarily placed out of the home as a result of a voluntary placement agreement between the parents and the local social services agency,

Rule 41.03. Cumulation of Out-of-Home Placement Time

The time period requiring court review of the permanent status of the child shall be calculated as follows:

(a) during the pendency of a petition alleging a child to be in need of protection or services, all time periods when a child is placed out of the home of the parent are cumulated;

(b) if a child has been placed out of the home of the parent within the previous five years in connection with one or more prior petitions for a child in need of protection or services, the lengths of all prior time periods when the child was placed out of the home within the previous five years and under the current petition are cumulated. If a child under this clause has been out of the home for twelve (12) months or more, the court, if it is in the best interests of the child, 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 41.04. Permanent Placement Order

Upon finding that the permanent placement petition has been proved, the court shall enter a permanent placement order and proceed as follows:

(a) **Transfer of Permanent Legal and Physical Custody.** When the court transfers permanent legal and physical custody to a relative, juvenile court jurisdiction is terminated unless specifically retained by the court in its order. The order shall be entered in family court. Any further proceedings shall be brought in the family court pursuant to Minnesota Statutes § 518.18. Notice of such family court proceedings shall be provided to the county welfare board.

(b) **Long-term Foster Care.** When the court orders long-term foster care, the court shall order such further review as it determines appropriate or in the best interests of the child. If the long-term foster care placement disrupts, the local social services agency shall return to court within ten (10) days for further review of the permanent status of the child. An order for long-term foster care is reviewable upon motion and a showing by the parent of a substantial change in circumstances such that the parent could provide appropriate care of the child and that removal of the child from the child's permanent placement and return to the parent's care would be in the best interests of the child.

(c) **Foster Care for a Specified Period of Time.** When the court orders foster care for a specified period of time, the court shall order reviews at such time and manner as will serve the child's best interests.

(d) **Return of Child to Care of Parent.** When 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.

RULE 42. TERMINATION OF PARENTAL RIGHTS MATTERS

Rule 42.01. 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, subdivision 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 46.

Rule 42.02. Order for Guardianship

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.

Rule 42.03. Further Proceedings

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. The court shall notify the county welfare board, the child's guardian ad litem, the child's attorney, and the child's foster parent or other relative who has asked for notice of the date and time of the hearing.

Rule 42.04. Voluntary Termination of Parental Rights Matters

The court shall conduct a hearing when a parent voluntarily consents to the termination of his or her parental rights. At the hearing, petitioner shall make a prima facie showing that there is good cause for termination of parental rights and that it is in the best interests of the child to terminate parental rights.

If the parent is present in court, the court shall advise the parent of the right to trial, the right to representation by counsel, and shall determine whether the parent fully understands the consequences of termination of parental rights and the alternatives to termination.

If the parent is not present in court but has signed a voluntary consent to termination of parental rights, the court shall determine whether there has been compliance with all statutory requirements regarding a written consent to termination of parental rights and whether the parent was thoroughly advised of and understood the right to trial, the right to representation by counsel, the consequences of termination of parental rights, and the alternatives to termination.

If the child is an Indian child, the consent of the parent or Indian custodian shall not be valid unless:

(a) executed in writing;

(b) recorded before the judge; and

(c) accompanied by the presiding Judge's certificate that the terms and consequences of the consent were explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, the birth of the Indian child shall not be valid.

RULE 43. REVIEW OF VOLUNTARY PLACEMENT MATTERS

Rule 43.01. Generally

Subdivision 1. Scope of Review. This rule governs review of all placements made pursuant to Minnesota Statutes § 257.071, subds. 3 and 4.

Subd. 2. Jurisdiction. The court assumes jurisdiction to review a voluntary placement of a child pursuant to Minnesota Statutes § 257.071, subds. 3 or 4, upon the filing of a petition alleging the child to be in need of protection or services pursuant to the requirements of Minnesota Statutes § 260.131.

Advisory Committee Comment

The practitioner should note the application of the Indian Child Welfare Act, 25 U.S.C. § 1913(a).

Rule 43.02. Petition and Hearing

Subdivision 1. Child in Placement Due to Child's Status as Developmentally Delayed or Emotionally Handicapped.

(a) **Petition.** In the case of a child in voluntary placement pursuant to Minnesota Statutes § 257.071, subd. 4, the petition shall be filed within six (6) months of the date of the voluntary placement agreement. The petition shall state the date of the voluntary placement agreement, the nature of the child's developmental delay or emotional handicap, the plan for the ongoing care of the child and the parent's participation in that plan, and the statutory basis for the petition.

(b) **Decision.** Based upon on the contents of the petition, and the agreement of all parties, including the child, where appropriate, the court may find the voluntary arrangement in the best interests of the child, approve the voluntary arrangement, and dismiss the matter from further jurisdiction of the court.

(c) **Further Proceedings.**

(1) The court shall give notice to the local social services agency that the matter must be returned to court for further review if the child remains in placement after twelve (12) months.

(2) If any party, including the child, disagrees with the voluntary arrangement or the sufficiency of the services offered by the local social services agency, the court shall direct the parties to answer the petition and set the matter for further hearing pursuant to Rule 35.

(d) In the case of a voluntary placement agreement pursuant to Minnesota Statutes § 257.071, subd. 4, the provisions of Minnesota Statutes § 260.191, subd. 3b, do not apply unless custody of the child is transferred to the local social services agency pursuant to Minnesota Statutes § 260.191 subd. 1.

Subd. 2. Other Voluntary Placements.

(a) **Petition.** In the case of a child in voluntary placement pursuant to Minnesota Statutes § 257.071, subd. 3, the petition shall be filed within ninety (90) days of the date of the voluntary placement agreement and shall state the reasons why the child is in placement, the progress on the case plan required pursuant to Minnesota Statutes § 257.071, subd. 1, and the statutory basis for the petition pursuant to Minnesota Statutes § 260.015, subd. 2a.

(b) **Hearing.** The matter shall be set for hearing within twenty (20) days of service.

(c) **Findings.** If all parties agree and the court finds that it is in the best interests of the child, the court may find the petition states a prima facie case that:

(1) the child's needs are being met;

(2) the placement of the child in foster care is in the best interests of the child; and

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

(d) **Approval of Placement.** If the court makes findings required pursuant to subdivision 2(c), the court shall approve the voluntary placement arrangement and continue the matter for ninety (90) days to assure the child returns to the parent's home.

(e) **Further Proceedings.**

(1) The local social services agency shall report to the court when the child returns home and the progress made by the parent on the case plan required pursuant to Minnesota Statutes § 257.071. If the child does not return home within the ninety (90) days

approved by the court, the matter shall be returned to court for further proceedings pursuant to Rule 35.

(2) If the court or any party, including the child, disagrees with the voluntary placement or the sufficiency of the services offered by the local social services agency, or if the court finds that the placement or case plan is not in the best interests of the child, the court shall direct the parties to admit or deny the petition and set the matter for further proceedings pursuant to Rule 37 or 38. If the court makes required findings pursuant to Rule 31, the court may order the child in protective care.

(f) **Calculating Time Period.** When a child is placed pursuant to a voluntary placement agreement pursuant to Minnesota Statutes § 257.071, subd. 3, the time period the child is considered to be in placement for purposes of determining whether to proceed pursuant to Minnesota Statutes § 260.191, subd. 3b, is sixty (60) days after the voluntary placement agreement is signed, the date court approves the placement of the child, or the date the court orders the child in protective care, whichever is earlier.

Subd. 3. Child Determined to be in Need of Protection or Services.

(a) **Further Proceedings After Adjudication.** Pursuant to subdivision 2(e) or subdivision 1(c)(2), 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 39.

(b) If the court determines that the child is in need of protection or services or withholds adjudication, and the court issues an order pursuant to Minnesota Statutes § 260.191, subdivision 1(3), the provisions of Minnesota Statutes § 260.191 subdivision 3b, shall not apply.

(c) When the court determines the child is in need of protection or services, the court may make orders pursuant to Minnesota Statutes § 260.191 or § 260.192.

(d) When the court determines the child in need of protection or services or withholds such a determination, further proceedings shall be pursuant to Rule 40.

RULE 44. POST-TRIAL MOTIONS

Rule 44.01. Procedure and Timing

Subdivision 1. Scope. This rule applies only to non-dispositional post-trial matters. It does not apply to matters concerning disposition.

Subd. 2. Timing. All non-dispositional post-trial motions shall be filed within fifteen (15) days after first service upon a party by any party, the county attorney, the court, or a court administrator of written notice of the order finding that the statutory grounds set forth in the petition are or are not proved. The motion shall be heard by the court within thirty (30) days after service of the order finding that the statutory grounds set forth in the petition are or are not proved unless the time for the hearing is extended by the court for good cause shown within the thirty (30) day period. If no notice of filing is served, the time for filing a post-trial motion shall be ninety (90) days from the date of filing of the order by the court.

Subd. 3. Basis of Motion. A post-trial motion shall be made and heard on the files, exhibits, and minutes of the court. Pertinent facts substantiating the grounds set forth in Rule 38.03 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 on the hearing of the motion.

Subd. 4. Time for Serving Affidavits. When a post-trial motion is based upon affidavits, they shall be served with the notice of motion. The parties and the county attorney shall have ten (10) days after such service in which to serve opposing affidavits pursuant to Rule 15. 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.

Advisory Committee Comment

Subdivision 1 clarifies that this rule applies to all non-dispositional post-trial motions; it does not apply to matters concerning adjudication.

Subdivision 2 clarifies that service of the written notice of the order by a party upon all other parties commences the period within which all post-trial motions must be served by the parties.

Rule 44.02. New Trial on Court's Own Motion

Not later than fifteen (15) days after finding that the statutory grounds set forth in the petition are or are not proved, the court may upon its own initiative order a new trial for any reason for which it might have granted a new trial on a motion. After giving appropriate notice and an opportunity to be heard, the court may grant a motion for a new trial, timely served, for reasons not stated in the motion. In either case, the court shall specify in the order the basis for ordering a new trial.

Rule 44.03. Grounds for New Trial

A new trial may be granted on all or some of the issues for any of the following reasons:

(a) irregularity in the proceedings of the court, referee, or prevailing party, or any order or abuse of discretion whereby the moving party was deprived of a fair trial;

(b) misconduct of counsel;

(c) fraud, misrepresentation, or other misconduct of the county attorney, any party, their counsel, or their guardian ad litem;

(d) accident or surprise which could not have been prevented by ordinary prudence;

(e) material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the trial;

(f) errors of law occurring at the trial and objected to at the time or if no objection need have been made plainly assigned in the motion;

(g) a finding that the statutory grounds set forth in the petition are proved is not justified by the evidence or is contrary to law; or

(h) if required in the interests of justice.

Rule 44.04. Decision

The court shall rule on all post-trial motions within fifteen (15) days of submission. For good cause shown, the court may extend this period for an additional fifteen (15) days. All findings shall be stated orally on the record or in writing.

Rule 44.05. Relief

In response to any post-trial motion, including a motion for a new trial, the court may:

(a) conduct a new trial;

(b) reopen the proceedings and take additional testimony;

(c) amend the findings of fact and conclusions of law; or

(d) make new findings and conclusions as required.

RULE 45. RELIEF FROM ORDER

Rule 45.01. Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time upon its own initiative or upon motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected with leave of the appellate court.

Rule 45.02. Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud

Upon motion and upon such terms as are just, the court may relieve a party or the party's legal representatives from a final order or proceeding and may order a new trial or grant such other relief as may be just for any of the following reasons:

(a) mistake, inadvertence, surprise, or excusable neglect;

(b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial;

(c) fraud (whether denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(d) the judgment is void; or

(e) any other reason justifying relief from the operation of the order.

The motion shall be made within a reasonable time, but in no event not more than ninety (90) days following the filing of the court's order.

RULE 46. APPEAL

Rule 46.01. Generally

All appeals of juvenile protection matters shall be in accordance with the requirements of the Rules of Civil Appellate Procedure, except as specified or clarified in these rules.

Rule 46.02. Time for Appeal

Any appeal shall be taken from an appealable order within thirty (30) days after first service upon a party by any party, the county attorney, the court, or the court administrator of written notice of the filing of the order. Upon service of the notice of filing of the trial court's order, the time for appeal shall begin to run for all parties served and the person serving notice. If no notice of filing is served, the time for appeal shall expire ninety (90) days from the filing of the trial court's order.

Advisory Committee Comment

The intent of the rule is to allow any party, participant, or court administrator to start the appeal time running by serving written notice of the filing of the order. Participants are included because a participant may have the right to appeal from certain orders, including an order denying intervention.

Rule 46.03. Stay of Trial Court Order

The service and filing of a notice of appeal does not automatically stay the order of the trial court. A motion for a stay must be made to the trial court. If the trial court denies the motion, the appellant may make a motion for stay to the appellate court.

Rule 46.04. 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 notice of appeal, and shall contain proof of service.

Rule 46.05. 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. A party shall be responsible for the cost of preparation of the transcript except as provide by Rule 11.03.

Rule 46.06. Time for Rendering Decisions

All decisions regarding juvenile protection matters shall be issued by the appellate court within thirty (30) days of the date the case is deemed submitted pursuant to the Rules of Civil Appellate Procedure.

Rule 46.07. Attorneys Fees

If the child or the child's parent or legal custodian cannot afford the costs of appeal, these costs shall be paid at public expense in whole or in part depending on the ability of the child's parent or legal custodian to pay.