ADDENDUM A

RULES OF JUVENILE PROTECTION PROCEDURE

[*Note: The full text of the rules as amended is provided here, without the traditional underline/strike-through method]*

A. Scope and Purpose

B. General Rules for Juvenile Protection Matters

C. Juvenile Protection Matters Governed by the Indian Child Welfare Act

D. Parties and Participants

F. Child in Need of Protection or Services Proceedings

G. Permanency or Termination of Parental Rights Proceedings

A. Scope and Purpose

RULE 1. SCOPE AND 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 2.01(19).

Rule 1.02. Purpose

These rules establish uniform practice and procedure for matters brought to court under the juvenile protection provisions or the child in voluntary foster care for treatment provisions of the Juvenile Court Act. Minn. Stat. §§ 260C.001 and 260D.01(e) describe the purposes of those provisions of the Juvenile Court Act. These rules are additionally intended to:

(a) secure for each child under the jurisdiction of the court a home that is safe and permanent;
(b) 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 procedures;
(c) 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;
(d) ensure a coordinated decision-making process;
(e) reduce unnecessary delays in court proceedings;
(f) encourage the involvement of parents and children in the proceedings; and
(g) ensure compliance with the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act.

2019 Advisory Committee Comment

Rule 1 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The amendments to Rule 1 are not intended to substantively change the rule's meaning.

Rule 1.02 is amended to eliminate provisions that either duplicate or resemble statutory language describing the purposes of juvenile protection matters. The revised Rule 1.02 cites the statutory provisions in which the legislature has described the purposes of the juvenile protection and child in voluntary foster care for treatment provisions of the Juvenile Court Act. The purposes that remain listed in Rule 1.02 reflect the Minnesota Judicial Branch's intent to implement the Juvenile Court Act's provisions.

RULE 2. DEFINITIONS

Rule 2.01. Definitions

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

(1) **"Active efforts"** is defined in 25 C.F.R. § 23.2 and in the Minnesota Indian Family Preservation Act, Minn. Stat. § 260.755, subd. 1a.

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

(3) **"Affidavit"** is defined in Rule 15 of the General Rules of Practice for the District Courts.

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

(5) **"Child"** means an individual under 18 years of age. "Child" also includes individuals under age 21 who are in foster care pursuant to Minn. Stat. § 260C.451.

(6) **"Child-placing agency"** is defined in Minn. Stat. § 260C.007, subd. 7.

(7) **"Child custody proceeding"** means any judicial action within the definition of a "child custody proceeding" under the Indian Child Welfare Act, 25 U.S.C. § 1903(1) and 25 C.F.R. § 23.2, or a "child placement proceeding" under the Minnesota Indian Family Preservation Act, Minn. Stat. § 260.755, subd. 3.

(8) **"Child support"** means an amount for basic support, child care support, and medical support pursuant to:

- (a) the duty of support ordered in a parentage proceeding under the Parentage Act, Minn. Stat. §§ 257.51− .74;
- (b) a contribution by parents ordered under Minn. Stat. § 256.87; or
- (c) support ordered under Minn. Stat. chs. 518A, 518B, 518C or 518E.

(9) **"Electronic means"** is defined in Rule 14.01(a)(7) of the General Rules of Practice for the District Courts.

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

- (a) taken into custody by a peace officer pursuant to Minn. Stat. §§ 260C.151, subd. 6; 260C.154; or 260C.175; or
- (b) returned home before an emergency protective care hearing pursuant to Rule 41 pursuant to court-ordered conditions of release.

(11) **"Extended family member"** is defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(2), and at 25 C.F.R. § 23.2.

(12) **"Foster care"** is defined in Minn. Stat. § 260C.007, subd. 18.

(13) **"Independent living plan"** is a plan as described in Minn. Stat. § 260C.212, subd. 1(c)(12).

(14) **"Indian child"** is defined in the Minnesota Indian Family Preservation Act, Minn. Stat. § 260.755, subd. 8.

(15) **"Indian child's tribe"** is defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(5), at 25 C.F.R. §§ 23.2 and 23.109, and in the Minnesota Indian Family Preservation Act, Minn. Stat. § 260.755, subd. 9.

(16) **"Indian custodian"** is defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(6), at 25 C.F.R. § 23.2, and in the Minnesota Indian Family Preservation Act, Minn. Stat. § 260.755, subd. 10.

(17) **"Indian tribe"** is defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(8), at 25 C.F.R. § 23.2, and in the Minnesota Indian Family Preservation Act, Minn. Stat. § 260.755, subd. 12.

(18) **"Juvenile protection case records"** means all records regarding a particular juvenile protection matter filed with or generated by the court, including orders, notices, the register of actions, the index, the calendar, and the official transcript.

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

(a) child in need of protection or services matters as defined in Minn. Stat. § 260C.007, subd. 6, including habitual truant and runaway matters;

(b) neglected and in foster care matters as defined in Minn. Stat. § 260C.007, subd. 24;

(c) review of voluntary foster care matters as defined in Minn. Stat. § 260C.141, subd. 2;

(d) review of out-of-home placement matters as defined in Minn. Stat. § 260C.212;

(e) termination of parental rights matters as defined in Minn. Stat. §§ 260C.301−.328; and

(f) permanent placement matters as defined in Minn. Stat. §§ 260C.503−.521, including matters involving termination of parental rights, guardianship to the Commissioner of Human Services, transfer of permanent legal and physical custody to a relative, permanent custody to the agency, and temporary legal custody to the agency, and matters involving voluntary placement pursuant to Minn. Stat. § 260D.07.

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

(21) **"Nonresident parent"** means a parent who was not residing with the child at the time the child was removed from the home.

(22) **"Parent"** is defined in Minn. Stat. § 260C.007, subd. 25.

(23) **"Parentage matter"** means an action under the Parentage Act, Minn. Stat. §§ 257.51−.74.

(24) **"Person"** is defined in Minn. Stat. § 260C.007, subd. 26.

(25) **"Presumed father"** means an individual who is presumed to be the biological father of a child under Minn. Stat. § 257.55, subd. 1, or § 260C.150, subd. 2.

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

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

(28) **"Putative father"** is defined in Minn. Stat. § 260C.007, subd. 26a.

(29) **"Qualified expert witness"** is defined in the Minnesota Indian Family Preservation Act, Minn. Stat. § 260.755, subd. 17a.

(30) **"Reasonable efforts to prevent placement"** is defined in Minn. Stat. § 260.012(d).

(31) **"Reasonable efforts to finalize a permanent plan for the child"** is defined in Minn. Stat. § 260.012(e).

(32) **"Relative"** is defined in Minn. Stat. § 260C.007, subd. 27. For an Indian child, "relative" also includes persons within the definition of "relative of an Indian child" as defined in Minn. Stat. § 260C.007, subd. 26b, and persons within the definitions of "extended family member," "Indian custodian," or "parent" under the Indian Child Welfare Act, 25 U.S.C. § 1903(2), (6), and (9), and under 25 C.F.R. § 23.2.

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

(34) **"Reservation"** is defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(10), and in 25 C.F.R. § 23.2.

(35) **"Shelter care facility"** is defined in Minn. Stat. § 260C.007, subd. 30.

(36) **"Trial home visit"** is defined in Minn. Stat. § 260C.201, subd. 1(a)(3).

(37) **"Tribal court"** is defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(12), and in 25 C.F.R. § 23.2.

(38) **"Voluntary foster care"** is a placement of a child in foster care as described in Minn. Stat. §§ 260C.227 or .229 or ch. 260D. For an Indian child, voluntary foster care placements are defined at Minn. Stat. § 260.755, subd. 22, and are subject to the procedural requirements of Minn. Stat. § 260.765.

2019 Advisory Committee Comment

Rule 2 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure.

Rule 2.01(7) cites the definitions of "child custody proceeding" under the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1903(1), "child-custody proceeding" under the ICWA regulations, 25 C.F.R. § 23.2, and "child placement proceeding" under the Minnesota Indian Family Preservation Act (MIFPA), Minn. Stat. § 260.755, subd. 3. There are some differences between each of the definitions. The ICWA definition exempts "placement[s] based upon an act which, if committed by an adult, would be deemed a crime." In contrast, the ICWA regulation definition expressly includes "status offenses" within the definition of "child-custody proceeding," but unlike ICWA exempts "emergency proceeding[s]" from the definition. The ICWA regulation definition also specifies that for its purposes, "an action that may culminate in one of these four outcomes [foster-care placement, termination of parental rights, preadoptive placement, or adoptive placement] is considered a separate child-custody proceeding from an action that may culminate in a different one of these four outcomes." Meanwhile, the MIFPA definition includes "placements based upon juvenile status offenses, but do[es] not include a placement based upon an act which if committed by an adult would be deemed a crime." The applicability and interplay of these three definitions should be determined on a case-by-case basis.

Rule 2.01(14) cites the definition of "Indian child" under MIFPA, Minn. Stat. § 260.755, subd. 8. Unlike the definition of Indian child under ICWA, 25 U.S.C. § 1903(4), MIFPA does not require a child who is eligible for tribal membership to be the biological child of a member of an Indian tribe. The Committee notes that the MIFPA definition provides a "higher standard of protection to the rights of the parent or Indian custodian" as contemplated by ICWA, 25 U.S.C. § 1921. See In re the Adoption of M.T.S., 489 N.W.2d 285, 288 (Minn. Ct. App. 1992).

Rule 2.01(15) cites the definitions of "Indian child's tribe" under ICWA, 25 U.S.C. § 1903(5), the ICWA regulations, 25 C.F.R. § 23.2 and 23.109, and MIFPA, Minn. Stat. § 260.755, subd. 9. In situations where a child is a member or eligible for membership in more than one tribe, the ICWA definition states that the "Indian child's tribe is the tribe with which the Indian child has the most significant contacts." The MIFPA definition restates the ICWA definition, and then provides that if the tribe with which the child has the most significant contacts does not become involved with the outcome of the court actions, "any other tribe in which the child is eligible for membership that expresses an interest in the outcome may act as the Indian child's tribe." In contrast, 25 C.F.R. § 23.109, "How should a State court determine an Indian child's Tribe when the child may be a member or eligible for membership in more than one Tribe?", sets out a different procedure. The applicability and interplay of these three definitions should be determined on a case-by-case basis.

Rule 2.01(16) cites the definitions of "Indian custodian" under ICWA, 25 U.S.C. § 1903(6), the ICWA regulations, 25 C.F.R. § 23.2, and MIFPA, Minn. Stat. § 260.755, subd. 10. The ICWA regulation definition additionally provides that "[a]n Indian may demonstrate that he or she is an Indian custodian by looking to Tribal law or Tribal custom or State law."

Rule 2.01(32) cites the statute defining who is a "relative" for purposes of juvenile protection matters. The rule cites the additional state statutes that govern who is a "relative" for an Indian child for purposes of juvenile protection matters. The state statute provides that a "relative" of an Indian child includes anyone who is an "extended family member," an "Indian custodian," or a "parent" of the child as defined in ICWA.

RULE 3. APPLICABILITY OF OTHER RULES AND STATUTES

Rule 3.01. Rules of Civil Procedure

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

Rule 3.02. Rules of Evidence

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

Subd. 2. Certain Out-of-Court Statements Admissible. An out-of-court statement not otherwise admissible by statute or rule of evidence is admissible if required by Minn. Stat. § 260C.165.

Subd. 3. Judicial Notice. In addition to the judicial notice permitted under the Rules of Evidence, the court, upon its own motion or the motion of any party or the county attorney, may take judicial notice only of findings of fact and court orders in the juvenile protection court file and in any other proceeding in any other court file involving the child or the child's parent or legal custodian.

Rule 3.03. Indian Child Welfare Act

Juvenile protection matters concerning an Indian child shall be governed by the Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901−1963; the ICWA regulations, 25 C.F.R. pt. 23; the Minnesota Indian Family Preservation Act (MIFPA), Minn. Stat. §§ 260.751−.835; and by these rules when these rules are not inconsistent with ICWA, the ICWA regulations, or MIFPA.

Rule 3.04. Rules of Guardian Ad Litem Procedure

The Rules of Guardian Ad Litem Procedure, codified as Rules 901−907 of the General Rules of Practice for the District Courts, apply to juvenile protection matters.

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

The statutes, court rules, and court policies regarding appointment of court interpreters apply to juvenile protection matters. The court may appoint an interpreter of its own selection and may fix reasonable compensation pursuant to those statutes, court rules and court policies.

Rule 3.06. General Rules of Practice for the District Courts

Except as otherwise provided by these rules, Rules 1−2, 4−16, and 901−907 of the General Rules of Practice for the District Courts apply to juvenile protection matters. Rules 3 and 101−814 of the General Rules of Practice for the District Courts do not apply to juvenile protection matters. Rule 5 of the General Rules of Practice for the District Courts does not apply to attorneys who represent Indian tribes in juvenile protection matters.

2019 Advisory Committee Comment

Rule 3 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The amendments to Rule 3 are not intended to substantively change the rule's meaning.

Rule 3.02 refers to Minn. Stat. § 260C.165, which makes various types of statements admissible in juvenile protection matters. The prior version of Rule 3.02 restated the statutory language, but the amended rule simply cites the statute.

Rule 3.06 describes which of the General Rules of Practice for the District Courts apply to juvenile protection matters. General Rule of Practice 5 in general provides that an "out-of-state lawyer is subject to all rules that apply to lawyers admitted in Minnesota, including rules related to e-filing." Consistent with the letter and spirit of the Indian Child Welfare Act, the Juvenile Protection Rules Committee does not want to place any barriers to participation by Indian tribes in juvenile protection matters. For that reason, Rule 3.06 provides that the requirements of General Rule of Practice 5 relating to pro hac vice admissions and electronic filing do not apply to attorneys who represent Indian tribes. General Rule of Practice 10, as amended in 2018, addresses recognition of orders, judgments, and other judicial acts of the tribal courts of any federally recognized Indian tribe. Rule 10.01 addresses situations where recognition is mandatory (including when recognition is required by the Indian Child Welfare Act), and Rule 10.03 addresses situations where recognition is discretionary.

B. General Rules for Juvenile Protection Matters

RULE 4. TIME

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 in the computation of time. The last day of the period shall be included, unless it is a Saturday, Sunday, or legal holiday. When a period of time prescribed or allowed is three days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" includes any holiday designated in Minn. Stat. § 645.44, subd. 5, as a holiday for the state or any state-wide branch of government and any day that the U.S. mail does not operate.

Rule 4.02. Additional Time After Service by U.S. Mail or Other Means

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 document and the notice or other document is served by U.S. mail, three days shall be added to the prescribed period. If service is made by any means other than U.S. mail and accomplished after 5:00 p.m. local Minnesota time on the day of service, one additional day shall be added to the prescribed period.

Rule 4.03. Sanctions for Violations of Timelines

These rules contain several timelines that apply to different types of juvenile protection matters. 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.

2019 Advisory Committee Comment

Rule 4 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The amendments to Rule 4 are not intended to substantively change the rule's meaning.

Rule 4.01 is amended to more closely track the language of Rule 6.01 of the Rules of Civil Procedure, and to eliminate a potential conflict between the rule and the statutory definition of "holiday."

Rule 4.02 is amended to refer to "local Minnesota time," which tracks the language in Rule 6.05 of the Rules of Civil Procedure. This eliminates a potential ambiguity in the rule: the extra day to respond arises if service is accomplished after 5:00 p.m. under Minnesota time. This clarification is important with the use of service through the court's E-Filing System, which can be used from anywhere in the world, in any time zone.

Until 2019, Rule 4.03 listed timeline requirements for several types of juvenile protection matters. To promote clarity, those timeline requirements have been moved to the rules governing each type of juvenile protection matter: Rules 43 and 60.

The former Rule 4.04 has been renumbered to Rule 4.03, and recognizes the court's authority to issue sanctions for willful violations of the timelines set forth in these rules.

RULE 5. CONTINUANCES

Rule 5.01. Compliance with Timelines

Subd. 1. Generally. Upon its own motion or motion of a party or the county attorney, the court may continue a scheduled hearing or trial to a later date so long as the timelines for achieving permanency as set forth in these rules are not delayed.

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

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 Minn. Stat. § 260C.001−.637.

2019 Advisory Committee Comment

Rule 5 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The amendments to Rule 5 are not intended to substantively change the rule's meaning.

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

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

Subd. 1. When Issued. The court shall issue a scheduling order at the admit/deny hearing held pursuant to Rule 46 or 55, or within 15 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.

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.

2019 Advisory Committee Comment

Rule 6 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The amendments to Rule 6 are not intended to substantively change the rule's meaning.

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 matter heard by a referee. The right to object shall be deemed waived unless the objection is in writing, filed with the court, and served upon all other parties and the county attorney within three 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. Transmittal of Referee's Findings and Recommended Order

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

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

Rule 7.04. Review of Referee's Findings and Recommended Order

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

Subd. 2. Motion for Review. Any motion for review of the referee's findings and recommended order, together with a memorandum of law, shall be filed with the court and served on all parties and the county attorney within five 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 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 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.

Rule 7.05. 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 judge shall confirm or modify the order within 15 days of the transmittal of the findings and proposed order.

Rule 7.06. Removal of Judge or Referee

A party or the county attorney may file with the court and serve upon all other parties a notice to remove a particular judge or referee under the procedures and standards set forth in Rule 63 of the Minnesota Rules of Civil Procedure. When a permanent placement matter or termination of parental rights matter is filed in connection with a child is the subject of a pending child in need of protection or services matter, the permanency or termination matter shall be considered a continuation of the protection matter for purposes of this rule. For that reason, if the judge or referee assigned to hear the protection matter is assigned to hear the permanency or termination matter, the parties and the county attorney cannot disqualify the assigned judge or referee as a matter of right.

2019 Advisory Committee Comment

Rule 7 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The amendments to Rule 7 are intended to establish a consistent standard for removal of judges or referees.

Former Rule 7.03 governed the process for removing a particular referee from presiding over a case, either as of right or for cause. This closely tracked the process for removing a particular judge from presiding over a case, in former Rule 7.07. Both judges and referees are governed by the Code of Judicial Conduct, and the committee believes the same process should govern removals of judges and removals of referees. Accordingly, former Rule 7.03 has been deleted, and removals of judges and referees are now governed by Rule 7.06. The rule incorporates the judicial removal procedures of Civil Procedure Rule 63, which in turn allows for a limited opportunity to remove a judge

as of right, and (as of July 1, 2018) incorporates the Code of Judicial Conduct. The same standard is used in the Rules of Criminal Procedure (Minn. R. Crim. P. 26.03, subd. 14) and the Rules of Juvenile Delinquency Procedure (Minn. R. Juv. Del. P. 22). Rule 7.06 clarifies that for purposes of removals of right, a permanency or termination proceeding filed in connection with a pending CHIPS proceeding is considered a continuation of the CHIPS proceeding. Essentially, each party has a one-time opportunity to remove a judge or referee as of right, and that right does not arise again if a CHIPS proceeding goes on to a permanency or termination proceeding.

RULE 8. ACCESSIBILITY OF JUVENILE PROTECTION CASE RECORDS

Rule 8.01. Presumption of Access to Juvenile Protection Case Records

Except as otherwise provided in Rule 8.04 of these rules and the Rules of Public Access to Records of the Judicial Branch, all juvenile protection case records relating to any juvenile protection matters, as those terms are defined in Rule 2.01, are presumed to be accessible to any party, participant, or member of the public for inspection and copying. Any order prohibiting access to all juvenile protection records of a particular case, or any portion of a juvenile protection case record, shall be accessible to the public, parties, and participants.

Rule 8.02. Effective Date

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

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

Rule 8.03. Access to Records Filed Prior to July 2015; Access to Records Upon Appeal

(a) **Access to Records Filed Before July 1, 2015.** For juvenile protection case records filed before July 1, 2015, or for case records filed before October 1, 2016, in cases where a child is a party, confidential information to which access is restricted under Rule 8.04 shall, if necessary, be redacted by or at the direction of court administration staff prior to allowing access to any party, participant, or member of the public. In the case of a request for access to a petition filed before July 1, 2015, when a redacted petition has not been filed as required by the rules in effect at the time of filing, court administration staff may notify the petitioner of the access request and direct the petitioner to promptly file a petition from

which the confidential information has been redacted as required so that access may be provided to the requesting individual.

(b) **Access to Records During Appeal.** For juvenile protection case records filed before July 1, 2015, confidential information to which access is restricted under Rule 8.04 shall not be redacted prior to transmission to the clerk of appellate courts. A request for access to a juvenile protection case record by any party, participant, or member of the public during an appeal shall be directed to the district court, and the portion of the record shall, if necessary, be redacted of all confidential information under Rule 8.03 by or at the direction of court administration staff before access shall be allowed.

Rule 8.04. Juvenile Protection Case Records Inaccessible to the Public, Parties, or Participants

Subd. 1. Definitions. The following definitions apply for purposes of this rule:

(a) "Calendar" is as defined in Rule 8, subd. 2, of the Rules of Public Access to Records of the Judicial Branch.

(b) "Register of Actions" is as defined in Rule 8, subd. 2, of the Rules of Public Access to Records of the Judicial Branch.

(c) "Remote Access" is as defined in Rule 8, subd. 2, of the Rules of Public Access to Records of the Judicial Branch.

(d) "Confidential document" means any document that is inaccessible to the public under subdivisions 2 or 4 of this rule.

(e) "Confidential information" means any information that is inaccessible to the public under subdivision 2(d), (e), (j), (l), (m), or (p).

Subd. 2. Confidential Documents and Confidential Information. The following juvenile protection case records are confidential documents or confidential information and are accessible to the public, parties, and participants only as specified in subdivision 3:

(a) official transcripts of testimony taken during proceedings that are closed by the presiding judge;

(b) audio or video recordings of a child alleging or describing physical abuse, sexual abuse, or neglect of any child;

(c) victims' statements;

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

(e) records of HIV testing, portions of records that reveal any person has undergone HIV testing, or any reference to any person's HIV status;

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

(g) sexual offender treatment program reports;

(h) portions of photographs that identify a child;

(i) notices of change of foster care placement;

(j) the identity of a minor victim or perpetrator of an alleged or adjudicated sexual assault;

(k) notice of pending court proceedings provided by the petitioner pursuant to the Indian Child Welfare Act, 25 U.S.C.§ 1912, and any response to that notice from an Indian tribe or the Bureau of Indian Affairs as to whether the child is eligible for tribal membership, including documents such as family ancestry charts, genograms, and tribal membership information;

(l) records or portions of records which the court in exceptional circumstances has deemed to be inaccessible to the public through a protective order issued under Rule 8.07;

(m) the name, address, home, or location of any shelter care facility or foster care in which a child is currently placed pursuant to law or court order, except in documents consenting to adoption or transferring permanent legal and physical custody to a foster care provider or relative;

(n) signature pages containing signatures of foster parents or children whose identities are confidential;

(o) documents provided to the court to give notice of a hearing for a child under state guardianship pursuant to Rule 27.07, subd. 2; and

(p) names, addresses, e-mail addresses, or telephone numbers that would endanger a person if disclosed in a public court filing.

Subd. 3. Access to Juvenile Protection Case Records by Public, Parties, and Participants.

(a) **Public.** The public shall have access to inspect and copy all juvenile protection case records in the court file, except those listed in subdivision 2(a)-(p) and subdivision 4 of this rule.

(b) **Parties.** Unless otherwise ordered by the court, parties shall have access to inspect and copy all juvenile protection case records in the court file, except those listed in subdivision 2(b), (d), and (e) of this rule. Records listed in subdivision 2(p) of this rule shall not be accessible to the parties, but shall be accessible to the attorneys and the guardian ad litem.

(c) **Participants.** Upon order of the court, participants may have access to inspect and copy all juvenile protection case records in the court file, except those listed in subdivision 2(b), (d), (e), and (p) of this rule. A participant's request for an order permitting access need not be made by written motion, but may be made orally on the record.

Subd. 4. Juvenile Case Records Confidential and Presumptively Inaccessible to the Public Unless Authorized by Court Order. The following juvenile protection case records are confidential and presumptively inaccessible to the public unless otherwise ordered by the court upon a finding of an exceptional circumstance:

(a) "Confidential Documents" filed under subdivision 5; and

(b) "Confidential Information Forms" filed under subdivision 5.

Subd. 5. Submission of Confidential Documents and Confidential Information.

(a) **Confidential Documents.** No person shall file a confidential document listed in subdivision 2 unless it is submitted under a cover sheet entitled "Confidential Document" (see Form 11.3 as published by the State Court Administrator), in which case the document shall be designated as confidential and inaccessible to the public. The person filing a confidential document is solely responsible for ensuring that it is filed under a "Confidential Document" cover sheet and designated as confidential.

(b) **Confidential Information.** No person shall file a publicly accessible document, including without limitation, petitions and social services or guardian ad litem reports, that contains any confidential information listed in subdivision 2. Confidential information shall be omitted from the public document and filed on a separate document entitled "Confidential Information Form" (see Form 11.4 as published by the State Court Administrator), in which case the Confidential Information Form shall be designated as confidential and inaccessible to the public. The person filing a publicly accessible document is solely responsible for ensuring that all confidential information is omitted from the document and filed on a separate "Confidential Information Form." A person filing a document that refers to a child or foster parent using a pseudonym may reference a Form 11.4 previously filed that identifies the child or foster parent instead of filing a new Form 11.4.

(c) **Records Generated by the Court.** Confidential information generated by the court in its register of actions, calendars, indexes, and other records shall not be accessible to the public. Paragraphs (a) and (b) of this subdivision do not apply to orders or other documents filed by judicial officers.

(d) **Noncompliance.**

(1) **Confidential Document.**

(i) If it is brought to the attention of court administration staff that a confidential document has not been filed under a "Confidential Document" cover sheet and/or has not been designated as confidential, court administration staff shall designate the document as confidential, notify the filer of the change in designation, and direct the filer to promptly file a cover sheet in compliance with subdivision 5(a) of this rule.

(ii) If it is brought to the attention of court administration staff that an Indian tribe or the Bureau of Indian Affairs has filed a response to a notice described under subdivision 2(k) of this rule but failed to file a "Confidential Document" cover sheet and/or designate the response as confidential, court administration staff shall designate

the response as confidential. Court staff shall not direct the filing of a cover sheet under this paragraph.

(2) **Confidential Information.** If it is brought to the attention of court administration staff that a publicly accessible document includes confidential information that has not been filed under a "Confidential Information Form" and/or has not been designated as confidential, court administration staff shall designate the document as confidential and direct the filer to promptly file a document in compliance with subdivision 5(b) of this rule.

(3) **Sanction.** If a person fails to comply with the requirements of this rule, the court may upon motion or its own initiative impose appropriate sanctions, including any monetary fee to the court or costs necessary to prepare a document for filing that complies with this rule.

Rule 8.05. Access to Exhibits

Juvenile protection case records received into evidence as exhibits during a hearing or trial are not subject to Rule 8.04, subdivision 5, and shall be accessible to the public unless subject to a protective order issued pursuant to Rule 8.07.

Rule 8.06. Electronic Access to Juvenile Protection Case Records

Electronic access to juvenile protection case records, including remote access and access at a courthouse facility, shall be as permitted by the Rules of Public Access to Records of the Judicial Branch.

Rule 8.07. Protective Order

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

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

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

Subd. 1. District Court. All juvenile protection court files and any petitions, pleadings, reports, orders, or other documents shall be captioned in the name of the child's parent(s) or legal custodian(s), as follows: "*In the Matter of the Welfare of the Child(ren) of _____, Parent(s)/Legal Custodian(s).*" The caption shall not include the child's name or initials. The body of any petitions, pleadings, reports, orders, or other documents or records filed with the court shall include the child's and parent's or legal custodian's full name, not their initials. The case caption shall not be modified upon the issuance of an order terminating parental rights.

Subd. 2. Appellate Court. All juvenile protection case files opened in any Minnesota appellate court shall be captioned in the initials of the parent(s) or legal custodian(s) as follows: "*In the Matter of the Welfare of the Child(ren) of _____, Parent(s)/Legal Custodian(s).*" The caption shall not include the child's name or initials. The body of any decision filed in any Minnesota appellate court shall use the parent's and child's initials, not their names. Upon the filing of an appeal pursuant to Rule 23.02, the appellant shall provide to the court administrator, the appellate court, and the parties and participants notice of the correct appellate case caption required under this Rule. This Rule supersedes Rule 143.01 of the Rules of Civil Appellate Procedure regarding the provisions relating to case captions on appeal.

Rule 8.09. Access to Juvenile Protection Record by Family Court Judicial Officer

In any family court matter involving custody or parenting time regarding a child who has been or is the subject of a juvenile protection matter, the assigned judicial officer shall, upon notice to the parties, have access to the entire juvenile protection court record. Upon request of a party made within 10 days of the court's notice to the parties, the parties shall have an opportunity to be heard after the court accesses the file.

Rule 8.10. Access to Juvenile Protection Record by Parties and Child's Guardian ad Litem in Family Court Matter

The parties to a family court matter involving a determination of custody or parenting time regarding a child who has been or is the subject of a juvenile protection matter, including any person established as a parent in a parentage matter and any guardian ad litem appointed in the family court matter, shall have access to the juvenile protection case record to the same extent as a party to the juvenile protection matter has access under Rule 8.04, subd. 3. If the juvenile court has issued a protective order under Rule 8.07, the portions of the juvenile protection case record subject to the protective order continue to be subject to the protective order when accessed by any party to the family court matter.

2019 Advisory Committee Comment

Rule 8 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure.

Most juvenile protection case records in Minnesota state courts are public. Public access began as a pilot project. Records of cases filed in the pilot project locations (courts in the counties of Chisago, Clay, Goodhue, Hennepin, Houston,

LeSueur, Marshall, Pennington, Red Lake, Stevens, St. Louis (Virginia courthouse only), and Watonwan) are presumptively publicly accessible if filed on or after June 28, 1998. The presumption of public access took effect statewide on July 1, 2002. Rule 8.02 distinguishes between pilot project and non-pilot project records.

After the pilot project, juvenile protection records were accessible to the public on an on-demand basis. Petitioners were responsible for filing redacted copies of their petitions so that court administration staff could make them available to the public, but otherwise court administration staff were responsible for redacting non-public information from juvenile protection case records before making them accessible to the public. Non-public information includes both "confidential information" and "confidential documents" as defined in Rule 8.04. Redacting non-public information became an impracticable burden for court administration staff once juvenile protection case records were made electronically accessible to the public. For that reason, the rules were amended as of July 1, 2015, to provide that every person who files documents into juvenile protection cases is responsible for keeping non-public information out of public records. Court administration staff retain their historic responsibility for redacting non-public information from juvenile protection case records filed before July 1, 2015, as described in Rule 8.03.

Rule 8.04 draws the line between those juvenile protection records that are accessible to the public and those that are not. The rule helps strike a balance between preserving the privacy interests of the people involved in juvenile protection proceedings and ensuring transparency and accountability.

Everyone who files a document in a juvenile protection matter is responsible for separating the publicly accessible portions from those that are inaccessible to the public. The onus is on filers to ensure that the public and confidential portions of the filings are properly separated. There are two types of records that are inaccessible to the public: confidential documents and confidential information. Confidential documents must be designated as confidential upon filing, and must be filed with a Form 11.3 cover sheet, which is public. Confidential information is information that must be taken out of a public document and placed onto a Form 11.4 Confidential Information Form.

Only judicial officers have discretion to change the classification of a record from the classification set out in Rule 8.04. A judicial officer may order that a confidential record be made accessible to the public, or that a public record be made inaccessible if exceptional circumstances exist. Judicial officers who issue orders in juvenile protection proceedings have discretion to include confidential information and confidential documents in public court orders. Judicial officers are encouraged to consider that their public court orders are immediately accessible at every state courthouse in Minnesota.

Rule 8.04 defines three levels of access to juvenile protection records: what the public can access; what parties can access; and what participants can access. Members of the public can access confidential information or confidential documents only by filing a motion for and obtaining an order granting access. Parties can access most confidential documents and confidential information, with the exceptions of recordings of children alleging or describing abuse, the identities of reporters of child abuse or neglect, and information about any person's HIV status. Participants can access confidential information or confidential documents if a judge issues an order granting

them access, and can request access orally or in writing without filing a formal motion for access.

Although confidential documents are inaccessible to the public, filers are free to discuss the contents of confidential documents in public court filings where doing so is necessary and relevant to the issues being addressed in the court filing. For example, all medical records are confidential documents. But a publicly accessible social worker report could describe a child's medical condition and progress in treatment. The social worker report could quote directly from the child's treatment records, even though the treatment records themselves are not accessible to the public. The public social worker report should not include confidential information, such as the child's HIV status or the child's identity if there is an allegation of sexual assault.

Categories of confidential documents:

Rule 8.04, subd. 2(a) precludes public access to transcripts of portions of hearings that were closed to the public by the presiding judge upon a finding of exceptional circumstances.

Rule 8.04, subd. 2(b) precludes public access to audio or video recordings of a child alleging or describing physical abuse, sexual abuse, or neglect of any child. This is consistent with Minn. Stat. § 13.821, which governs access to these recordings when held by an executive branch agency.

Rule 8.04, subd. 2(c) precludes public access to victims' statements, which includes written records of interviews with victims made under Minn. Stat. § 626.561. This is consistent with the confidential classification of victim interviews in presentence investigation reports in criminal proceedings, pursuant to Minn. Stat. §§ 609.115, 609.2244, and 611A.037.

Rule 8.04, subds. 2(f) and (g) preclude public access to medical records, chemical dependency evaluations and records, psychological evaluations and records, psychiatric evaluations and records, and sexual offender treatment program reports. This is consistent with Rule 4, subd. 1(f) of the Rules of Public Access to Records of the Judicial Branch. Filers should be careful not to violate federal law by disclosing these records. Under 42 U.S.C § 290dd-2, records of all federally assisted or regulated substance abuse treatment programs are confidential and may not be disclosed by the program without consent or a court order. Disclosure procedural requirements are found in 42 C.F.R. §§ 2.1−2.67.

Rule 8.04, subd. 2(h) precludes public access to portions of photographs that identify a child. Filers are required to designate as confidential any photograph that displays a child's face or other identifying features. Any need to make the remainder of the photograph accessible to the public can be addressed through a court order issued under Rule 8.07.

Rule 8.04, subd. 2(i) precludes public access to notices of change of foster care placement. All of the information in these notices is confidential under subdivision 2(m). The Form 11.3 cover sheet discloses to the public that there has been a change of foster care placement.

Rule 8.04, subd. 2(k) precludes public access to the notice of pending proceedings provided by the petitioner pursuant to 25 U.S.C. § 1912(a). The notices can contain detailed personal information about the child, including, when "known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents." 25 C.F.R. § 23.111(d)(3). Parties who receive the notices are directed to keep them confidential. 25 C.F.R. § 23.111(d)(6)(ix). Subdivision 2(k) was amended in 2019 to also preclude public access to responses to these notices. Just as the notices can contain detailed personal information about the child, responses can also contain detailed personal information.

Rule 8.04, subd. 2(l) recognizes that judicial officers may, in exceptional circumstances, issue orders precluding public access to specified records.

Rule 8.04, subd. 2(n) precludes public access to the signature pages of documents containing signatures of foster parents or children whose identities are confidential. This recognizes that foster parents and, occasionally, children whose identities are confidential must sign documents that are filed with the court, such as out-of-home placement plans. Classifying the signature page as confidential preserves the confidentiality of their identities. Subdivision 2(n) does not make the remainder of the document confidential.

Rule 8.04, subd. 2(o) precludes public access to documents provided to the court by a social services agency under Rule 27.07, subd. 2(a) as part of a report when a child is under state guardianship. The information is provided to enable the court to provide notice of the hearing to various individuals. The identities of those individuals are non-public, and are additionally not accessible to parents whose rights have been terminated or who have executed a consent to adoption of the child.

Categories of confidential information:

Rule 8.04, subd. 2(d) precludes public access to the identity of a reporter of abuse or neglect of a child. This is consistent with state laws restricting the disclosure of the identity of a reporter of abuse or neglect. Minn. Stat. § 626.556. It is also intended to help preserve federal funds for child abuse prevention and treatment programs. 42 U.S.C. § 5106a(b)(2). Subdivision 2(d) does not, however, apply to testimony of a witness in a proceeding that is open to the public.

Rule 8.04, subd. 2(e) precludes public access to any person's HIV test results, to information that reveals that any person has been tested for HIV, and to any reference to a person's HIV status. This is consistent with the classification of HIV status of crime victims under certain state and federal laws. Minn. Stat. § 611A.19; 34 U.S.C. § 12391. Additionally, federal funding for early intervention services is contingent upon HIV status being kept confidential. 42 U.S.C. §§ 300ff-61−300ff-63.

Rule 8.04, subd. 2(j) precludes public access to the identity of a minor victim or minor perpetrator of an alleged or adjudicated sexual assault. The rule is similar to the requirements of Minn. Stat. § 609.3471, and Rule 4, subd. 1(m) of the Rules of Public Access to Records of the Judicial Branch. Unlike that statute and rule, Rule 8.04, subd. 2(j) applies to all situations where there has been an allegation of sexual assault, even if the allegation is not proven. Several recommended practices are listed below in this comment.

Rule 8.04, subd. 2(m) precludes public access to the name, address, home, and location of the child's current shelter care or foster care placement. This is designed to reduce the risk of continued contact with someone whose parental rights have been terminated. Subdivision 2(m) only makes current placements confidential. It does not make a child's past placements confidential. Subdivision 2(m) does not apply to information disclosed in consent to adoption forms. Subdivision 2(m) also does not apply to information disclosed in documents, such as petitions or proposed orders, that are intended to transfer permanent legal and physical custody of a child to a foster care provider or relative. Documents containing the signature of a foster parent are addressed in subd. 2(n) (see the discussion of confidential documents above).

Rule 8.04, subd. 2(p) precludes public access to names, addresses, e-mail addresses, and telephone numbers if disclosing that information would endanger a person. Absent a court order, this information is also inaccessible to parties, but is accessible to attorneys and guardians ad litem.

Use of Form 11.3:

Every confidential document needs a Form 11.3 cover sheet. The filer should check the appropriate box on Form 11.3 to indicate the type of confidential document that is being filed.

Electronic filers using Form 11.3 need to file it as a separate PDF file from the confidential document. This makes it possible to make the cover sheet accessible to the public and the confidential documents inaccessible to the public.

Form 11.3 does not have a separate checkbox for documents referring to HIV, because having a separate checkbox would reveal to the public that there is a document referring to HIV. Documents referring to HIV should be checked as "medical records" on Form 11.3. Filers should not write anything on Form 11.3 to indicate there is a document referring to HIV.

Rule 8.04, subd. 5(d)(1)(i) directs court administration staff to take action if it is brought to their attention that a filer has failed to designate a confidential document as confidential and use a Form 11.3. The rule directs court administration staff to designate the document as confidential, notify the filer of the change in classification, and direct the filer to file a Form 11.3 in compliance with the rule.

Subdivision 5(d)(1)(ii) creates a limited exception for responses to notices of pending court proceedings, which are confidential documents. The majority of the hundreds of federally recognized tribes are located outside of Minnesota, and may not be familiar with Minnesota's unique filing requirements in juvenile protection cases. If it is brought to the attention of court administration staff that the response has not been filed as confidential using Form 11.3, court administration staff are directed only to designate the document as confidential, without directing the filing of a Form 11.3 cover sheet. Subdivision 5(d)(1)(ii) only applies when tribes or the Bureau of Indian Affairs file responses to notices of pending court proceedings. If a tribe or the Bureau of Indian Affairs files any other type of confidential document, or if any other entity (such as a county attorney) files a tribal response to a notice of pending court proceeding, then subdivision 5(d)(1)(i) applies.

Use of Form 11.4:

Form 11.4 is used to file confidential information. If a document contains confidential information but is otherwise public, the public portion of the document must be filed as public. The confidential information is filed on a Form 11.4. Filers should file a Form 11.4 with each filing that contains confidential information, with the exception that filers may refer to a Form 11.4 that was previously filed in a case that identifies a child's identity or a foster parent's identity.

Some confidential information is accessible to parties and some is not. Filers who are submitting both party-accessible and party-inaccessible confidential information should use two Forms 11.4 to submit the information: one Form 11.4 that is accessible to the parties and another that is not accessible.

Electronic filers using Form 11.4 need to file it as a separate PDF file from the public document. This makes it possible to make the public document accessible to the public and the confidential information inaccessible to the public.

Rule 8.04, subd. 5(d)(2) directs court administration staff to take action if it is brought their attention that a publicly accessible document contains confidential information. Court administration staff are directed to designate the document as confidential and direct the filer to promptly file a document with confidential information properly separated.

Recommended practices for using pseudonyms for minor victims of sexual assault:

Do not use the child's initials when there is an allegation of sexual assault. Refer to the child as "Child 1," "Child 2," etc. The child's name, date of birth, race, and gender should be submitted on a Form 11.4. No Form 11.4 need be submitted if the child's identity has already been provided on a Form 11.4 in the same case. Instead, the public document may state "Child 1 is identified on Confidential Information Form 11.4, filed on [DATE]."

If there are multiple children in a case and only one child's identity is confidential, all of the children should be given pseudonyms to avoid revealing the child's identity by process of elimination.

Use consistent pseudonyms for minor children within a juvenile protection matter and within related juvenile protection matters. Do not use gendered pronouns. Instead of "she," "he," "his," or "her," write "the child" or "the child's."

Sometimes, an allegation of sexual assault is made midway through a case. In such situations, the child's identity will be apparent from previously filed documents. The previously filed publicly accessible documents continue to be publicly accessible, even though they identify the child. Under Rule 8.07, a judicial officer may, upon finding an exceptional circumstance, order that the documents be made confidential.

A judicial order that uses a pseudonym for a child placed in foster care should include the child's identity in a confidential attachment which is incorporated into the order. If this is not done, the foster placement may not be eligible for federal Title IV-E reimbursement.

Recommended practices for using pseudonyms for foster parents:

Foster parents should be referred to as "Foster Parent 1," "Foster Parent 2," etc. No Form 11.4 need be submitted if the foster parent's identity has already been provided on a Form 11.4 in the same case. Instead, the public document may state "Foster Parent 1 is identified on Confidential Information Form 11.4, filed on [DATE]." When assigning a pseudonym to a foster parent, consider which pseudonyms have already been used for any previous foster parents in the case.

Case captions:

Rule 8.08 dictates the case captions to be used in juvenile protection matters. The captions are designed to minimize the stigma to children involved in juvenile protection matters.

Access when there is a related family court matter:

Rules 8.09 and 8.10 serve the child's best interests and judicial economy by permitting access by the judicial officer hearing a family court matter involving a child with a juvenile protection matter. After giving the parties notice, the judicial officer hearing the family court matter may access the records of the juvenile protection matter. This rule is consistent with the ethical considerations discussed in Minnesota Board of Judicial Standards Advisory Opinion 2016-2, Judicial Notice of Electronic Court Records in OFP Proceedings.

A legal parent in a family matter has access to the juvenile protection case record to the same extent as a party to the juvenile protection matter. If the juvenile court has issued a protective order regarding the content of the juvenile protection case record, that order remains in effect regarding access by any party to the family court matter.

RULE 9. ORDERS

Rule 9.01. Written or Oral Orders; Timing

Court orders may be written or stated on the record. An order stated on the record shall also be reduced to writing by the court. All orders shall be filed with the court administrator within 15 days of the conclusion of the testimony, unless the court finds that a 15-day extension is required in the interests of justice or the best interests of the child. Each order issued following a hearing shall include the name and contact information of the court reporter. Failure to include the court reporter contact information does not extend the timeline for appeal. An order shall remain in full force and effect pursuant to law or until the first occurrence of one of the following:

(a) issuance of an inconsistent order; or

(b) the order ends pursuant to its terms.

Rule 9.02. Immediate Effect of Oral Order

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

Rule 9.03. Method and Timing of Service; Persons to be Served

Subd. 1. Persons to be Served and Method of Service. Service of court orders shall be made by the court administrator upon each party, county attorney, and such other persons as the court may direct, and may be made by personal service at the hearing, by U.S. mail, through the E-Filing System, by e-mail, or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court. Except as otherwise provided in Rule 23.02, subd. 2, if a party is represented by counsel, delivery or service shall be upon counsel.

Subd. 2. Service Not Required. If service of the summons was by publication and the person has not appeared either personally or through counsel, service of court orders upon the person is not required.

Subd. 3. Timing of Service. Service of the order by the court administrator shall be accomplished within five days of the date the judicial officer delivers the order to the court administrator. In a permanency or termination of parental rights matter, service by the court administrator of the findings and order terminating parental rights or establishing other permanency for the child shall be accomplished within three days of the date the judicial officer delivers the order to the court administrator.

Subd. 4. Notification to Family Court. If a parentage matter is pending in family court regarding a child who is the subject of a juvenile protection matter, the court administrator shall send notification to the family court administrator and the assigned family court judicial officer of the filing of an order listed in Rule 24.06.

Rule 9.04. Notice of Filing of Order

Each order served upon the parties and the county attorney shall be accompanied by a notice of filing of order, which shall include notice of the right to appeal a final order pursuant to Rule 23.02. The State Court Administrator shall develop a "notice of filing" form which shall be used by court administrators.

2019 Advisory Committee Comment

Rule 9 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The amendments to Rule 9 are not intended to substantively change the rule's meaning. Rule 9 was formerly codified as Rule 10.

Rule 9.01 requires each order issued following a hearing to include the name and contact information of the court reporter. This allows easy identification of court reporters for the purpose of timely requesting transcripts for purposes of appeal.

The phrase "send notification" in Rule 9.03, subd. 4 is intended to permit flexibility at the local level in determining the "notification" used to alert both the "family court administrator" and the "assigned family court judicial officer" that the juvenile protection matter has progressed to the point where the parentage matter may be completed. It is not intended to require formal legal notice as that term is used in Rules 44 and 61 in regard to ensuring parties or participants have notice of hearings or as used

in Rule 9.03 in regard to notice of filing of an order. Court administration may use any reasonable means of letting family court know the parentage matter may be completed.

RULE 10. RECORDING AND TRANSCRIPTS

Rule 10.01. 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 10.02. Transcript Requests

Transcripts may be requested by the county attorney, parties, and participants. The court upon a showing of good cause may grant any other person's written or on the record request for a transcript.

Rule 10.03. Expense

A person who is unable to pay transcript preparation costs may apply for in forma pauperis status and a waiver of transcript costs under Minn. Stat. § 563.01.

2019 Advisory Committee Comment

Rule 10 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 10 was formerly codified as Rule 11.

RULE 11. USE OF TELEPHONE AND INTERACTIVE VIDEO

Rule 11.01. Motions and Conferences

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

Rule 11.02. Hearings and Taking Testimony

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

Rule 11.03. In Court Appearance Not Precluded

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

2019 Advisory Committee Comment

Rule 11 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 11 was formerly codified as Rule 12.

RULE 12. SUBPOENAS

Rule 12.01. 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. Alternatively, an attorney as an officer of the court may issue and sign a subpoena on behalf of the court where the matter is pending.

Rule 12.02. Form; Issuance; Notice

Subd. 1. Form. Every subpoena shall:

(a) state the name of the court from which it is issued;
(b) state the title of the action and its court file number, if one has been assigned;
(c) 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.

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 49 or 58, or to produce books, papers, documents, or other tangible things designated in the subpoena.

Subd. 3. Notice. Every subpoena shall contain a notice to the person to whom it is directed advising the person of the right to reimbursement for certain expenses pursuant to Rule 12.08.

Rule 12.03. Service

A subpoena may be served by the sheriff, a deputy sheriff, or any other person at least 18 years of age 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 the abode. Upon written agreement of the witness, a subpoena may be served by U.S. mail, through the E-Filing System, by e-mail or by other electronic means.

Rule 12.04. Motion to Quash a Subpoena

A person served with a subpoena may file and serve a motion 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 12.05. Objection

The person to whom the subpoena is directed may, within five 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 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 12.06. Subpoena for Taking Depositions; Place of Examination

Subd. 1. Proof of Service. Proof of service of notice to take a deposition, as provided in Rule 17, 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 12.07. Expenses

Subd. 1. Witnesses. If the subpoena is issued by an attorney for or 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 by an attorney for or 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. Unless otherwise ordered by the court upon motion, all other fees and mileage shall be paid by the party for whom the subpoena was issued.

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 arrangements are not made, the person subpoenaed may proceed pursuant to Rule 12.04 or Rule 12.05. If the deponent has moved to quash or otherwise objected to the subpoena, the party serving the subpoena may, upon notice and motion to the deponent and all parties and the

county attorney, move for an order directing the amount of such compensation at any time before the taking of the deposition.

Rule 12.08. 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 proceed against the person for civil contempt of court pursuant to Rule 13 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.

2019 Advisory Committee Comment

Rule 12 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 12 was formerly codified as Rule 13.

Rule 12.01 is amended to allow attorneys to issue subpoenas as officers of the court. This is consistent with modern practices in civil and criminal cases in Minnesota's state courts. Minn. R. Civ. P. 45.01(c); Minn. R. Crim. P. 22.02, subd. 2. The committee believes allowing attorneys to issue subpoenas as officers of the court will eliminate an unnecessary administrative burden for attorneys and court administration staff. Rule 12.01 retains the language that the court administrator shall issue subpoenas upon request by a party or the county attorney. Participants do not have the right to the issuance of subpoenas in juvenile protection cases unless they obtain party status. Minn. R. Juv. Prot. P. 32.02(g) (right of parties to subpoena witnesses); Minn. R. Juv. Prot. P. 32.02, subd. 1 (list of rights of participants does not include subpoenaing witnesses).

RULE 13. CONTEMPT

Rule 13.01. Initiation

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

(a) a reference to the specific order of the court alleged to have been violated and date of filing of the order;
(b) a quotation of the specific applicable provisions ordered;
(c) a statement identifying the alleged contemnor's ability to comply with the order; and
(d) a statement identifying the alleged contemnor's failure to comply with the order.

Rule 13.02. Supporting and Responsive Affidavits

The supporting affidavit of the moving party shall set forth with particularity the facts constituting each alleged violation of the order. Any responsive affidavit shall set forth with

particularity any defenses the alleged contemnor will present to the court. The supporting affidavit and the responsive affidavit shall contain paragraphs which shall be numbered to correspond to the paragraphs of the motion where possible.

Rule 13.03. 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 13.04. Sentencing

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

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

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

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

2019 Advisory Committee Comment

Rule 13 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 13 was formerly codified as Rule 14. The amendments to Rule 13 are not intended to substantively change the rule's meaning.

RULE 14. MOTIONS

Rule 14.01. Form

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

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

(a) set forth the relief or order sought;
(b) state with particularity the grounds for the relief or order sought;
(c) be signed by the person making the motion;

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

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

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

Rule 14.02. Service and Notice of Motions

Subd. 1. Upon Whom. The moving party shall serve the notice of motion and motion, along with any supporting affidavit or other supporting documentation or a memorandum of law, upon all parties, or, if represented, upon the attorneys for such individuals, the county attorney, and any other persons designated by the court. If service of the petition was by publication and the address of the person remains unknown, service of a motion shall be deemed sufficient if it is mailed to the person's last known address. The moving party shall serve only the notice of the motion and not the motion upon all participants. The court administrator shall perform service if the address of the person being served is confidential.

Subd. 2. How Made. Service of a motion by a Registered User of the E-Filing System upon another Registered User shall be made in compliance with Rule 14.03 of the General Rules of Practice for the District Courts. All other service of a motion shall be made by personal service, mail, or e-mail or other electronic means agreed upon in writing by the person to be served.

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 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 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 14.03. Ex Parte Motion and Hearing

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

Subd. 2. Hearing. When the court issues an ex parte order removing a child from the care of a parent or legal custodian, the court shall schedule a hearing to review the order within 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 Minn. Stat. § 260C.148. Upon issuance of any other ex parte order, a hearing shall be scheduled on the request of a party or the county attorney at the earliest possible date.

Rule 14.04. 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;
(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; or
(d) any other ground supported by law.

Rule 14.05. Motion to Strike Document

If a motion to strike a document or any portion of a document is granted, the document or portion of document shall be marked as stricken, but the document shall remain in the court file.

Rule 14.06. Obtaining Hearing Date; Notice to Parties

Upon request of a party who intends to file a notice of motion and motion, the court administrator shall schedule a hearing which shall take place within 15 days of the request. A party obtaining a date and time for a hearing on a motion shall file and serve the notice of motion and motion pursuant to Rule 14.02.

Rule 14.07. Timing and Service of Orders

Orders regarding motions shall be filed with the court administrator within 15 days of the conclusion of the hearing. Orders shall be served by the court administrator pursuant to Rule 9.03.

2019 Advisory Committee Comment

Rule 14 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 14 was formerly codified as Rule 15.

Former Rule 15.02, subd. 1(b) has been transferred to Rule 31.01, subd. 2(a), which requires motions to transfer jurisdiction to a tribal court to be served additionally upon parents who are participants to the proceedings. Rule 31.01, subd. 2(a) does not require service of a transfer motion upon a child. That requirement, formerly codified in Rule 15.02, subd. 1(b), was based upon ICWA guidelines that have since been rescinded.

Rule 14.02, subd. 2, governs methods of service by filers, and is similar to Rule 9.03, which governs methods of service by court administration staff. One important distinction is that Rule 9.03 recognizes court administration staff's discretion under General Rules of Practice 14.02(a) and 14.03(f) to serve by e-mail without written agreement by the recipient. Under General Rule of Practice 14, the act of designating an

e-mail address for receipt of service in a case constitutes consent to service by e-mail from court administration staff. This consent only extends to service by court administration staff. Thus, Juvenile Protection Procedure Rule 14.02, subd. 2 allows filers to serve by e-mail only if service through the E-Filing System is not required and the recipient has agreed in writing to receive service by e-mail.

RULE 15. SIGNING OF PLEADINGS, MOTIONS, AND OTHER DOCUMENTS; SANCTIONS

Rule 15.01. Signature

Subd. 1. Generally. Except as otherwise provided in these rules, every pleading, written motion, and other similar document shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each document shall state the signer's name, address, telephone number, e-mail address if the document is filed or served electronically, and attorney registration number if signed by an attorney. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned document shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party. The filing, serving, or submitting of a document through the E-Filing System constitutes certification of compliance with Rule 15.02.

Subd. 2. Exception − Social Worker and Guardian Ad Litem Reports. Reports filed by social workers and guardians ad litem under Rule 27 need not be signed.

Rule 15.02. Representations to Court

By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, motion, report, affidavit, or other similar document, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that:

(a) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(b) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(c) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(d) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Rule 15.03. Sanctions

If a pleading, motion, affidavit, or other similar document 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, affidavit, or other similar document 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, affidavit, or other similar document, including reasonable attorney fees.

2019 Advisory Committee Comment

Rule 15 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 15 was formerly codified as Rule 16. Former Rule 16 provided that filers could provide an address, e-mail address, or telephone number on a separate informational statement if providing that information would endanger a person. For consistency, those provisions have been moved to Rule 8.04, which governs access to juvenile protection case records.

RULE 16. METHODS OF FILING AND SERVICE

Rule 16.01. Types of Filing

Subd. 1. Generally; Electronic Filing. When electronic filing is required by Rule 14 of the General Rules of Practice for the District Courts, documents shall be filed electronically. Otherwise, documents may be filed with the court personally, by U.S. mail, or by facsimile transmission.

Subd. 2. Filing by Facsimile Transmission.

(a) Any document not required to be filed through the E-Filing System 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.

(b) Within five days after the court has received the transmission, the person filing the document shall forward the following to the court:
   (1) a $25 transmission fee for each 50 pages, or part thereof, of the filing; unless otherwise provided by statute or rule or otherwise ordered by the court;
   (2) any bulky exhibits or attachments; and
   (3) the applicable filing fee or fees, if any.

(c) If a document is filed by facsimile, the sender's original must not be filed but must be maintained in the files of the person transmitting it for filing and made available to the court or any party or participant to the action upon request.

(d) 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 16.02. Types of Service

Subd. 1. Personal Service. Personal service means personally delivering the 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 otherwise provided by these rules or ordered by the court, the sheriff, a deputy sheriff, or any other person at least 18 years of age who is not a party to the proceeding may make personal service of a summons or other process. The social services reports and guardian ad litem reports required under Rule 27 may be served directly by the social worker or guardian ad litem.

(a) **Service Outside United States.** Unless otherwise provided by law, service upon an individual, other than an infant or an incompetent person, may be effected in a place not within the United States:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(a) in the manner prescribed by the law of the foreign country for service in that county in an action in any of its courts of general jurisdiction; or

(b) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(c) unless prohibited by the law of the foreign country, by:

(i) delivery to the individual personally of a copy of the summons and the petition; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the court administrator to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the court.

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

Subd. 3. Publication. Service by publication substitutes for personal service when authorized by the court. Service by publication means the publication in full of the summons, notice, or other documents in the regular issue of a qualified newspaper as specified in Rule 44.02, subd. 3 (for child in need of protection or services matters) or Rule 53.02, subd. 3 (for permanency or termination of parental rights matters). The court shall authorize service by publication only if the petitioner has filed a written statement or affidavit describing diligent efforts to locate the person to be served. Service by publication shall be completed in a location

approved by the court. The published summons shall be directed to the person for whom personal service was not accomplished and shall not include the child's name or initials.

Subd. 4. Electronic Service. Electronic service means service through the E-Filing System under the procedures of Rule 14 of the General Rules of Practice. Electronic service shall be used when required by Rule 14.

Subd. 5. Waiver of Personal Service.

(a) Waivers of personal service may be made by mailing by first-class U.S. mail, postage prepaid to the person to be served, a copy of the document to be served together with two copies of a notice and waiver of service by mail conforming substantially to a form to be developed by the State Court Administrator, along with a return envelope, postage prepaid, addressed to the sender.

(b) Any person served by U.S. mail who receives a notice and waiver of service by mail form shall, with 20 days of the date the notice and waiver form is mailed, complete the waiver form and return one copy of the completed form to the serving party.

(c) If the serving party does not receive the completed waiver form within 20 days of the date it is mailed, service is not valid upon that person. The serving party shall then serve the document by any means authorized under this rule.

(d) If the person served by U.S. mail does not complete and return the notice and waiver form within 20 days of the date it is mailed, the court may order the costs of personal service to be paid by the person served.

Subd. 6. Alternative Electronic Service by Agreement. Unless other means of service (such as personal service or electronic service) are required, any document may be served by e-mail or other electronic means as agreed to by the person to be served on the record or in writing.

Rule 16.03. Service Upon Counsel; Social Services Agency

Unless personal service upon a party or participant is required, service upon the party or participant's counsel shall be deemed service upon the party or participant. Service upon the county attorney shall be deemed service upon the responsible social services agency. Reports and other documents that are not court orders should not be served directly upon a represented party.

Rule 16.04. Completion of Service

Personal service is complete upon delivery of the document. Service by U.S. mail is complete upon mailing. Completion of service by electronic means is governed by Rule 14.03(e) of the General Rules of Practice. When a waiver of service is filed with the court, these rules apply as if the document had been served on the date of signing of the waiver. Service by alternative electronic means is complete upon the completion of transmission of the documents.

Rule 16.05. Proof of Service

Subd. 1. Generally. 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) the method of service;
(c) the name of the person served; and
(d) the date and place of service.

If the recipient signed a waiver of service, the waiver may be filed in lieu of an affidavit. If the document was served through electronic service pursuant to Rule 14 of the General Rules of Practice, the E-Filing System's records of service are sufficient proof of service.

Subd. 2. Exceptions.

(a) **Social Worker and Guardian ad Litem Court Reports.** Social workers and guardians ad litem are not required to file proof of service when serving the court reports required under Rule 27 and, instead, shall include with their report a certificate of distribution under oath or penalty of perjury under Minn. Stat. § 358.117 stating:
   (1) the name of the person served,
   (2) the method of service,
   (3) the date and place of service, and
   (4) the name of the person submitting the certificate of distribution.

(b) **Court Administrators.** If the court administrator served the document, the court administrator may file a written statement in lieu of an affidavit.

2019 Advisory Committee Comment

Rule 16 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 16 was formerly codified as Rule 31.

Rule 16 addresses different methods of filing and service. Rule 16.01 reflects that, in many situations, General Rule of Practice 14 requires documents to be filed through the court's E-Filing System. Filers who are not governed by General Rule of Practice 14 can deliver their documents to the courthouse, mail them, or file them by facsimile. Facsimile filing is subject to an administrative processing fee due to the significant administrative burdens it imposes on court administration staff. As has been the case throughout its history, facsimile filing is not intended to be a routine filing method. The rule does not provide a specific mechanism for collecting the transmission fee required under the rule. Because prejudice may occur to a party if a filing is deemed ineffective, the court should determine the appropriate consequences of failure to pay the necessary fee.

Rule 16.02 describes the various means of service. In many situations, General Rule of Practice 14 requires the use of service through the E-Filing System. In many other situations, service by U.S. mail is permissible. In some situations, personal service is required. Subdivisions 1 and 5 of Rule 16.02 clarify the differences between personal service and a waiver of personal service, and between electronic service and electronic

service by agreement. People who would be entitled to personal service may agree to waive personal service and receive the documents by mail. If they do not agree to waive personal service, then personal service is still required. However, the court may order them to pay the costs of personal service. This clarification in subdivision 5 is similar to the 2018 clarification to Rule 4.05 of the Minnesota Rules of Civil Procedure. Likewise, subdivision 6 clarifies that in situations where a particular means of service is not required, parties may agree to service by electronic means, such as e-mail or social media. Importantly, Rule 14 of the General Rules of Practice does not permit parties who are required to use electronic service to agree to other means of service.

Rule 16.05 describes various requirements for proof of service. Under General Rule of Practice 14.05, the E-Filing System's service records are sufficient proof of service for all purposes. The E-Filing System's service records are automatically imported into the case court records when documents are simultaneously e-filed and e-served. For documents not simultaneously e-filed and e-served, and for all other methods of service, proof of service must be filed with the court as described in Rule 16.05.

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

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

(c) **Expert Witnesses.** The 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 relate 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) documents containing privileged information between an attorney and client, legal research, records, correspondence, reports, or memoranda to the extent they contain the opinions, theories, or conclusions of the attorney for a party or other staff of an attorney for a party; and
(b) except as otherwise required by this rule, reports, memoranda, or internal documents made by an attorney for a party or staff of an attorney for a party.

Rule 17.04. Discovery Upon Court Order

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

(a) **Physical and Mental Examinations.**

(1) **Examination by Licensed Professional.** If the physical or mental condition of a party is in controversy, the court may order the party to

submit to a physical or mental examination by a licensed professional of the moving party's choice. The examination shall be at the moving party's expense. The order shall specify the time, place, manner, conditions, and the scope of the examination.

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

(b) **Depositions.**

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

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

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

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

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

(3) **Subpoena.** Attendance of witnesses at oral deposition may be compelled by subpoena as provided by Rule 12. Attendance of parties at oral deposition shall be ordered by the court when the court grants a motion pursuant to Rule 17.04(b)(2), and shall be procured through service of the order and a notice of the time and place of the taking of the deposition on the party.

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

subd. 8), so long as it leads to or is reasonably calculated to lead to the discovery of any admissible evidence.

(c) **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 may be discoverable in accordance with Minn. Stat. § 626.556, subd. 8.

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

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

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

(3) Unless manifest injustice would result,

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

(ii) 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

Subd. 1. Continuing Duty to Disclose. Whenever a party or the county attorney discovers additional material, information, or witnesses subject to disclosure, that party or the county attorney shall promptly notify the other parties and the county attorney of the existence of the additional material or information and the identity 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 14 days of a request for disclosure.

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

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

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

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

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

(e) an order requiring 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.

2019 Advisory Committee Comment

Rule 17 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 17.01(a) is amended to refer to the "release" of a videotaped statement instead of the "copying" of a videotaped statement, because Minn. Stat. § 611A.90 refers to the "release" of the statement. Rule 17.04(b)(4) is amended to provide for a consistent "reasonably calculated to lead to the discovery of admissible evidence" standard for questions asked in depositions, instead of the former language:

"reasonably calculated to lead to the discovery of any relevant data." Rule 17.04(c) is amended to reflect that privileged communications "may be" discoverable under Minn. Stat. § 626.556, subd. 8, instead of stating that privileged communications "are" discoverable under the statute. Minn. Stat. § 626.556, subd. 8 abrogates some privileges, but does not abrogate all privileges. The amendments are intended to ensure the Rule's language is consistent with the statutory language. The amendments are not intended to substantively change the Rule's meaning.

RULE 18. DEFAULT

Rule 18.01. Failure to Appear

Except as otherwise provided in Rules 47.02, subd. 1 and 56.02, subd. 1, if a parent, legal custodian, or Indian custodian fails to appear for an admit-deny hearing, a pretrial hearing, or a trial after being properly served with a summons pursuant to Rule 44.02 or 53.02, or a notice pursuant to Rule 44.03, 44.04, 53.03, or 53.04, the court may receive evidence in support of the petition or reschedule the hearing.

Rule 18.02. Default Order

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

2019 Advisory Committee Comment

Rule 18 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The amendments updated the cross-references in Rule 18.01. The amendments are not intended to substantively change the Rule's meaning.

RULE 19. SETTLEMENT

Rule 19.01. Procedure

Every settlement agreement shall be filed with the court or stated and agreed to on the record by the settling parties. Before approving a settlement agreement, the court shall determine that the agreement is in the best interests of the child and that each party to the agreement understands the content and consequences of any admission or a 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 50 or 58.04. 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 49 or 58.

Rule 19.02. 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 days of service of the 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 58.

2019 Advisory Committee Comment

Rule 19 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The amendments delete former Rules 19.01 and 19.02, which described the purpose and contents of settlement agreements. The committee viewed the language as unnecessary and unduly restrictive. Former Rules 19.03 and 19.04 have been recodified as Rules 19.01 and 19.02. The amendments also clarify that the court's obligation is to ensure that each party to the agreement understands the consequences of any admission or settlement agreement.

RULE 20. ALTERNATIVE DISPUTE RESOLUTION

The court may authorize alternative dispute resolution pursuant to Minn. Stat. § 260C.163, subd. 12.

RULE 21. POST-TRIAL MOTIONS

Rule 21.01. Procedure and Timing

Subd. 1. Timing. All post-trial motions shall comply with Rule 14 and shall be filed with the court and served upon the parties within 10 days of the service of notice by the court administrator of the filing of the court's order finding that the statutory grounds set forth in the petition are or are not proved. Any response to a post-trial motion shall comply with Rule 14 and shall be filed with the court and served upon the parties within five days of service of the post-trial motion.

Subd. 2. Basis of Motion. A post-trial motion shall be made and decided on the files, exhibits, and minutes of the court. Pertinent facts that would not be a part of the minutes may be shown by affidavit except as otherwise provided by these rules. A full or partial transcript may be used in deciding the motion.

Subd. 3. Time for Serving Affidavits. When a post-trial motion is based upon affidavits, the affidavits shall be served with the notice of motion. The parties and the county attorney shall have five days after the service in which to serve opposing affidavits. The court may permit reply affidavits so long as the time for issuing a decision is not extended beyond the time permitted in Rule 21.05.

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

Rule 21.02. New Trial on Court's Own Initiative

Not later than 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 21.03. Amendment of Findings

Upon motion, the court may amend its findings or make additional findings, and may amend the order accordingly. The motion may be made with a motion for a new trial and may be made on the files, exhibits, and minutes of the court. The question of sufficiency of the evidence to support the findings may be raised whether or not the party raising the question has made in the district court an objection to the findings or has made a motion to amend the order.

Rule 21.04. Grounds for New Trial

A new trial may be granted on all or some of the issues for any of the following reasons:

(a) irregularity in the proceedings of the court, referee, or prevailing party, or any order or abuse of discretion whereby the moving party was deprived of a fair trial;
(b) misconduct of counsel;
(c) fraud, misrepresentation, or other misconduct of the county attorney, any party, their counsel, or their guardian ad litem;
(d) accident or surprise that could not have been prevented by ordinary prudence;
(e) material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the trial;
(f) errors of law occurring at the trial and objected to at the time, or if no objection need have been made, then plainly assigned in the motion;
(g) a finding that the statutory grounds set forth in the petition are proved is not justified by the evidence or is contrary to law; or
(h) if required in the interests of justice.

Rule 21.05. Decision

The court shall rule on all post-trial motions within 10 days of the conclusion of the motion hearing, which shall include the time for filing written arguments, if any. The findings and order shall be filed with the court administrator, who shall proceed pursuant to Rule 9.

Rule 21.06. 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;
(d) make new findings and conclusions as required; or
(e) deny the motion.

2019 Advisory Committee Comment

Rule 21 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 45.

RULE 22. RELIEF FROM ORDER

Rule 22.01. 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 22.02. Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud

Upon motion and upon such terms as are just, the court may relieve a party or the party's legal representatives from a final order or proceeding, including a default order, and may order a new trial or grant such other relief as may be just for any of the following reasons:

(a) mistake, inadvertence, surprise, or excusable neglect;
(b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial;
(c) fraud (whether denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
(d) the judgment is void; or
(e) any other reason justifying relief from the operation of the order.

The motion shall be made within a reasonable time, but in no event shall it be more than 90 days following the service of notice by the court administrator of the filing of the court's order.

2019 Advisory Committee Comment

Rule 22 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 46. The amendments are not intended to substantively change the rule's meaning. Former Rule 46.03 has been moved to Rule 28.09, which addresses invalidations of actions for violations of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act.

RULE 23. APPEAL

Rule 23.01. Applicability of Rules of Civil Appellate Procedure

Except as provided in Rule 23.02, 23.05, and 23.07, appeals of juvenile protection matters shall be in accordance with the Rules of Civil Appellate Procedure.

Rule 23.02. Procedure

Subd. 1. Appealable Order. An appeal may be taken by the aggrieved person from a final order of the juvenile court affecting a substantial right of the aggrieved person.

Subd. 2. Timing of Filing Notice of Appeal. Any appeal shall be taken within 20 days of the service of notice by the court administrator of the filing of the court's order. In the event of the filing and service of a timely and proper post-trial motion under Rule 21, or motion for relief under Rule 22 if the motion is filed within the time specified in Rule 21.01, subd. 1, the provisions of Minnesota Rules of Civil Appellate Procedure Rule 104.01, subds. 2 and 3, apply, except that the time for appeal runs for all parties from the service of notice by the court administrator of the filing of the order disposing of the last post-trial motion. Where the court administrator serves notice of the filing of the order on both a represented party and that party's attorney, the time for appeal shall begin to run based on the service on the party's attorney. Where the order expressly discharges trial counsel, the time for appeal shall begin to run once the party formerly represented by trial counsel has been served.

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

(a) serve a notice of appeal upon the county attorney and all parties or their counsel if represented, including notice of the correct case caption pursuant to Rule 8.08; and

(b) file with the clerk of appellate courts a notice of appeal, together with proof of service upon all parties, including notice of the correct case caption pursuant to Rule 8.08.

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

Subd. 4. Notice to Court Administrator. At the same time as the appeal is filed, the appellant shall provide notice of the appeal to the court administrator. Failure to notify the court administrator does not deprive the court of appeals of jurisdiction.

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

Subd. 6. Failure to File Proof of Service. Failure to file proof of service of the notice of appeal does not deprive the court of appeals of jurisdiction over the appeal, but is grounds only for such action as the court of appeals deems appropriate, including a dismissal of the appeal.

Subd. 7. Notice to Legal Custodian. The court administrator shall notify the child's legal custodian of the appeal. Failure to notify the legal custodian does not affect the jurisdiction of the court of appeals.

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

Rule 23.03. Application for Stay of Trial Court Order

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

Rule 23.04. 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 15 days after service of the notice of appeal, and shall contain proof of service.

Rule 23.05. 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 30 days from the date the request for transcript is received.

Rule 23.06. Time for Rendering Decision by Minnesota Court of Appeals

All decisions regarding juvenile protection matters shall be issued by the appellate court within 45 days of the date the case is deemed submitted pursuant to the Rules of Civil Appellate Procedure.

Rule 23.07. Petition in Supreme Court for Review of Decisions of the Court of Appeals

A petition for review shall be filed with the clerk of the appellate courts and served upon the parties within 15 days of the filing of the court of appeals' decision, and any response to such petition shall be filed with the clerk of appellate courts and served upon the parties within 10 days of service of the petition. The petition for review shall in all other respects be in accordance with Rule 117 of the Rules of Civil Appellate Procedure.

2019 Advisory Committee Comment

Rule 23 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 47. The amendments are not intended to substantively change the rule's meaning.

Minn. Stat. § 260C.415 provides that an appeal may be taken "within 30 days of the filing of the appealable order," and "as in civil cases." The timing provisions of Rule 23.02, subd. 2 are a departure from this statute and from the Rules of Civil Appellate Procedure. Significantly, Rule 23.02, subd. 2 shortens the appeal deadline from 30 to 20 days. This change was made in 2009 to expedite the process based on federal standards for permanency timelines and best practices. In re R.K., 901 N.W.2d 156, 162 n.8 (Minn. 2017). The provisions of Rule 23.02 govern over the conflicting statute. In re J.R., Jr., 655 N.W.2d 1, 3 (Minn. 2003). The timing provisions of Rule 23.07 are a departure from the Rules of Civil Appellate Procedure and shorten the deadline for filing a petition with the Supreme Court from 30 to 15 days, and responding to the petition from 20 to 10 days.

Rules 9.03, subd. 1, and 23.02, subd. 2, are amended to make it clear that where the court administrator serves notice of the filing of an order on a party represented by an attorney and on that party's attorney, time begins to run for purposes of appeal when both the attorney and party have been served. This amendment is intended to remove any ambiguity created by the service of a "courtesy" copy of an order directly on the represented party. That potential ambiguity was noted by the Minnesota Supreme Court in In re R.K., 901 N.W.2d 156 (Minn. 2017). A party is represented by an attorney following appearance of the attorney and at all times until the attorney is either replaced by substitution of a new attorney or the attorney withdraws in accordance with Minn. Gen. R. Prac. 105 and Minn. R. Prof. Cond. 1.16, or the attorney's representation is discharged by Rule 36.05 or by order of the court. See, e.g., In re K.M. and T.R., ___ N.W.2d ___ (Minn. Ct. App. 2018).

RULE 24. PARENTAGE MATTER

Rule 24.01. Scope

Subd. 1. Parentage Matter and Juvenile Protection Matter Brought at the Same Time. The establishment of a parent and child relationship or the declaration of the nonexistence of the parent and child relationship shall occur pursuant to the Parentage Act, Minn. Stat. §§ 257.51−.74 in a separate file in family court. A parentage matter regarding the child may be brought at the same time as a juvenile protection matter.

Subd. 2. Original and Exclusive Jurisdiction in Juvenile Court. The juvenile court has original and exclusive jurisdiction in proceedings described in Minn. Stat. § 260C.101.

Subd. 3. Family Court Jurisdiction. When a parentage matter and a juvenile protection matter regarding the same child are pending at the same time, the family court has jurisdiction to determine parentage, the child's name, and child support. The family court shall not make determinations regarding custody or parenting time until the juvenile court makes an order under Rule 24.06.

Rule 24.02. Judicial Assignment and Calendaring

Subd. 1. Assignment and Calendaring. With the consent of the judicial officer assigned to the juvenile protection matter, a parentage matter commenced in family court under the Parentage Act, Minn. Stat. §§ 257.51−.74 may be assigned to the same judicial officer assigned to the juvenile protection matter regarding the same child. Hearings in the parentage matter may be calendared at the same time as hearings on the juvenile protection matter.

Subd. 2. Communication Between Judicial Officers. When different judicial officers are assigned to handle a juvenile protection matter and a parentage matter regarding the same child, the judicial officers may communicate with each other as permitted under the Code of Judicial Conduct.

Rule 24.03. Applicable Statutes and Rules

Parentage matters under the Parentage Act, Minn. Stat. §§ 257.51−.74, calendared at the same time as juvenile protection matters regarding the same child continue to be governed by:

(a) the provisions of Minn. Stat. § 257.70 limiting access to hearings, and of Rule of Public Access 4, subd. 1(n), limiting access to records;
(b) the right to appointed counsel under Minn. Stat. § 257.69;
(c) the Rules of Civil Procedure; and
(d) the Rules of Civil Appellate Procedure.

Rule 24.04. Responsible Social Services Agency to Provide Copy of Petition and Orders to County Child Support Enforcement Agency

Subd. 1. Copy of Petition and Interim Orders Provided to Child Support Agency. The responsible social services agency shall provide a copy of the juvenile protection petition and any orders related to the status and progress of the case plan in the juvenile protection matter to the appropriate county child support enforcement agency whenever parentage is an issue in the juvenile protection matter.

Subd. 2. Copy of Orders to be Provided to County Child Support Enforcement Agency. The responsible social services agency shall provide a copy of any order listed in Rule 24.06 to the appropriate county child support enforcement agency when the order is issued regarding a child who is the subject of both a juvenile protection matter and a parentage matter.

Rule 24.05. No Extension of Permanency Timelines

The pendency of a parentage matter shall not extend the permanency timelines set forth in these rules and Minn. Stat § 260C.503.

Rule 24.06. Notification to Family Court of Juvenile Protection Orders

When a parentage matter is pending regarding a child who is the subject of a juvenile protection matter and the family court has not issued an order regarding child support, legal and physical custody, or parenting time, the court administrator shall send notification to the family

court administrator and the assigned family court judicial officer of the filing of any of the following orders:

(a) an order for guardianship to the Commissioner of Human Services under Minn. Stat. § 260C.515, subd. 3, or § 260C.325, in which case the family court may close the parentage file;

(b) an order for permanent legal and physical custody to a relative, including an order for one of the child's parents to be the permanent legal and physical custodian pursuant to Minn. Stat. § 260C.515, subd. 4, in which case the family court may make a determination regarding child support in the parentage matter;

(c) an order for permanent custody to the agency pursuant to Minn. Stat § 260C.515, subd. 5, or temporary custody to the agency under Minn. Stat. § 260C.515, subd. 6, in which case the family court may make a determination of child support in the parentage matter;

(d) unless preceded by an order under paragraphs (a) to (c):

(1) an order for dismissal of the child from the only or last pending juvenile protection matter under Minn. Stat. § 260C.193, subd. 1, in which case the family court may make determinations regarding child support, legal and physical custody, and parenting time; or

(2) an order for termination of juvenile court jurisdiction over the child in the only or last pending juvenile protection matter under Minn. Stat. § 260C.193, subd. 6(b) or (c), in which case the family court may make determinations regarding child support, legal and physical custody, and parenting time; and

(e) any other order required by the juvenile court judicial officer to be filed in a pending parentage matter in family court.

2019 Advisory Committee Comment

Rule 24 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 50. The amendments are not intended to substantively change the rule's meaning.

Children involved in juvenile protection matters who have two known, legal parents have significant advantages. When a child does not have a legal relationship with a parent, timely establishment of parentage helps ensure:

(1) that the rights and obligations of both parents are considered throughout the juvenile protection matter, including the agency's obligation, when the child is removed from one parent, to consider the other parent for day-to-day care of the child (see Minn. Stat. § 260C.219(a)(1));

(2) that maternal and paternal relatives are considered for placement in a timely manner when the child is in foster care (see Minn. Stat. §§ 260C.212, subd. 2; 260C.221); and

(3) a timely permanency decision for a child in foster care through required planning and services for both parents and involvement of relatives (see Minn. Stat. §§ 260.012; 260C.001, subd. 2(b)(7)(ii); 260C.219; 260C.221).

The purpose of Rule 24 is to help expedite decision-making in parentage matters in family court when a juvenile protection matter is pending. There are differences between juvenile protection and parentage matters. Judges, professionals, and families

involved in both should understand the differences between the two, recognize the benefits to the child in making the two systems work together, and work to deliver known advantages of having two legal parents for the child. Significant dissimilarities in the two types of matters include:

(1) parentage matters are generally non-public under Rule 4, subd. 1(n) of the Rules of Public Access to Records of the Judicial Branch, but juvenile protection matters are generally public under Rule 4, subd. 1(s)(2)(D) of the Rules of Public Access to Records of the Judicial Branch and Rule 8 of the Rules of Juvenile Protection Procedure;

(2) parties under Minn. Stat. §§ 257.57 or 257.60 (parentage matters) and Rules 32 and 33 of the Rules of Juvenile Protection Procedure (juvenile protection matters);

(3) the right to appointed counsel under Minn. Stat. §§ 257.69 (parentage matters) and § 260C.163, subd. 3 (juvenile protection matters); and

(4) procedural rules, including rules of discovery and rules governing appeals. The Rules of Civil Procedure apply to parentage matters under Minn. Stat. § 257.65, but do not apply in juvenile protection matters under Rule 3.01. The Rules of Civil Appellate Procedure apply to both types of matters, but are modified for juvenile protection matters under Rule 23.

Rule 24.01 cites the entire Parentage Act, Minn. Stat. §§ 257.51−.74. However, the provisions in Minn. Stat. § 257.74 relating to adoption do not apply to children under state guardianship, whose matters are governed by Minn. Stat. §§ 260C.601−.637.

Rule 24.02 permits the assignment of juvenile protection matters and parentage matters to the same judicial officer, but does not require this because it may not be feasible in courts with separate family and juvenile divisions. When the matters cannot be calendared together and are assigned to different judicial officers, subdivision 2 supports communication between the judicial officers responsible for handling each matter so decision-making is coordinated and timely.

Judicial officers may wish to consider Rule 2.9(3) of the Code of Judicial Conduct:

A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

Judicial officers may also wish to consult the discussion of ethical considerations in Minnesota Board of Judicial Standards Advisory Opinion 2016-2, Judicial Notice of Electronic Court Records in OFP Proceedings.

Rule 24.03 alerts judges, professionals, and others involved in juvenile protection matters and parentage matters of some of the major differences between juvenile protection and parentage matters.

Rule 24.04 assists the responsible social services agency to fulfill its obligation under Minn. Stat. § 260C.219(a)(1) to require the nonadjudicated parent to cooperate with paternity establishment procedures as part of a required case plan. Requiring the responsible social services agency to provide a copy of the petition and orders from juvenile court to the appropriate county child support enforcement agency whenever there is a parentage issue in a juvenile protection matter will support the responsible

social services agency and the county child support enforcement agency to work together with the family to resolve parentage issues.

Rule 24.06 is intended to facilitate completion of a parentage matter when the family court judicial officer has deferred decisions in the parentage matter regarding child support, legal and physical custody, and parenting time during a pending juvenile protection matter. When these decisions have been deferred, the parentage matter is not considered complete (see Minn. Stat. § 257.66, subd. 3). So that the parentage matter can be completed, Rule 24.06 requires notification of the specified orders issued in the juvenile protection file to be given to the family court administrator and family court judicial officer assigned to the matter. Local practice will dictate how this notification is made by juvenile court to family court. See also the Advisory Committee Comment to Rule 9.

The orders listed in Rule 24.06 are orders which:

(1) dispose of all issues in the pending parentage matter (an order for guardianship to the Commissioner of Human Services based on termination of parental rights or consent to adopt);

(2) dispose of some of the issues in the pending parentage matter (an order for permanent legal any physical custody to a relative, including a parent, or permanent or temporary custody to the agency that resolves custody and parenting time issues but does not address child support); or

(3) do not dispose of any of the pending issues in the parentage matter (an order for termination or dismissal of jurisdiction).

The required filing of the juvenile protection orders listed in Rule 24.06 and notice to the judicial officer hearing the parentage matter, permits the family court judicial officer to decide any remaining issues regarding child support, legal and physical custody, or parenting time in the parentage matter.

RULE 25. JURISDICTION TO AGE 18 AND CONTINUED REVIEW AFTER AGE 18

Rule 25.01. Continuing Jurisdiction to Age 18

Unless terminated by the court pursuant to Minn. Stat. § 260C.193, subd. 6(b), jurisdiction of the court shall continue until the child becomes 18 years of age.

Rule 25.02. Continuing Jurisdiction to Age 19

The court may continue jurisdiction over an individual and all other parties to the proceeding until the individual's 19th birthday as provided by Minn. Stat. § 260C.193, subd. 6(c).

Rule 25.03. Continuing Jurisdiction and Review after Child's Eighteen Birthday

Subd. 1. Jurisdiction over Children in Foster Care. Jurisdiction over a child in foster care pursuant to Minn. Stat. § 260C.451 shall continue until the child becomes 21 years of age for the purpose of conducting the reviews required under Minn. Stat. §§ 260C.203; .317, subd. 3; or .515, subds. 5 or 6.

Subd. 2. Orders for Guardianship or Legal Custody Terminate. Any order establishing guardianship under Minn. Stat. §§ 260C.325 and .515, subd. 3, any legal custody order under Minn. Stat. § 260C.201, subd. 1, and any order for legal custody associated with an order for permanent custody under Minn. Stat. § 260C.515, subd. 5, terminates on the child's 18th birthday. The responsible social services agency has legal responsibility for the individual's placement and care when the matter continues under court jurisdiction pursuant to Minn. Stat. § 260C.193 or when the individual and the responsible agency execute a voluntary placement agreement pursuant to Minn. Stat. § 260C.229.

Subd. 3. Notice of Termination of Foster Care. When a child in foster care between the ages of 18 and 21 ceases to meet one of the eligibility criteria of Minn. Stat. § 260C.451, subd. 3a, termination of the child's ability to remain in foster care shall be addressed according to the requirements of Minn. Stat. § 260C.451, subd. 8.

Subd. 4. Required Notice to Child. Jurisdiction over a child in foster care pursuant to Minn. Stat. § 260C.451 shall not be terminated without giving the child notice of any motion or proposed order to terminate jurisdiction and an opportunity to be heard on the appropriateness of the resolution.

Subd. 5. Terminating Jurisdiction when Child Age 18 or Older Leaves Foster Care. When a child 18 or older in foster care pursuant to Minn. Stat. § 260C.451 asks to leave foster care or actually leaves foster care, the court may terminate its jurisdiction.

Subd. 6. Review after Re-Entry into Foster Care after Age 18. When a child re-enters foster care after age 18 pursuant to Minn. Stat. § 260C.451, subd. 6, the child's placement shall be pursuant to a voluntary placement agreement with the child under Minn. Stat. § 260C.229. If the child is not already under court jurisdiction pursuant to Minn. Stat. § 260C.193, subd. 6, review of the voluntary placement agreement between the child and the agency shall be according to Minn. Stat § 260C.229(b).

2019 Advisory Committee Comment

Rule 25 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 51. The amendments are not intended to substantively change the rule's meaning.

RULE 26. CASE AND OUT-OF-HOME PLACEMENT PLANS

Rule 26.01. Case and Out-of-Home Placement Plans Generally

When the responsible social services agency is the petitioner, the agency shall file with the court and provide to the parties and foster parent a case plan or out-of-home placement plan for the child and the parents or legal custodians, as appropriate. A case plan shall be prepared according to the requirements of Minn. Stat. § 245.4871, subd. 19 or 21; § 245.492, subd. 16; § 256B.092; or § 260C.212, subd. 1; whichever is applicable.

Rule 26.02. Child in Court-Ordered Foster Care: Out-of-Home Placement Plan

Subd. 1. Plan Required. When a child is placed in foster care by court order, the responsible social services agency shall file with the court and provide to the parties and foster parents the case plan or out-of-home placement plan required under Minn. Stat. § 260C.212, subd. 1.

Subd. 2. Timing. The out-of-home placement plan shall be filed with the court and provided to the parties and foster parents by the responsible social services agency within 30 days of the court order placing the child in foster care, an order for protective care, or order transferring legal custody to the responsible social services agency, whichever is earliest.

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

Subd. 4. Procedure for Approving or Ordering Out-of-Home Placement Plan Prior to Disposition.

(a) **Court's Approval of Jointly Developed Plan.** If the out-of-home placement plan was developed jointly with the parent and in consultation with others required under this Rule and Minn. Stat. § 260C.212, subd. 1, upon the filing of the out-of-home placement plan, together with the information about whether the parent or legal custodian; the child, if appropriate; the child's tribe, if the child is an Indian child; and the foster parents have received a copy of the plan, the court may, based upon the allegations in the petition, approve the responsible social services agency's implementation of the plan. The court shall state such approval on the record at a hearing after the plan has been filed with the court and provided to the parties, foster parents, and the child, as appropriate, or serve written notice of the approval of the plan upon all parties and the county attorney. If the court directs that written notice of the approval of the case plan be served, such notice may be served pursuant to Rule 9.03.

(b) **Court's Approval of Plan not Jointly Developed.** When a parent or legal custodian refuses to participate in the preparation of the out-of-home placement plan or disagrees with the services recommended by the responsible social

services agency, the agency shall notify the court of the services it will provide or efforts it will attempt under the plan notwithstanding the parent's refusal to cooperate or disagreement with the services. Any party may ask the court to modify the plan to require different or additional services. The court may approve the plan as presented by the agency or may modify the plan to require services requested. The court's approval of the plan shall be based upon the content of the petition or amended petition.

(c) **Voluntary or Court-Ordered Compliance with Plan.** A parent may voluntarily agree to comply with the terms of an out-of-home placement plan filed with the court. Unless the parent voluntarily agrees to the plan, the court may not order a parent to comply with the plan until there is a disposition ordered under Minn. Stat. § 260C.201, subd. 1, and Rule 51. However, the court may find that the responsible social services agency has made reasonable efforts to finalize a permanent placement plan for the child if the agency makes efforts to implement the terms of an out-of-home placement plan approved under this rule and Minn. Stat. § 260C.178, subd. 7.

(d) **Copy of Plan.** When the out-of-home placement plan is either ordered or approved, a copy of the plan shall be incorporated into the order by reference. The plan need not be served with the order, unless the plan has been modified.

Rule 26.03. Child in Voluntary Foster Care: Out-of-Home Placement Plan

Subd. 1. Child in Voluntary Foster for Reasons Other than for Treatment.

(a) **Timing.** The out-of-home placement plan required under Minn. Stat. § 260C.212, subd. 1, shall be filed and served with the petition asking the court to review a voluntary placement of a child in placement when the placement is not due solely to the child's disability under Minn. Stat. § 260C.141, subd. 2, and Rule 61.

(b) **Content.** The plan shall include a statement about whether the child and parent, legal custodian, or Indian custodian participated in the preparation of the plan. The plan shall also include a statement about whether the child's guardian ad litem; the child's tribe, if the child is an Indian child; and the child's foster parent or representative of the residential facility have been consulted in the plan's preparation. The agency shall document whether the parent, legal custodian, or Indian custodian; the child, if appropriate; the child's tribe, if the child is an Indian child; and foster parents have received a copy of the plan. When a child is in foster care due solely or in part to the child's emotional disturbance, the child's mental health treatment provider shall also be consulted in preparation of the plan and the agency shall document such consultation in the plan filed with the court.

Subd. 2. Procedure for Approving Out-of-Home Placement Plan for Child in Voluntary Foster Care. The court shall consider the appropriateness of the case plan or out-of-home placement plan in determining whether the voluntary placement is in the best interests of the child as required under Rule 61.02.

Rule 26.04. Child Not in Foster Care: Child Protective Services Case Plan

(a) **Plan Required.** When a petition is filed alleging a child to be in need of protection or services and the child is not in foster care or other out-of-home placement, the responsible social services agency or other agency shall file with the court the statutorily required protective services case plan designed to correct the conditions underlying the allegations that make the child in need of protection or services.

(b) **Timing.** When the child is not in foster care, the statutorily required child protective services plan shall be filed with the petition alleging the child to be in need of protection or services unless the responsible social services agency includes a statement in the petition explaining why it has not been possible to develop the plan, which may include exigent circumstances or the non-cooperation of the child's parents or guardian. The child protective services plan shall be provided to the parties by the responsible social services agency at the time it is filed with the court.

(c) **Procedure for Ordering Child Protective Services Plan.** When the child is not in foster care or is not recommended to continue in foster care, but the court finds endangerment under Rule 42, the court may order the parties to comply with the provisions of the child protective services plan as a condition of the child remaining in the care of the parent, guardian, or custodian. The court may also order the parties to comply with the provisions of the plan as part of a disposition under Rule 51. When the court orders a child protection services plan, a copy of the plan shall be attached to the court's order and incorporated into it by reference.

Rule 26.05. Child with Disability: Community Support, Individual Treatment, or Multiagency Case Plan

Subd. 1. Procedure. If a child found to be in need of protection or services has a physical or mental disability and a case plan is required under Minn. Stat. § 245.4871, subds. 19 or 21; § 245.492, subd. 16; or § 256B.092, the plan shall be filed with the court. Services may be ordered provided to the child according to the provisions of Minn. Stat. § 260C.201, subd. l(a)(3). When an out-of-home placement plan is required under Rule 26.02 or a child protective services plan is required under Rule 26.04, the requirements of a plan under this paragraph may be included in such plans and need not be a separate document.

Subd. 2. Timing. The case plan shall be provided to the parties by the responsible social services agency at the time it is filed with the court.

2019 Advisory Committee Comment

Rule 26 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 37. Former Rules 37.02, subd. 5, and 37.06 have been deleted because the committee believes they are no longer necessary.

RULE 27. REPORTS TO THE COURT

Rule 27.01. Social Services Court Reports − Generally

Subd. 1. Periodic Reports Required. The responsible social services agency shall submit periodic certified reports to the court regarding the child and family. Whenever possible and appropriate, the agency may combine required reporting provisions under this rule into a single report.

Subd. 2. Timing of Filing and Service. The agency shall file the report with the court and serve it upon all parties at least five days prior to the hearing at which the report is to be considered.

Subd. 3. Supplementation of Report. Reports may be supplemented at or before the hearing either orally or in writing.

Subd. 4. Certificate of Distribution. Each report shall contain or have attached the certificate of distribution required under Rule 16.05, subd. 2.

Subd. 5. Report Content. Each report shall include a statement certifying the content as true based upon personal observation, first-hand knowledge, or information and belief, and shall:

(a) be captioned in the name of the case and include the court file number;
(b) include the following demographic information:
    (1) the name of the person submitting the report;
    (2) the date of the report;
    (3) the date of the hearing at which the report is to be considered;
    (4) the child's name and date of birth and, in the case of an Indian child, the tribe in which the child is enrolled or eligible for membership;
    (5) a statement about whether the child is an Indian child and whether the Indian Child Welfare Act applies;
    (6) the names of both of the child's parents or the child's legal custodian; and
    (7) the dates of birth of the child's parents if they are minors;
(c) include the date the case was most recently opened for services in the responsible social services agency;
(d) include the date and a brief description of the nature of all other previous case openings for this child and the child's siblings with the responsible social services agency and, if known, case openings for this child and the child's siblings with any other social services agency responsible for providing public child welfare or child protection services;
(e) identify progress made on the out-of-home placement plan or case plan;
(f) address the safety, permanency, and well-being of the child, including the child's:
    (1) educational readiness, stability, and achievement; and
    (2) physical and mental health; and
(g) request orders related to:
    (1) the child's need for protection or services;

(2) implementing requirements of the out-of-home placement plan or case plan; and
(3) the health, safety, and welfare of the child.

Subd. 6. Reports Regarding Siblings. The agency may submit in a single document reports regarding siblings who are subjects of the same juvenile protection matter.

Subd. 7. Information from Collateral Sources. The agency may submit written information from collateral sources, including, but not limited to, physical and mental health assessments, parenting assessments, or information about the delivery of services or any other relevant information regarding the child's safety, health, or welfare in support of the report or as a supplement to the report.

Rule 27.02. Social Services Court Report − Child in Foster Care

Subd. 1. Content. In addition to the requirements of Rule 27.01, each certified report regarding a child in foster care shall include:

(a) the child's placement history, including:
  (1) the date the child was removed from the home and the agency's legal authority for removal;
  (2) the date the child was ordered placed in foster care, if the child has been ordered in foster care;
  (3) the total length of time the child has been in foster care, including all cumulative time in foster care the child may have experienced within the previous five years;
  (4) the number of times, if any, the child reentered foster care prior to age 21;
  (5) the number of foster care placements the child has been in prior to age 21;
  (6) if the child's foster care home has changed since the last court hearing:
    (i) the reason for the change in foster care home; and
    (ii) how the child's new foster care home meets the child's best interests under Minn. Stat. § 260C.212, subd. 2(a) and (b), or, in the case of an Indian child, how the placement complies with placement preferences established in 25 U.S.C. § 1915; and
  (7) if the child is not placed with siblings who are in placement, the efforts the agency has made to place the siblings together; and
(b) services under the out-of-home placement plan, including, as appropriate to the stage of the matter:
  (1) a description of the agency's efforts to implement the out-of-home placement plan; and
  (2) the parent's progress in complying with the out-of-home placement plan, including anything the parent has done to alleviate the child's need for protection or services; and
(c) a description of:
  (1) the case worker visits required under Minn. Stat. § 260C.212, subd. 4a, that occurred since the last court hearing; and

(2) as applicable, the quality and frequency of visitation between the child and the child's:
(i) parents or custodian;
(ii) siblings; and
(iii) relatives; and

(d) when the child is age fourteen or older, progress in implementing each of the elements of the child's independent living plan required under Minn. Stat. § 260C.212, subd. 1(b)(12), and the agency's continued efforts to identify and make the most legally-permanent placement that is in the child's best interest.

Subd. 2. Requested Court Action. The report shall include recommendations to the court for:

(a) modification of the out-of-home placement plan or for actions the parents or legal custodian must take to make changes necessary to alleviate the child's need for protection or services; and

(b) orders necessary for the child's safety, permanency, and well-being, including any orders necessary to promote the child's:
(1) educational readiness, stability, and achievement;
(2) physical and mental health; and
(3) welfare and best interests.

Subd. 3. Reports Under Minn. Stat. Ch. 260D. Reports under Minn. Stat. 260D must meet the requirements of Minn. Stat. ch. 260D.06.

Rule 27.03. Social Services Court Report − Reasonable Efforts to Identify and Locate Both Parents of the Child

If both parents of the child have not been identified and located at the time of the first review hearing under Rule 51.03 the agency shall report to the court regarding the diligent efforts required of the agency to identify and locate the parents pursuant to Minn. Stat. § 260C.150, subd. 3. The agency shall continue to report to the court, on a schedule set by the court, until:

(a) both parents of the child are identified and located; or

(b) the court finds the agency has made diligent efforts to identify and locate the parent as required under Minn. Stat. §§ 260.012, 260C.178, 260C.201, and 260C.301, subd. 8, regarding any parent who remains unknown or cannot be located. The court may also find that further reasonable efforts for reunification with the parent who cannot be identified or located would be futile.

Rule 27.04. Social Services Court Report − Due Diligence to Identify and Notify Relatives

Subd. 1. Timing.

(a) Within three months of the child's placement, the agency shall report to the court regarding the agency's due diligence to identify and notify relatives under Minn. Stat. § 260C.221 and, in the case of an Indian child, describe the agency's active efforts to meet the placement preferences of 25 U.S.C. § 1915.

(b) If the court orders continued efforts to identify and locate relatives, the agency shall periodically report on its continuing efforts on a schedule set by the court.

(c) If an Indian child is not placed according to the placement preferences of 25 U.S.C. § 1915, the agency shall periodically report on its efforts to meet the placement preferences until the court makes a finding of good cause under 25 U.S.C. § 1915.

Subd. 2. Content.

(a) **Identification and notice to relatives.** The report shall include information about identification and notice to relatives, including:

(1) a description of the procedures the agency used to identify relatives, including the names of persons who were asked to provide information about the child's relatives and the use of any internet or other resource to identify and locate relatives;

(2) the names of all identified relatives and how the person is related or known to the child or child's family;

(3) whether the agency has an address or other contact information for the relative and the results of using the address or contact information, if any; and

(4) whether the relative was sent the notice and information required under Minn. Stat. § 260C.221(a) and the nature of any resulting contact from the relative back to the agency.

(b) **Consideration of relatives for placement.** The report shall include information about how the agency considered relatives for placement, including:

(1) whether identified relatives were considered for placement under Minn. Stat. § 260C.212, subd. 2(a) and (b), and the result of that consideration;

(2) a description of the process the agency used to consider relatives for placement, including who was consulted, whether the agency used family group decision-making or a family conference, or any other process to assist with consideration of relatives;

(3) in the case of an Indian child, the efforts the agency made to work with the child's tribe to identify relatives and the results of those efforts;

(4) a copy of or reference to the documentation from the out-of-home placement plan regarding how the relative with whom the child is placed meets the placement factors at Minn. Stat. § 260C.212, subd. 2(b), or, if placement is not with a relative, why a relative placement was not appropriate; and

(5) what future consideration for placement of the child will be given to relatives.

(c) **Engagement in planning**. The report shall include a description of how the agency will engage relatives in continued support for the child and family and involvement in permanency planning for the child as required under Minn. Stat. § 260C.221.

Subd. 3. Requested Findings; Plan for Active Efforts; Orders.

(a) **Reasonable Efforts.** Pursuant to Minn. Stat. § 260C.221(f), the agency may request a finding that the agency has made reasonable efforts to identify and notify relatives.

(b) **Active Efforts.** In the case of an Indian child, if the child's placement is not according to the preferences of 25 U.S.C. § 1915, the agency shall report its plan for continued efforts to place the child according to the preferences or request a finding of good cause under 25 U.S.C. § 1915.

(c) **Orders.** When appropriate to assist the agency in its duties for reasonable and active efforts, the agency may ask the court for orders that assist in the identification and location of relatives.

Rule 27.05. Social Services Court Report − Permanency Progress Review Hearing

Subd. 1. Content.

(a) **Progress towards permanency.** In addition to the requirements of Rules 27.01 and 27.02 regarding the permanency progress review hearing, the report shall address the elements in Minn. Stat. § 260C.204(a).

(b) **Concurrent efforts on adoption and referrals under the Interstate Compact on the Placement of Children.** As appropriate, the report shall also address any concurrent reasonable efforts required under Minn. Stat. § 260C.605 and information on any referrals that have been made or will be made under Minn. Stat. § 260.851, the Interstate Compact on the Placement of Children.

Subd. 2. Requested Court Order Regarding Permanency Progress. The report shall include a request for appropriate orders under Minn. Stat. § 260C.204(c) to:

(a) return the child home;
(b) continue reasonable efforts for reunification or active efforts to prevent the breakup of the Indian family; or
(c) plan for the legally permanent placement of the child away from the parent, identify permanency resource homes that will be the legally permanent home if the child cannot return to the parent, and file a permanency petition under Minn. Stat. § 260C.204(d)(2) or (3).

Rule 27.06. Social Services Court Report − Child on Trial Home Visit

Subd. 1. Timing and Content. In addition to the requirements of Rules 27.01 and 27.02, when a hearing is required under Minn. Stat. § 260C.503, subd. 3(c), because the child is on a trial home visit at the time for a required permanency hearing, the agency shall serve and file a report regarding the child's and parent's progress during the trial home visit and the agency's reasonable efforts to finalize the child's safe and permanent return to the care of the parent. When a trial home visit is terminated, the agency shall report to the court as required under Minn. Stat. § 260C.201, subd. 1(a)(3)(v) and (vi).

Subd. 2. Requested Court Orders. The report shall include recommendations, if any, for modification to the services and supports in place, and for any orders necessary for the safety, protection, well-being, or best interests of the child during the trial home visit. The agency shall also recommend whether the trial home visit should continue as provided in Minn. Stat. § 260C.201, subd. 1(a)(3).

Rule 27.07. Social Services Court Report − Child Under State Guardianship

Subd. 1. Timing. When a hearing is required under Minn. Stat. § 260C.607 to review the progress of the matter towards finalized adoption and the child's well-being, in addition to the requirements of Rules 27.01 and 27.02, and as appropriate to the stage of the matter, the agency shall file and serve a report addressing the elements of Minn. Stat. § 260C.607, subd. 4.

Subd. 2. Content.

(a) **Information for Notice of Hearing.** In a document attached to the report, filed as a confidential document under Rule 8.04, subd. 2(o), the agency shall include the following information required for the court to provide notice of the hearing:
- (1) the child's current address, if the child is age 10 and older;
- (2) the names and addresses of each relative of the child who has responded to the agency's notice under Minn. Stat. § 260C.221(g) indicating a willingness to provide an adoptive home for the child unless the relative has been previously ruled out by the court as a suitable foster parent or permanency resource for the child;
- (3) the name and address of the current foster or adopting parent of the child;
- (4) the name and address of any foster or adopting parents of siblings of the child; and
- (5) the name and address of an Indian child's tribe.

(b) **Progress towards Finalized Adoption.** The report shall describe the agency's reasonable efforts to finalize the child's adoption as required in Minn. Stat. § 260C.605, including:
- (1) the steps taken to identify and place the child in a home that will timely commit to adopt the child, including:
  - (i) the status of any relative search under Minn. Stat. § 260C.221;
  - (ii) whether any relative of the child has expressed interest in adopting the child, and, if so, the agency's consideration of the relative according to the requirements of Minn. Stat. § 260C.212, subd. 2(a) and (b);
  - (iii) the progress of any study required under Minn. Stat. § 260.851, the Interstate Compact on the Placement of Children;
  - (iv) whether child-specific recruitment efforts are necessary and, if so, the nature and timing of those efforts; and
- (2) if the child is placed with a prospective adoptive home, expected dates for the following:
  - (i) completion of the adoption study required under Minn. Stat. § 260C.611;

(ii) the execution of the adoption placement agreement;
(iii) the required notice under Minn. Stat. § 260C.613, subd. 1(c);
(iv) the execution of an agreement regarding adoption assistance under Minn. Stat. ch. 259A or Northstar Adoption Assistance under Minn. Stat. ch. 256N, including the specific reasons for any delay in executing the agreement;
(v) the filing of the adoption petition; and
(vi) the final hearing on the adoption petition.

(c) **Child Well-Being.** In addition to reporting on the agency's efforts to finalize adoption, the report shall address the child's well-being, including:
(1) how the child's placement is meeting the child's best interests;
(2) the quality and frequency of visitation and contact between the child and siblings and, if applicable, relatives;
(3) how the agency is meeting the child's medical, mental, and dental health needs;
(4) how the agency is planning for the child's education pursuant to Minn. Stat. § 260C.607, subd. 4(a)(2); and
(5) when the child is age 14 or older, progress in implementing each of the elements of the child's independent living plan required under Minn. Stat. § 260C.212, subd. 1(b)(12), while the agency continues to make reasonable efforts to finalize an adoption for the child.

Subd. 3. Requested Findings and Orders. The agency may request findings pursuant to Minn. Stat. § 260C.607 that the agency is making reasonable efforts to finalize the adoption of the child as appropriate to the stage of the case and may request any order that will assist in achieving a finalized adoption for the child.

Subd. 4. Adoption Placement Agreement.

(a) **Notice of Agreement.** When the agency has a fully executed adoption placement agreement under Minn. Stat. § 260C.613, subd. 1, the agency shall report to the court that the adoptive placement has been made and the adoption placement agreement regarding the child is fully executed. The agency shall file and serve on the parties entitled to notice under Minn. Stat. § 260C.607, subd. 2, a copy of the court report together with notice that there is a fully executed adoption placement agreement. The notice shall include a statement that if a relative or foster parent is requesting adoptive placement of the child, the relative or foster parent has 30 days after receiving the notice to file a motion for an order for adoption placement of the child under Minn. Stat. § 260C.607, subd. 6.

(b) **Notice of Termination of Agreement.** In the event an adoption placement agreement terminates, the agency shall report that the agreement and adoptive placement have terminated. The agency shall file and serve a copy of the report upon the parties entitled to notice under Minn. Stat. § 260C.607, subd. 2, and shall send a copy of the report to the Commissioner of Human Services by U.S. mail.

Subd. 5. Report upon Finalized Adoption. When the adoption of a child who is under the guardianship of the commissioner has been finalized, the agency shall file and serve a report stating:

(a) the date the adoption was finalized;
(b) the state and county where the adoption was finalized; and
(c) the name of the judge who finalized the adoption.

Rule 27.08. Social Services Court Report − Child Not in Foster Care

In addition to the requirements of Rule 27.01, a certified report for a child not in foster care shall include the following:

(a) the child's residence and whether the child's residence has changed since the last court hearing;
(b) as applicable, a description of:
    (1) the services provided to the child and parent and the agency's efforts to implement the case plan; and
    (2) the parents' or legal custodian's and child's progress in complying with the plan, including anything the parents or legal custodian, and child, if appropriate, have done to alleviate the child's need for protection or services; and
(c) recommendations to the court for modification of the plan or for actions the parent or legal custodian must take to provide adequate protection or services for the child.

Rule 27.09. Social Services Court Report − Between Disposition Review Hearings

Once disposition has been ordered pursuant to Minn. Stat. § 260C.201 and Rule 51, the responsible social services agency, through the county attorney, may ask the court for orders related to meeting the safety, protection, and best interests of the child based upon a certified report that states the factual basis for the request. Such reports shall be filed with the court, together with proof of service upon all parties, by the responsible social services agency. Within five days of service of the report, any party may request a hearing regarding the agency's report. Pending hearing, if any, upon two days' notice and based upon the report, the court may issue an order that is in the best interests of the child. Upon a finding that an emergency exists, the court may issue a temporary order that is in the best interests of the child.

Rule 27.10. Objections to Agency's Report or Recommendations

A party may object to the content or recommendations of the responsible social services agency's report by submitting a written objection either before or at the hearing at which the report is to be considered. The objection shall include a statement certifying the content as true based upon personal observation, first-hand knowledge, or information and belief. The certified objection shall be supported by a statement made under oath or penalty of perjury under Minn. Stat. § 358.116, stating the party's factual basis for the objection and may state other or additional facts on information and belief and argument that the court should consider in making its determinations or orders. An objection may also be supported by reports from collateral

service providers or assessors. Objections to the agency's report and recommendations may also be stated on the record, but the court shall give the agency a reasonable opportunity to respond to the party's objection.

Rule 27.11. Reports to the Court by Child's Guardian ad Litem

Subd. 1. Periodic Reports Required. The guardian ad litem for the child shall submit periodic certified written reports to the court.

Subd. 2. Timing of Filing and Service. The guardian ad litem shall file the report with the court and serve it upon all parties at least five days prior to the hearing at which the report is to be considered.

Subd. 3. Supplementation of Report. Reports may be supplemented at or before the hearing either orally or in writing.

Subd. 4. Certificate of Distribution. Each report shall contain or have attached the certificate of distribution required under Rule 16.05, subd. 2.

Subd. 5. Report Content. Each report shall include a statement certifying the content as true based upon personal observation, first-hand knowledge, or information and belief, and shall:

(a) be captioned in the name of the case and include the court file number;

(b) include the following information:

(1) the name of the person submitting the report;

(2) the names of the child's parents or legal custodians;

(3) the date of the report;

(4) the date of the hearing at which the report is to be considered;

(5) the date the guardian ad litem was appointed by the court;

(6) a brief summary of the issues that brought the child and family into the court system;

(7) a list of the resources or persons contacted who provided information to the guardian ad litem since the date of the last court hearing;

(8) a list of the dates and types of contacts the guardian ad litem had with the child since the date of the last court hearing;

(9) a list of all documents relied upon when generating the court report;

(10) a summary of information gathered regarding the child and family since the date of the last hearing relevant to the pending hearing;

(11) a list of any issues of concern to the guardian ad litem about the child's or family's situation; and

(12) a list of recommendations designed to address the concerns and advocate for the best interests of the child.

Subd. 6. Objections to Guardian Ad Litem's Report or Recommendations. Any party may object to the content or recommendations of the guardian ad litem by submitting a written objection either before or at the hearing at which the report is to be considered. The objection shall include a statement certifying the content as true based upon personal

observation, first-hand knowledge, or information and belief. The certified objection shall be supported by a statement made under oath or penalty of perjury under Minn. Stat. § 358.116, stating the party's factual basis for the objection and may state other or additional facts on information and belief and argument that the court should consider in making its determinations or orders. An objection may also be supported by reports from collateral service providers or assessors. Objections to the guardian ad litem's report and recommendations may also be stated on the record, but the court shall give the guardian ad litem a reasonable opportunity to respond to the party's objection.

2019 Advisory Committee Comment

Rule 27 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 38.

C. Juvenile Protection Matters Governed by the Indian Child Welfare Act

RULE 28. GENERAL RULES FOR MATTERS GOVERNED BY THE INDIAN CHILD WELFARE ACT

Rule 28.01. Purpose

The Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901−1963, establishes minimum federal standards for the removal of Indian children from their families and the placement of Indian children in foster or adoptive homes. The Minnesota Indian Family Preservation Act (MIFPA), Minn. Stat. §§ 260.751−.835, provides state standards to protect the long-term best interests of Indian children, their families, and the child's tribe. This section of these rules provides procedures for the application of ICWA and MIFPA in juvenile protection matters concerning an Indian child.

Rule 28.02. Party Status of Tribes

Pursuant to Rule 32.01, subd. 1, an Indian child's tribe is a party to a case of an Indian child. Tribes do not need to file a motion to obtain party status.

Rule 28.03. Tribal/State Agreement

The Indian Child Welfare Act, 25 U.S.C. § 1919, provides that states and Indian tribes may enter into agreements with respect to the care and custody of Indian children and jurisdiction over child custody proceedings. The State of Minnesota has entered into a Tribal/State agreement which shall be available on the Minnesota Judicial Branch's website (www.mncourts.gov).

Rule 28.04. Higher Standard Under ICWA

Subd. 1. Greater Protection under State Law. The Indian Child Welfare Act (ICWA), 25 U.S.C. § 1921, provides that if state or federal law establishes a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the Indian Child Welfare

Act, the court shall apply the state or federal standard. The Minnesota Indian Family Preservation Act (MIFPA), Minn. Stat. §§ 260.751−.835, may provide a higher level of protection than ICWA in ICWA proceedings.

Subd. 2. Active Efforts. Both ICWA and MIFPA require the court to make findings regarding active efforts, as defined in Rule 2.01(1), throughout the proceedings. The active efforts standard provides a higher level of protection than reasonable efforts. Active efforts include reasonable efforts, but reasonable efforts may be found without meeting the threshold for active efforts.

Subd. 3. Standard of Proof. Pursuant to ICWA, 25 U.S.C. § 1912(f), in a termination of parental rights matter involving an Indian child, the standard of proof is beyond a reasonable doubt. In all other juvenile protection matters concerning an Indian child, the standard of proof is clear and convincing evidence.

Subd. 4. Notice Standards. ICWA, 25 U.S.C. § 1912(a), and Rule 30.01 require the petitioner to provide an additional notice of the proceedings to the parent, Indian custodian, and the Indian child's tribe.

Subd. 5. Placement Preferences. The court shall follow the order of placement preferences required by ICWA, 25 U.S.C. § 1915, when placing an Indian child. The court may only place an Indian child outside of the order of placement preferences on a written finding of good cause pursuant to MIFPA, Minn. Stat. § 260.771, subd. 7.

Subd. 6. Appointment of Counsel. Appointment of counsel for an Indian child, or for a parent or Indian custodian of an Indian child, who is the subject of a juvenile protection matter, shall be pursuant to ICWA, 25 U.S.C. § 1912(b).

Rule 28.05. Best Interests of an Indian Child

In proceedings involving an Indian child, the best interests of the child shall be determined consistent with the Indian Child Welfare Act, 25 U.S.C. §§ 1901−1963. "Best interests of an Indian child" is defined in the Minnesota Indian Family Preservation Act, Minn. Stat. § 260.755, subd. 2a.

Rule 28.06. Qualified Expert Witness Requirement

The Indian Child Welfare Act, 25 U.S.C. § 1912, and the Minnesota Indian Family Preservation Act, Minn. Stat. § 260.771, subd. 6, require testimony from a qualified expert witness, as defined in Rule 2.01(29), before making the findings required by subd. 1 and subd. 2 of this rule.

Subd. 1. Foster Care Placement. In the case of an Indian child, foster care placement shall not be ordered in the absence of testimony of at least one qualified expert witness that supports a determination that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Subd. 2. Termination of Parental Rights. In the case of an Indian child, termination of parental rights shall not be ordered in the absence of testimony of at least one qualified expert witness that supports a determination that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Rule 28.07. Particularized Findings in Cases Involving an Indian Child

Subd. 1. Emergency Proceedings. In emergency proceedings involving an Indian child, the court shall make initial findings regarding whether active efforts were made by the social services agency, pursuant to Minn. Stat. § 260.762, to prevent the child's out-of-home placement. Emergency proceedings shall not be continued for more than 30 days unless the court makes findings pursuant to the Indian Child Welfare Act regulations, 25 C.F.R. § 23.113(e).

Subd. 2. Emergency Removal and Placement Authority for Indian Child Ward, Resident, or Domiciliary.

(a) **Finding.** If the district court finds from review of the petition or other information that an Indian child resides or is domiciled on an Indian reservation or that an Indian child is a ward of tribal court but is temporarily located off the reservation, the district court may order emergency removal of the child from the child's parent or Indian custodian and emergency out of home placement.

(b) **Required Actions for Ward of the Tribal Court.** If the district court finds from review of the petition or other information that an Indian child is a ward of tribal court, the court shall order that the child be expeditiously returned to the jurisdiction of the Indian child's tribe and shall consult with the tribal court regarding the child's safe transition pursuant to Rule 31.02, subd. 1.

Subd. 3. Child in Need of Protection or Services Proceedings. In a child in need of protection or services proceeding, the standard of proof is clear and convincing evidence. Foster care placement shall not be ordered in the absence of testimony of at least one qualified expert witness that supports a determination that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Subd. 4. Permanency Proceedings.

(a) **Termination of Parental Rights**. Pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1912(f), in a termination of parental rights matter involving an Indian child, the standard of proof is beyond a reasonable doubt. The court shall make specific findings regarding the following:

(1) **Active Efforts.** 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.

(2) **Serious Emotional or Physical Damage.** That the continued custody of the child by the parent or Indian custodian is likely to result in serious

emotional or physical damage to the child, as supported by qualified expert witness testimony in the termination of parental rights proceeding pursuant to Rule 28.06.

(b) **Other Permanency Proceedings**. In permanency proceedings involving an Indian child other than termination of parental rights, the standard of proof is clear and convincing evidence. The court shall make specific findings regarding the following:

(1) **Active Efforts.** 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.

(2) **Serious Emotional or Physical Damage.** That the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, as supported by qualified expert witness testimony pursuant to Rule 28.06.

Rule 28.08. Voluntary Termination of Parental Rights Under ICWA

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

Subd. 1. Procedures for Consent. The consent to terminate parental rights by the parent shall not be valid unless:

(a) executed in writing;
(b) recorded before the judge; and
(c) accompanied by the presiding judge's certificate that the terms and consequences of the consent were explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that the parent or Indian custodian fully understood the explanation in English or that it was translated into a language that the parent or Indian custodian understood.

Subd. 2. Timing of Consent. Any consent to termination of parental rights given prior to, or within ten days after, the birth of the Indian child shall not be valid.

Subd. 3. Parent's Right to Withdraw Consent. Any consent to termination of parental rights by a parent of an Indian child may be withdrawn by the parent at any time prior to the filing of the final order terminating the parent's rights.

Rule 28.09. Invalidation of Action Under ICWA

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

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

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

Subd. 2. Form and Service. A motion or petition to invalidate shall be in writing pursuant to Rule 14.01 and shall be filed and served pursuant to Rule 14.02. Both a motion and a petition to invalidate shall be processed by the court as a motion. Upon receipt of a petition to invalidate a proceeding in which juvenile court jurisdiction has been terminated, the court administrator shall re-open the original juvenile protection file related to the petition.

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

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

2019 Advisory Committee Comment

"Juvenile Protection Matters Governed by the Indian Child Welfare Act" is a new section in the Rules of Juvenile Protection Procedure. The rules in this section were added in 2019 as part of a revision of the rules. This section was added to consolidate rules for proceedings governed by the Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901−1963, and the Minnesota Indian Family Preservation Act (MIFPA), Minn. Stat. §§ 260.751−.835. The ICWA rules have been updated to reflect the 2016 BIA ICWA regulations, and the 2015 amendments to MIFPA.

Rule 28.04, subd. 2, states that "[a]ctive efforts include reasonable efforts, but reasonable efforts may be found without meeting the threshold for active efforts." This rule contemplates situations where the threshold for active efforts has not been met, but reasonable efforts have occurred, and Title IV-E funding can be made available.

Rule 28.06 recognizes the unique requirements for and qualifications of the qualified expert witness whose testimony must be presented to the court before the court may order foster care placement or termination of parental rights under ICWA. Compliance with the requirement for a qualified expert witness is best achieved by timely notice to the child's tribe, ensuring that the county agency works with the child's tribe to discuss the need for placement, identifying extended family who can serve as placement resources and support for the family, ensuring that culturally appropriate services are delivered to the family, and requesting qualified expert witness testimony from the tribe or elsewhere. When the court has determined that ICWA applies, but the child's tribe has not participated in planning for the child, or when the child's tribe does not support placement of the child in foster care or termination of parental rights, the requirements of this rule may be met by a person who meets the criteria of Rule 2.01(29).

Rules 28.06 and 28.07 state that the qualified expert witness's testimony must support a determination that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The Minnesota Supreme Court has held that ICWA and MIFPA, 25 U.S.C. § 1912(f) and Minn. Stat. § 260.771, subd. 6(a), require the qualified expert witness testimony to support this determination, but that the qualified expert witness is not required to "opine on the ultimate issue of whether the State met its burden of proof" to show a likelihood of serious emotional or physical damage to the child. In re S.R.K. and O.A.K., 911 N.W.2d 821, 829 (Minn. 2018) (quotations and citations omitted). In S.R.K., the Minnesota Supreme Court interpreted the requirements of ICWA and MIFPA as they apply to termination of parental rights proceedings. 911 N.W.2d at 827-28 & n.6. Rules 28.06 and 28.07 apply the same requirement to foster care placements and to terminations of parental rights. The committee believes this is appropriate, because the language in ICWA and MIFPA requiring qualified expert witness testimony for foster care placements (25 U.S.C. § 1912(e) and Minn. Stat. § 260.771, subd. 6(a)) is identical to the language, analyzed in S.R.K, requiring qualified expert witness testimony for terminations of parental rights (25 U.S.C. § 1912(f) and Minn. Stat. § 260.771, subd. 6(a)).

Grounds for Invalidation. Rule 28.09 establishes a procedure for filing a petition or motion to invalidate an action under ICWA. 25 U.S.C. § 1914. Section 1914 of ICWA permits an Indian child, the Indian child's parent or Indian custodian, or the Indian child's tribe to petition the court to invalidate any action for foster care placement or termination of parental rights upon a showing that the action violated ICWA § 1911 (dealing with exclusive jurisdiction and transfer to tribal court), § 1912 (dealing with notice to the Indian child's tribe regarding the district court proceedings, appointment of counsel, examination of reports, and testimony of a qualified expert witness), or § 1913 (dealing with voluntary consent to foster care placement and termination of parental rights). Section 1914 of ICWA is silent about the time for bringing a petition to invalidate, the relief available, and whether relief is available even if there was no objection below.

RULE 29. COURT'S INQUIRY OF INDIAN ANCESTRY AND HERITAGE

Rule 29.01. Initial Hearing

Pursuant to 25 C.F.R. § 23.107(a), at the initial hearing in any juvenile protection matter, the court shall make a thorough on-the-record inquiry as to whether the child has Indian ancestry or heritage. If, upon such inquiry, the court finds that an Indian tribe has determined that a child is an Indian child, the court shall comply with the Indian Child Welfare Act, the Minnesota Indian Family Preservation Act, and these rules. If the court is unable to make such a finding but has reason to know that the child is an Indian child, the court shall direct the petitioner to further investigate the child's ancestry or heritage and shall treat the matter as if ICWA applies pending the investigation.

Rule 29.02. Court's Duty of Continued Inquiry

Unless the court has made a finding that the child is an Indian child, the court shall at all stages in the proceedings, continue to inquire whether the child has Indian ancestry or heritage.

If, at any time during the proceedings, the court has reason to believe that the child has Indian ancestry or heritage, the court shall direct the petitioner to continue to investigate whether the child is an Indian child.

2019 Advisory Committee Comment

It is important for the court to make a thorough inquiry regarding a child's ancestry or heritage to avoid proceeding in a case without properly applying the Indian Child Welfare Act (ICWA), which can have serious repercussions for all parties. A continued inquiry can provide additional information about whether ICWA applies, especially from parties or participants who did not attend the initial hearing.

In cases where the court has reason to know that ICWA applies, the court shall proceed pursuant to the requirements of ICWA unless or until a determination is otherwise made in order to fulfill the congressional purposes of ICWA, to ensure that the child's Indian tribe is involved, and to avoid invalidation of the action pursuant to 25 U.S.C. § 1914, 25 C.F.R. § 23.107(b)(2), and Rule 28.09.

RULE 30. NOTICE RESPONSIBILITIES UNDER THE INDIAN CHILD WELFARE ACT

Rule 30.01. Notice by Petitioner

Subd. 1. Generally. In any juvenile protection proceeding where the court knows or has reason to know that an Indian child is involved, the petitioner commencing a child custody proceeding shall notify the parent, Indian custodian, and the Indian child's tribe of the pending proceedings and of the right of intervention. Notice shall be pursuant to Indian Child Welfare Act, 25 U.S.C. § 1912(a), and the Indian Child Welfare Act regulations, 25 C.F.R. § 23.11. In addition, the court may direct personal service on the parent and Indian custodian. Each notice shall be filed with the court together with any return receipts or other proof of service.

Subd. 2. Identity or Location Unknown. Pursuant to 25 C.F.R. § 23.111(e), if the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Bureau of Indian Affairs Regional Director in like manner, who shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

Subd. 3. Timing of Proceedings. No foster care placement or termination of parental rights proceeding shall be held until at least 10 days after receipt of notice by the parent or Indian custodian and the tribe, provided that the parent or Indian custodian or the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceeding.

Rule 30.02. Notice by Court

When a court has reason to believe that a child placed in emergency protective care is an Indian child, the court administrator or a designee shall notify the tribal social services agency of the date, time and location of the emergency protective care hearing as required by the Minnesota Indian Family Preservation Act, Minn. Stat. § 260.761, subd. 2(c).

2019 Advisory Committee Comment

There are multiple notice requirements in Indian Child Welfare Act (ICWA) cases. In addition to the notice requirements listed in the rule above, the Minnesota Indian Family Preservation Act (MIFPA), Minn. Stat. § 260.761, provides additional notice requirements for local social services agencies.

The petitioner's notice requirement in ICWA, 25 U.S.C. § 1912(a), and the ICWA regulations, 25 C.F.R. § 23.11, while substantially similar, do have inconsistencies. For example, ICWA states that notice shall be by registered mail. The ICWA regulations state that notice shall be by registered or certified mail, and that personal service does not replace the registered or certified mail requirement. See 25 C.F.R. § 23.111. The committee contemplates situations where personal service on a parent is made at an initial hearing, but service on the parent by registered or certified mail is not possible. The committee notes that service by registered or certified mail on a tribe offers protections that personal service may not, including ensuring that service is made on the correct contact. The committee recommends that courts review service issues on a case-by-case basis, and make a clear record of efforts to provide notice in ICWA matters.

The 2016 BIA ICWA regulations, 25 C.F.R. § 23.11(b)(2), provide an incorrect address for the Minneapolis Regional Director of the Bureau of Indian Affairs. The office location is available at www.bia.gov.

The requirement for the petitioner to serve the ICWA notice is separate from the requirement for court staff to serve the summons and petition.

Emergency Protective Care Placement Pending ICWA Notice. While both ICWA and Minnesota law require notice to the Indian child's parent or Indian custodian and Indian child's tribe regarding the child custody proceeding, 25 U.S.C. § 1922 provides that a state may take emergency action to protect an Indian child who is domiciled or resides on a reservation but is temporarily located off the reservation. While there is no such explicit provision in ICWA regarding an Indian child who is not domiciled on or a resident of a reservation, by analogy there is general recognition that the state may take emergency action to protect an Indian child who is not domiciled on or resident of a reservation. It is not possible to send the ICWA notice referred to in Rule 30.01 and meet the timing requirements of 25 U.S.C. § 1912(a) before the emergency removal hearing. The ICWA notice that the court will direct be provided under Rule 42.09(f) is required under Rule 30.01 before the Admit/Deny Hearing may be held. The timing of the Admit/Deny Hearing in matters governed by ICWA may be different due to the notice requirement of Rule 30.01.

RULE 31. TRANSFER TO CHILD'S TRIBE

Rule 31.01. Transfer of Juvenile Protection Matter to the Tribe

Subd. 1. Motion or Request to Transfer. At any stage in the proceedings, an Indian child's parent, Indian custodian, or tribe may request transfer of the juvenile protection matter to the Indian child's tribe by:

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

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

Subd. 2. Service and Filing Requirements for Motion, Request, or Objection to Transfer Matter to Tribe.

(a) When a motion or other written document is filed pursuant to subdivision 1(a), the service and notice provisions of Rule 14.02, subd. 1, apply. Service and notice shall also made upon parents who are participants to the proceedings.

(b) When an on-the-record request is made pursuant to subdivision 1(b), the objection and continuance provisions of Rule 14.01, subd. 3, apply.

Subd. 3. Transfer Required Absent Objection by Parent or Good Cause Finding. Upon motion or request of an Indian child's parent, Indian custodian, or tribe pursuant to subdivision 1, the court shall issue an order transferring the juvenile protection matter to the Indian child's tribe absent objection by either parent pursuant to subdivision 4 or a finding of good cause to deny transfer pursuant to subdivision 6(b), and shall proceed pursuant to Rule 31.02. The order transferring the juvenile protection matter to the Indian child's tribe shall order jurisdiction of the matter retained pursuant to subdivision 7 until the Indian child's tribe exercises jurisdiction over the matter.

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

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

(b) **Timing of Filing and Service.** Any written objection shall be filed with the court and served upon those who are served with the motion pursuant to Rule 14.02, subd. 1, either:

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

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

(c) **Method of Filing and Service.** Any written objection by a Registered User of the E-Filing System shall be served upon another Registered User in compliance with Rule 14.03 of the General Rules of Practice for the District Courts. All other service of the written objection shall be made by personal service, U.S. mail, or e-mail or other electronic means agreed upon in writing by the person to be served. Service of the written objection shall be accomplished by the parent's attorney or by the court administrator when the parent is not represented by counsel.

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

(e) **Decision and Order.** Upon objection by a parent, the court shall deny the request to transfer the juvenile protection matter to the Indian child's tribe and issue its

findings and order pursuant to Rule 9.01. The court shall include a parent's on-the-record objection to the transfer as a finding in its order denying the motion to transfer.

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

(a) **Party Who is Not a Parent.** A party who is not a parent may request that the juvenile protection matter not be transferred to the Indian child's tribe by filing with the court and serving a notice of motion and motion pursuant to subdivision 1(a) and Rule 14 within 15 days of receiving the request to transfer the matter to the tribe. The party opposing transfer shall provide a written explanation of the reason for the opposition.

(b) **Establishment of Good Cause.** A party who is not a parent opposing transfer of the juvenile protection matter has the burden of establishing good cause not to transfer. The request to deny transfer shall be scheduled for hearing pursuant to subdivision 6.

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

(a) **Hearing.** Within 15 days of the filing of a written request to deny transfer of the juvenile protection matter to the Indian child's tribe, the court shall conduct a hearing to determine whether good cause exists to deny the transfer to the tribe pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1911(b), and the Minnesota Indian Family Preservation Act, Minn. Stat. § 260.771, subd. 3a.

(b) **Decision.** The court shall make findings regarding the existence of good cause to deny transfer. If good cause to deny transfer is not found, the court shall order the matter transferred to tribal court and shall proceed pursuant to Rule 31.02. If good cause to deny transfer is found, the court may either deny the request to transfer or order the matter transferred to tribal court.

(c) **Order.** The court shall issue its findings and order pursuant to Rule 9.01.

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

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

(1) approve or modify services to be provided to the child and the child's family; or
(2) approve or modify the case plan; and
(3) make other orders that ensure a smooth transition of the matter to the tribe.

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

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

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

(e) **Order Terminating District Court Jurisdiction.** After issuing the order transferring the juvenile protection matter to the Indian child's tribe pursuant to subdivision 6(b), and once the district court judge receives information that the tribe has exercised jurisdiction over the matter pursuant to paragraph (a), the district court judge shall issue an order terminating jurisdiction over the matter which shall include provisions:

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

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

(3) terminating the responsible social services agency's legal responsibility for the Indian child's placement when the district court has ordered the child into protective care Minn. Stat. § 260C.178;

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

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

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

Rule 31.02. Communication between District Court and Tribal Court Judges

Subd. 1. Child Ward of Tribal Court.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) inquire whether the tribal court will accept the transfer and, if so, order the transfer absent objection by either parent pursuant to Rule 31.01, subd. 4, or a finding of good cause to deny the transfer pursuant to Rule 31.01, subd. 6(b), and proceed pursuant to Rule 31.01, subd. 7; and

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

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

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

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

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

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

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

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

Rule 31.03. Court Administrator's Duties

Upon receiving an order transferring a juvenile protection matter to tribal court, the court administrator shall file the order and serve it on all parties, participants, the Indian child's parents, and the Indian child according to the requirements of Rule 9. The court administrator shall forward a certified copy of the complete court file personally, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the tribal court official, as otherwise directed by the transferor court, or any other means calculated to ensure timely receipt of the file by the tribal court.

2019 Advisory Committee Comment

"Tribe," "Tribal Court," and "Tribal Social Services." Throughout the Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901−1963, the phrases "tribe," "tribal court," and "tribal social services" are used. In an effort to remain consistent with ICWA, Rule 31 mirrors the use of those phrases.

Exclusive Jurisdiction. With respect to exclusive jurisdiction, ICWA provides:

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

25 U.S.C. § 1911(a). The language in the Minnesota Indian Family Preservation Act (MIFPA), Minn. Stat. § 260.771, subd. 1, is nearly identical. For a full discussion of "domicile" under ICWA, see Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989).

Tribe's Method of Communicating Exercise of Jurisdiction. Rule 31.01, subd. 7(c), provides "[t]he district court may accept and rely on any reasonable form of communication indicating the tribe has exercised jurisdiction over the juvenile protection matter." The information received may be in a written order or letter, a telephone call, a faxed or emailed message, a copy of a hearing notice setting the matter for hearing in tribal court, or any other form of communication between the tribe and the district court judge regarding the tribe's action in regard to the district court order transferring the matter to the Indian child's tribe.

Transfer of Juvenile Protection Matter after Termination of Parental Rights. ICWA does not preclude the transfer of matters to tribal court following termination of parental rights. Rule 31.01, subd. 7(e)(5), recognizes the practice of transferring cases to the tribe after termination of parental rights and requires certain orders when such a transfer is made, inter alia, discharging the Commissioner of Human Services as the guardian for the child.

Transfer to Tribe Other Than Indian Child's Tribe. ICWA provides for the transfer of jurisdiction from State court to the "the Indian child's tribe." 25 U.S.C. § 1911. Rule 31.01, subd. 7(c), recognizes that some Indian tribes are exercising

jurisdiction over child custody proceedings by designating other tribes to act on their behalf to receive the transferred case.

"Good Cause" to Deny Transfer. Consistent with ICWA, 25 U.S.C. § 1911(b), Rule 31.01, subd. 3, mandates that transfer to the Indian child's tribe must occur upon motion absent objection by a parent or a finding of "good cause to deny transfer." "Good cause to deny transfer" is not defined in ICWA, but is described in MIFPA, Minn. Stat. § 260.771, subd. 3a and in the ICWA regulations, 25 C.F.R. § 23.118.

Rule 31.02, subd. 4, regarding communication between courts includes language similar to certain provisions in the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Minn. Stat. § 518D.110. Not all provisions in the "communication between courts" provisions of the UCCJEA are included in this rule because the UCCJEA is not applicable when the case is governed by ICWA. See Minn. Stat. § 518D.104(a). The purpose of requiring court-to-court communication is to facilitate expeditious return or transfer by timely and direct contact between judges. Nothing in this rule shall be construed to delay return or transfer of the matter to tribal court. Administrative matters may include schedules, calendars, court records, and similar matters. Communication may include receipt of a tribal court order.

D. Parties and Participants

RULE 32. PARTIES

Rule 32.01. Party Status

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

(a) the child's guardian ad litem;
(b) the child's legal custodian;
(c) in the case of an Indian child, the child's parents, the child's Indian custodian, and the Indian child's tribe through the tribal representative;
(d) the petitioner;
(e) any person who intervenes as a party pursuant to Rule 34;
(f) any person who is joined as a party pursuant to Rule 35; and
(g) any other person who is deemed by the court to be important to a resolution that is in the best interests of the child.

Subd. 2. Habitual Truant, Runaway, and Sexually Exploited Child. In addition to the parties identified in subdivision 1, in any matter alleging a child to be a habitual truant, a runaway, or a sexually exploited child, 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 35.

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;
(c) the responsible social services agency when the agency is not the petitioner; and
(d) any other person who is deemed by the court to be important to a resolution that is in the best interests of the child.

Subd. 4. Relatives Recommended as Permanent Custodians. Relatives have the right to participate as parties in permanency proceedings where required by Minn. Stat. § 260C.163, subd. 2.

Rule 32.02. Rights of Parties

A party shall have the right to:
(a) notice pursuant to Rule 44 or 53;
(b) legal representation pursuant to Rule 36;
(c) be present at all hearings unless excluded pursuant to Rule 38;
(d) conduct discovery pursuant to Rule 17;
(e) bring motions before the court pursuant to Rule 14;
(f) participate in settlement agreements pursuant to Rule 19;
(g) subpoena witnesses pursuant to Rule 12;
(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;
(l) request review of the court's disposition upon a showing of a substantial change of circumstances or that the previous disposition was inappropriate;
(m) bring post-trial motions pursuant to Rule 21;
(n) appeal from orders of the court pursuant to Rule 23; and
(o) any other rights as set forth in statute or these rules.

Rule 32.03. Parties' Names and Addresses

It shall be the responsibility of the petitioner to set forth in the petition the names and addresses of all parties if known to the petitioner after reasonable inquiry, and to specify that each such person has party status. It shall be the responsibility of each party to inform the court administrator of any change of address or e-mail address; Registered Users of the E-Filing System shall also update any change of e-mail address in the E-Filing System.

2019 Advisory Committee Comment

Rule 32 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 21. The amendments are not intended to substantively change the rule's meaning.

Rule 32 delineates the status and rights of parties, and Rule 33 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 these rules is to ensure 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 34 or may be joined as a party pursuant to Rule 35.

Former Rule 21 had provisions for a party to ask the court to keep the party's name and address confidential if the party was endangered. This issue is now addressed by Rule 8.04, subd. 2(p).

RULE 33. PARTICIPANTS

Rule 33.01. Participant Status

Unless already a party pursuant to Rule 32, or unless otherwise specified, participants to a juvenile protection matter shall include:

(a) the child;
(b) any parent who is not a legal custodian and any alleged, adjudicated, or presumed father;
(c) the responsible social services agency, when the responsible social services agency is not the petitioner;
(d) any guardian ad litem for the child's legal custodian;
(e) grandparents with whom the child has lived within the two years preceding the filing of the petition;
(f) relatives or other persons providing care for the child and other relatives who request notice;
(g) current foster parents, persons proposed as permanent foster care parents, and persons proposed as pre-adoptive parents;
(h) the spouse of the child, if any; and
(i) 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 33.02. Rights of Participants

Subd. 1. Generally. Unless a participant intervenes as a party pursuant to Rule 34, or is joined as a party pursuant to Rule 35, the rights of a participant shall be limited to:

(a) notice and the petition pursuant to Rule 44 or 53;
(b) legal representation pursuant to Rule 36;
(c) being present at hearings unless excluded pursuant to Rule 38; and
(d) offering information at the discretion of the court, except as provided in subdivision 2.

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

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

Rule 33.03. Participants' Names and Addresses

It shall be the responsibility of the petitioner to set forth in the petition the names and addresses of all participants if known to the petitioner after reasonable inquiry, and to specify that each such person has participant status. It shall be the responsibility of each participant to inform the court administrator of any change of address or e-mail address; Registered Users of the E- Filing System shall also update any change of e-mail address in the E-Filing System.

2019 Advisory Committee Comment

Rule 33 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 22. The amendments are not intended to substantively change the rule's meaning.

Rule 32 delineates the status and rights of parties, and Rule 33 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 these rules is to ensure 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 34 or may be joined as a party pursuant to Rule 35.

Former Rule 22 had provisions for a party to ask the court to keep the party's name and address confidential if the party was endangered. This issue is now addressed by Rule 8.04, subd. 2(p).

RULE 34. INTERVENTION

Rule 34.01. Intervention of Right

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

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 years preceding the filing of the petition.

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

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

Rule 34.02. Permissive Intervention

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

Rule 34.03. Procedure

Subd. 1. Intervention of Right. A person with a right to intervene pursuant to Rule 34.01 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 10 days of the date of service. If a written objection is timely filed and served, the court shall schedule a hearing for the next available date.

Subd. 2. Permissive Intervention. A person, including the county attorney in a case where the responsible social services agency is not the petitioner, seeking permissive intervention pursuant to Rule 34.02 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 14. 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 10 days of the filing of the motion to intervene.

Rule 34.04. Effect of Intervention

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

2019 Advisory Committee Comment

Rule 34 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 23. The amendments are not intended to substantively change the rule's meaning.

RULE 35. JOINDER

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

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

(b) in the best interests of the child.

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

2019 Advisory Committee Comment

Rule 35 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 24. The amendments are not intended to substantively change the rule's meaning.

RULE 36. RIGHT TO REPRESENTATION; APPOINTMENT OF COUNSEL

Rule 36.01. Right to Representation

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

Rule 36.02. Appointment of Counsel

Subd. 1. Child. Appointment of counsel for a child who is the subject of a juvenile protection matter shall be pursuant to Minn. Stat. § 260C.163, subd. 3. Appointment of counsel for an Indian child who is the subject of a juvenile protection matter shall be pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1912(b). The court may sua sponte appoint counsel for the child, or may do so upon the request of any party or participant. Any such appointment of counsel for the child shall occur as soon as practicable after the request is made. For purposes of appeal, appointment of counsel in a juvenile protection matter shall be made within three days of the request for counsel. When possible, the trial court attorney should be appointed as appellate counsel.

Subd. 2. Parent, Guardian, Legal Custodian, or Indian Custodian. Appointment of counsel for a parent, guardian, or legal custodian whose child is the subject of a juvenile protection matter shall be pursuant to Minn. Stat. § 260C.163, subd. 3. Appointment of counsel for a parent or Indian custodian of an Indian child who is the subject of a juvenile protection matter shall be pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1912(b). The appointment of counsel for the parent, legal custodian, or Indian custodian shall occur as soon as practicable after the request is made. For purposes of appeal, appointment of counsel in a juvenile protection matter shall be made within three days of the request for counsel. When possible, the trial court attorney should be appointed as appellate counsel.

Subd. 3. Reimbursement. Whenever counsel is appointed for a child, parent, guardian, or custodian, the court shall make all inquiries required by Minn. Stat. § 260C.331, subd. 5 into the ability to pay for counsel's services, and may make any orders as authorized by that statute.

Subd. 3. Child's Preference. In any juvenile protection matter where the child is not represented by counsel, the court shall determine the child's preferences regarding the proceedings pursuant to Minn. Stat. § 260C.163, subd. 3(g), if the child is of suitable age to express a preference.

Rule 36.03. Notice of Right to Representation

Any child, parent, legal custodian, or Indian 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 this rule.

Rule 36.04. 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 36.05. Withdrawal or Discharge 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 district court proceedings in the matter have been completed, including filing and resolution in district court of all post-trial motions under Rules 21 and 22;
(b) the attorney has been discharged by the client in writing or on the record;
(c) the court grants the attorney's motion for withdrawal, which may be ex parte, upon good cause shown; or
(d) the court approves the attorney's written substitution of counsel, which may be ex parte.

2019 Advisory Committee Comment

Rule 36 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 25. The amendments are not intended to substantively change the rule's meaning.

Rule 36.01 sets forth the basic principle that each person appearing in court has the right to be represented by counsel. Each person, however, does not necessarily have the right to court-appointed counsel as described in Rule 36.02. Rule 36.02, subd. 4 reiterates the court's statutory responsibility to inquire into a child's preferences regarding the proceedings when the child is not represented by counsel.

Former Rule 25.03 governed reimbursement for the costs of court-appointed counsel, and has been moved to Rule 36.02, subd. 3 for clarity. Former Rule 25.02, subd. 3 governed appointment of counsel for guardians ad litem, and has been removed because counsel for guardians ad litem are now provided by the Minnesota State Guardian ad Litem Program.

Pursuant to Rule 36.05(a), courts should not discharge counsel until there has been an opportunity to file and resolve post-trial motions. The Minnesota Court of Appeals has held that counsel should not be discharged before proceedings have concluded. See, In re M.L.A., 730 N.W.2d 54, 62 (Minn. Ct. App. 2007).

RULE 37. GUARDIAN AD LITEM

Rule 37.01. Appointment for Child

Subd. 1. Mandatory Appointment Generally Required. Where Minn. Stat. § 260C.163, subd. 5 requires appointment of a guardian ad litem, the court shall appoint a guardian ad litem under the procedures set forth in General Rule of Practice 903.02. If the court has issued an order appointing a person as a guardian ad litem in a child in need of protection or services matter, the court may, but is not required to, issue an order reappointing the same person in the termination of parental rights or other permanent placement matter. An appointment order is required only if a new person is being appointed as guardian ad litem.

Subd. 2. Discretionary Appointment. Where Minn. Stat. § 260C.163, subd. 5 does not require appointment of a guardian ad litem, the court may appoint a guardian ad litem under the procedures set forth in General Rule of Practice 903.02.

Subd. 3. Timing; Method of Appointment. Appointment of a guardian ad litem shall occur prior to the emergency protective care hearing or the admit-deny hearing, whichever occurs first. The court may appoint a person to serve as guardian ad litem for more than one child in a proceeding. The appointment of a guardian ad litem shall be subject to General Rules of Practice 901-907.

Subd. 4. Responsibilities; Rights. The guardian ad litem shall carry out the responsibilities set forth in Minn. Stat. § 260C.163, subd. 5(b). The guardian ad litem shall have the rights set forth in General Rule of Practice 907.

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

Subd. 6. Counsel for Child Not Also Counsel for Guardian Ad Litem. The child's counsel shall not also serve as counsel for the guardian ad litem.

Subd. 7. Reimbursement. Whenever a guardian ad litem is appointed for a child, the court may make inquiries authorized by Minn. Stat. § 260C.331, subd. 6 into the ability of the parents to pay for the guardian ad litem's services, and may make any orders as authorized by that statute.

Rule 37.02. Discretionary Appointment for Child's Parent or Legal Custodian

The court may sua sponte or upon the written or on-the-record request of a party or participant appoint a guardian ad litem for a parent who is a party or a legal custodian pursuant to General Rule of Practice 903.02, subd. 3. The appointment of a guardian ad litem shall be subject to General Rules of Practice 901-907. Appointment of a guardian ad litem for a parent or legal custodian shall not result in discharge of counsel for the parent or legal custodian.

Rule 37.03. Term of Service of Guardian Ad Litem

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

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

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

(c) when the permanency plan for the child is termination of parental rights leading to adoption, the guardian ad litem shall continue to serve as a party until the adoption decree is entered;

(d) when the permanency plan for the child is long-term foster care, the guardian ad litem shall continue to serve as a party for the purpose of monitoring the child's welfare, and shall provide the foster parent and child, if of suitable age, with the address and phone number of the guardian ad litem so that they may contact the guardian ad litem if necessary. The guardian ad litem shall be provided notice of all social services administrative reviews and shall be consulted regarding development of any case plan, out-of-home placement plan, or independent living plan required pursuant to Rule 26.

Rule 37.04. Request for Appointment of Counsel for Child

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

2019 Advisory Committee Comment

Rule 37 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 26. The amendments are not intended to substantively change the rule's meaning.

Rule 37.01 refers to the requirements in Minn. Stat. § 260C.163, subd. 5, which requires the court to appoint a guardian ad litem in many circumstances. Rule 37.01 is also consistent with the requirements of the federal Child Abuse Prevention and Treatment Act (CAPTA) for states to receive federal grants for child protection prevention and treatment services. 42 U.S.C. § 5106a(b)(2)(B)(xiii). The state statutory requirements for appointing a guardian ad litem are broader than the federal CAPTA requirements. Rule 37.01, subd. 5, reflects the statutory prohibition in Minn. Stat. § 260C.163, subd. 3(f) against a child's counsel acting as the child's guardian ad litem.

Former Rule 26.05 governed reimbursement for the costs of a court-appointed guardian ad litem, and has been moved to Rule 37.01, subd. 7 for clarity.

RULE 38. ACCESS TO HEARINGS

Rule 38.01. Presumption of Public Access to Hearings

Absent exceptional circumstances, hearings in juvenile protection matters are presumed to be accessible to the public. Hearings, or portions of hearings, may be closed to the public by the court only in exceptional circumstances. The closure of any hearing shall be noted on the record and the reasons for the closure given. Closure of all or part of a hearing shall not prevent the court from proceeding with the hearing or issuing a decision. An order closing a hearing or portion of a hearing to the public shall be accessible to the public.

Rule 38.02. Party and Participant Attendance at Hearings

Notwithstanding the closure of a hearing to the public pursuant to Rule 38.01, any party who is entitled to summons pursuant to Rule 44.02 or 53.02, or any participant who is entitled to notice pursuant to Rule 44.03 or 53.03, or any person who is summoned or given notice, shall have the right to attend the hearing to which the summons or notice relates unless excluded pursuant to Rule 38.04.

Rule 38.03. Absence Does Not Bar Hearing

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

Rule 38.04. Exclusion of Parties or Participants from Hearings

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

2019 Advisory Committee Comment

Rule 38 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 27. The amendments are not intended to substantively change the rule's meaning.

Pursuant to Rule 32, a party has the right to be present in person at any hearing. For a child, the person with physical custody of the child should generally be responsible for ensuring the child's presence in court. When a child is in emergency protective care or protective care, the responsible social services agency is responsible for ensuring the child's presence in court. If the child is in the custody of the responsible social services agency in out-of-home placement, the 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.

E. Emergency Protective Care Proceedings

RULE 39. EMERGENCY PROTECTIVE CARE PROCEEDINGS TIMELINE

If a child has been removed from the home of the parent or legal custodian pursuant to Rule 40, the court shall hold an emergency protective care hearing within 72 hours of the child's removal.

RULE 40. EX PARTE EMERGENCY PROTECTIVE CARE ORDER AND NOTICE

Rule 40.01 Ex Parte Order for Emergency Protective Care

Subd. 1. Generally. The court may issue an ex parte order for emergency protective care:

(a) as provided by Minn. Stat. § 260C.151, subd. 6; or

(b) where a warrant for immediate custody of the child is authorized by Minn. Stat. § 260C.154.

Rule 40.02. Contents of Order

An ex parte order for emergency protective care shall be signed by a judicial officer, shall include the findings required by statute as listed in Rule 40.01, and shall:

(a) order the child to be taken to an appropriate relative, a designated caregiver pursuant to Minn. Stat. § 260C.181, or a shelter care facility designated by the court pending an emergency protective care hearing;

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

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

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

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

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

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

Rule 40.03. Execution of Order

An ex parte 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 40.04. Notice

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

(a) of the existence of the order for emergency protective care;
(b) of the reasons why the child is being taken into emergency protective care;
(c) of the time and place of the emergency protective care hearing;
(d) of the name, address, and telephone number of the responsible social services agency; and
(e) that the parent or legal custodian or child may request that the court place the child with a relative or a designated caregiver rather than in a shelter care facility.

The notice shall be given in compliance with Minn. Stat. § 260C.175, subd. 2.

Rule 40.05. Enforcement of Order

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

2019 Advisory Committee Comment

Rule 40 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 28. The amendments are intended to eliminate redundant language and statutory conflicts.

RULE 41. PROCEDURES DURING PERIOD OF EMERGENCY PROTECTIVE CARE

Rule 41.01. Release from Emergency Protective Care

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

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

(b) **Release Required.** A child taken into emergency protective care pursuant to a court order shall not be held in emergency protective care for more than 72 hours unless an emergency protective care hearing has commenced 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 within 72 hours except as provided by Minn. Stat. § 260C.176, subd. 2(b).

(b) **Discretionary Release.** When a peace officer has taken a child into emergency protective care without a court order, the child may be released at any time prior

to the emergency protective care hearing as permitted by Minn. Stat. § 260C.176, subd. 1.

Rule 41.02. 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 72 hours unless a hearing has commenced pursuant to Rule 42 and the court has ordered continuation of the condition.

Rule 41.03. 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 41.04. Reports

Subd. 1. Report by Peace Officer. Any report required by Minn. Stat. § 260C.176, subd. 4, shall be filed with the court on or before the first court day following placement of the child.

Subd. 2. Report by Supervisor of Shelter Care Facility. Any report required by Minn. Stat. § 260C.176, subd. 6, shall be filed with the court on or before the first court day following placement.

2019 Advisory Committee Comment

Rule 41 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 29. The amendments are intended to eliminate redundant language and statutory conflicts.

RULE 42. EMERGENCY PROTECTIVE CARE HEARING

Rule 42.01. Timing

Subd. 1. Generally. The court shall hold an emergency protective care hearing within 72 hours of the child being taken into emergency protective care unless the child is released pursuant to Rule 41. The purpose of the hearing shall be to determine whether the child shall be returned home or placed in protective care.

Subd. 2. Continuance. The court may, upon its own motion or upon the written or oral motion of a party made at the emergency protective care hearing, continue the emergency protective care hearing for a period not to exceed eight 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 40; and
(b) upon a finding by the court that a continuance is necessary for:
    (1) the protection of the child;
    (2) the accumulation or presentation of necessary evidence or witnesses;
    (3) to protect the rights of a party; or
    (4) other good cause shown.

Rule 42.02. Notice of Hearing

The court administrator, or designee, shall inform the following persons of the time and place of the emergency protective care hearing:
(a) the county attorney;
(b) the responsible social services agency;
(c) the child;
(d) the child's counsel;
(e) the child's guardian ad litem;
(f) the child's parent or legal custodian;
(g) the child's spouse, if any;
(h) the child's Indian custodian;
(i) the child's Indian tribe;
(j) the tribal social services agency as required by Minn. Stat. § 260.761, subd. 2(c) and Rule 30.02; and
(k) those persons required by Minn. Stat. § 127A.47, subd. 6.

Rule 42.03. Inspection of Reports

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

Rule 42.04. Determination Regarding Notice

During the hearing, the court shall determine whether all persons identified in Rule 42.02 have been informed of the time and place of the emergency protective care hearing and what further efforts, if any, must be taken to notify all parties and participants as rapidly as possible of the pendency of the matter and the date and time of the next hearing. Before the emergency protective care hearing, the court administrator, or designee, shall file with the court a written statement describing the efforts to inform the persons identified in Rule 42.02 of the emergency protective care hearing, including the date, time, and method of each effort to inform each person and whether contact was actually made.

Rule 42.05. Advisory

At the beginning of the emergency protective care hearing the court shall on the record advise all parties and participants present of:
(a) the reasons why the child was taken into emergency protective care;
(b) the substance of the statutory grounds and supporting factual allegations set forth in the petition;

(c) the purpose and scope of the hearing;
(d) the possible consequences of the proceedings;
(e) the right of the parties and participants to legal representation, including the right of the child, the child's parent or legal custodian, and the child's Indian custodian to court-appointed counsel pursuant to Rule 36;
(f) the right of the parties to present evidence and to cross-examine witnesses regarding whether the child should return home with or without conditions or whether the child should be placed in protective care; and
(g) that failure to appear at future hearings could result in a finding that the petition has been proved, issuance of an order adjudicating the child in need of protection or services, and an order transferring permanent legal and physical custody of the child to another.

Rule 42.06. Evidence

The court may admit any evidence, including reliable hearsay and opinion evidence, that is relevant to the decision of whether to continue protective care of the child or return the child home. Privileged communications may be admitted if authorized by Minn. Stat. § 626.556, subd. 8.

Rule 42.07. Filing and Service of Petition

A child in need of protection or services petition or a permanency petition shall be filed with the court and may be served at or before the emergency protective care hearing.

Rule 42.08. Protection Care Determinations

Subd. 1. Initial Determinations.

At the emergency protective care hearing, the court shall make the following determinations:

(a) **Prima Facie Showing.** The court shall dismiss the petition if it finds that the petition fails to establish a prima facie showing that a juvenile protection matter exists and that the child is the subject of that matter.

(b) **Endangerment.**

(1) **Findings.** If the court finds that the petition establishes a prima facie showing that a juvenile protection matter exists and that the child is the subject of that matter, the court shall then determine whether the petition also makes a prima facie showing that:
(i) the child or others would be immediately endangered by the child's actions if the child were released to the care of the parent or legal custodian; or
(ii) the child's health, safety, or welfare would be immediately endangered if the child were released to the care of the parent or legal custodian.

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

(3) **Continued Custody by Parent Contrary to Welfare of Child.** The court may not order or continue the foster care placement of the child except as permitted by Minn. Stat. § 260C.178, subd. 1(f).

(c) **Reasonable or Active Efforts.** Based upon the information provided to the court, the court shall make a determination whether reasonable efforts, or active efforts in the case of an Indian child pursuant to Rule 28.07, subd. 1, were made to prevent the child's out-of-home placement. The court shall also determine whether there are available services that would prevent the need for further placement. In the alternative, the court shall determine that reasonable efforts are not required if the court makes a prima facie determination that one of the circumstances under subdivision 1(d) exists.

(d) **Placement of Child.** In making a determination of the initial placement of the child, except in cases described in Rule 42.08, subd. 1(e), or when the parental rights of the parent to a sibling of the child have been terminated involuntarily, or the child is presumed to be an abandoned infant under Minn. Stat. § 260C.301, subd. 2, at the emergency protective care hearing the court shall require the petitioner to present information regarding the following issues:

(1) whether there are services the court could order that would allow the child to safely return home;
(2) whether responsible relatives of the child, or other responsible adults who are licensed to provide foster care for a child, are available to provide services or to serve as placement options;
(3) whether the placement proposed by the agency is the least restrictive and most home-like setting that meets the needs of the child;
(4) whether restraining orders, or orders expelling an allegedly abusive parent or legal custodian from the home, are appropriate;
(5) whether orders are needed for examinations, evaluations, or immediate services;
(6) the terms and conditions for parental visitation; and
(7) what consideration has been given for financial support of the child.

(e) **Cases Permitting Bypass of Child in Need of Protection or Services Proceedings.**

(1) **Permanency Determination.** Reasonable efforts to prevent placement and for rehabilitation and reunification are always required except upon notice by the county attorney and a determination by the court at the

emergency protective care hearing, or at any time prior to adjudication, that a petition has been filed stating a prima facie case that at least one of the circumstances under Minn. Stat. § 260.012(a) exists.

(2) **Permanency Hearing Required.** If the court makes a determination under subdivision 3(a), the court shall bypass the child in need of protection or services proceeding and shall proceed directly to permanency pursuant to Rules 52-59.

Subd. 2. Indian Child Determination. The court shall determine whether the child is an Indian child through review of the petition and other documents and an on-the-record inquiry as required by Rule 29.01. If the court is unable to determine whether the child is an Indian child, the court shall direct the petitioner to make further inquiry and provide to the court and parties additional information regarding whether the child is an Indian child. If the court determines the child is an Indian child, the court shall apply Rules 28-31 and the requirements of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act.

Subd. 3. Emergency Removal and Placement Authority for Indian Child Ward, Resident, or Domiciliary. In proceedings where an Indian child resides or is domiciled on an Indian reservation, or is a ward of tribal court, the court shall proceed pursuant to Rule 28.07, subd. 2.

Rule 42.09. Protective Care Findings and Order

Within three days of the conclusion of the emergency protective care hearing, the court shall issue a written order which shall include findings pursuant to Rule 42.08 and which shall order:

(a) that the child:
  (1) continue in protective care;
  (2) return home with conditions to ensure the safety of the child or others;
  (3) return home with reasonable conditions of release; or
  (4) return home with no conditions;

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

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

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

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

(f) if the court knows or has reason to know that the child is an Indian child, notice of the proceedings shall be sent to the Indian child's parents or Indian custodian and Indian child's tribe consistent with 25 U.S.C. § 1912(a) and Rule 30.01.

Rule 42.10. Protective Care Review

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

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

Subd. 3. Formal Review.

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

(b) **On Request of a Party or the County Attorney.** A party or the county attorney may request a formal hearing concerning continued protective care by filing a motion with the court. The court shall schedule a hearing and provide notice pursuant to Rule 44 if the motion states:

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

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

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

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

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

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

(3) modify the conditions of release.

Rule 42.11. Notification When Child Returned Home

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

2019 Advisory Committee Comment

Rule 42 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 30.

F. Child in Need of Protection or Services Proceedings

RULE 43. CHILD IN NEED OF PROTECTION OR SERVICES PROCEEDINGS TIMELINE

Subd. 1. Admit/Deny Hearing. When a child is removed from home by court order, an admit/deny hearing shall be held within 10 days of the emergency protective care hearing. When a child is not placed outside the child's home by court order, an admit/deny hearing shall be held no sooner than three days and no later than 20 days after the filing of the petition. In matters governed by the Indian Child Welfare Act, an admit/deny hearing shall not be held until the provisions of Rule 30.01, subd. 3, are met.

Subd. 2. Scheduling Order. The court shall issue a scheduling order at the admit/deny hearing, or within 15 days of the admit/deny hearing. The scheduling order shall comply with the requirements of Rule 6.

Subd. 3. Pretrial Hearing. The court shall convene a pretrial hearing at least 10 days prior to trial.

Subd. 4. Trial. If the statutory grounds set forth in the petition are denied, a trial regarding a child in need or protection or services matter shall commence within 60 days from the date of the emergency protective care hearing or the admit/deny hearing, whichever is earlier. Testimony shall be concluded within 30 days from the commencement of the trial, and whenever possible should be over consecutive days. Continuances and adjournments shall comply with Rule 5.01, subd. 2.

Subd. 5. Findings/Adjudication. Within 15 days of the conclusion of the testimony, during which time the court may require simultaneous written arguments to be filed and served, the court shall issue its findings and order regarding whether one or more statutory grounds set forth in the petition have been proved. The court may extend the period for issuing an order for an additional 15 days if it finds that an extension is required in the interests of justice and in the best interests of the child.

Subd. 6. Disposition. To the extent practicable, the court shall conduct a disposition hearing and enter a disposition order the same day it makes a finding that one or more statutory grounds set forth in the petition have been proved. In the event disposition is not ordered at the same time as adjudication, the disposition order shall be issued within 10 days of the date the court finds one or more statutory grounds set forth in the petition have been proved.

Subd. 7. Review of Legal Custody. When the disposition is transfer of legal custody, including trial home visits, to the responsible social services agency, the court shall conduct a review hearing at least every 90 days to review whether foster care is necessary and continues to

be appropriate or whether the child should be returned to the home of the parent or legal custodian from whom the child was removed. Any party of the county attorney may request a review hearing before 90 days.

Subd. 8. Review of Protective Supervision. When the disposition is protective supervision, the court shall review the disposition in court at least every six months from the date of the disposition.

Subd. 9. Timing of Required Permanency Proceedings for Child in Need of Protection or Services Matters.

(a) **Reasonable Efforts for Reunification Required.** When a child has been alleged or found to be in need of protection or services and has been ordered into foster care or the home of a noncustodial or nonresident parent, and reasonable efforts for reunification are required, the first order placing the child in foster care or the home of a noncustodial or nonresident parent shall set the deadlines for:

(i) the six-month permanency progress review hearing required by Minn. Stat. § 260C.204(a); and

(ii) the twelve-month hearing to commence permanency proceedings required by Minn. Stat. § 260C.503, subd. 1.

The deadline for the twelve-month hearing shall be calculated pursuant to Minn. Stat. § 260C.503, subd. 3. The court shall notify all parties and participants of these requirements.

(b) **Reasonable Efforts for Reunification Not Required.** When the court finds that the petition states a prima facie case that at least one of the circumstances under Minn. Stat. §§ 260.012(a), 260C.178(g), and 260C.503, subd. 2(a) exists and reasonable efforts for reunification are not required, and the county attorney has elected to file a petition under Minn. Stat. § 260C.503, subd. 2(d) instead of a petition for termination of parental rights, the court shall order an admit/deny hearing under Rule 55 to be held within 30 days of the prima facie finding, and a trial under Rule 58 to be held within 90 days of the prima facie finding.

2019 Advisory Committee Comment

Rule 43 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 4.03, subds. 1(b)-(i) and 2. The amendment is intended to make it easier for judges, attorneys, and other individuals involved with a child in need of protection or services matter to identify the applicable timelines. Timing provisions that apply to juvenile protection matters in general are located in Rules 4 and 5.

RULE 44. COMMENCEMENT OF PROCEEDINGS

Rule 44.01. Commencement

A child in need of protection or services matter is commenced by filing a petition with the court, or by the filing of a citation pursuant to Rule 45.01, subd. 2.

Rule 44.02. Summons

A summons shall be issued by the court ordering the initial appearance in court of the person(s) to whom it is directed.

Subd. 1. Upon Whom Served; Method; Cost.

(a) **Generally.** The court shall serve a summons and petition upon each party identified in Rule 32; the child's parents, except alleged fathers who shall be served a notice pursuant to Rule 44.03; and any other person whose presence the court deems necessary to a determination concerning the best interests of the child. The cost of service of a summons and petition filed by someone other than a non-profit or public agency shall be paid by the petitioner.

(b) **Methods of Service:**

(1) **Parents, Parties, and Attorneys.** Unless the court orders service by publication pursuant to Rule 16.02, subd. 3, the summons and petition shall be personally served upon the child's parents or legal guardian. Service of the summons and petition upon other parties and attorneys shall be made through the E-Filing System or by personal service, U.S. mail, e-mail, or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court. Alleged parents and participants shall be served a notice of hearing and petition pursuant to Rule 44.03.

(2) **Habitual Truant, Runaway, and Sexually Exploited Child Matters.** When the sole allegation is that the child is a habitual truant, a runaway, or a sexually exploited child, initial service may be made as follows:

(i) in lieu of a summons, the court may serve a notice of hearing and a copy of the petition by U.S. mail upon 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.

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

Subd. 2. Content. A summons shall contain or have attached:

(a) a copy of the petition, supporting documents, and ex parte order for emergency protective care, if any; however, these documents shall not be contained in or attached to the summons if the court has authorized service of the summons by publication pursuant to Rule 16.02, subd. 3;
(b) a statement of the time and place for the hearing;
(c) a statement describing the purpose of the hearing;
(d) a statement explaining the right to representation pursuant to Rule 36;
(e) a statement that failure to appear may result in:
    (1) the child being removed from home pursuant to a child in need of protection or services petition;
    (2) the parent's parental rights being permanently severed pursuant to a termination of parental rights petition;
    (3) permanent transfer of the child's legal and physical custody to a relative;
    (4) a finding that the statutory grounds set forth in the petition have been proved; and
    (5) an order granting the relief requested; and
(f) a statement pursuant to Rule 18.01 that:
    (1) if the person summoned fails to appear, the court may conduct the hearing in the person's absence; and
    (2) the hearing may result in an order granting the relief requested in the petition.

Subd. 3. Timing of Service of Summons and Petition. The summons and petition shall be served either at or before the emergency protective care hearing, or at least three 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 and petition have been served less than three days before the hearing. If service is made outside the state or by publication, the summons shall be served or published at least 10 days before the hearing. In cases where publication of a child in need of protection or services petition is ordered, published notice shall be made pursuant to Rule 16.02, subd. 3, one time with the last publication at least 10 days before the date of the hearing.

Subd. 4. Waiver. Service is waived by voluntary appearance in court or by a written waiver of service filed with the court.

Subd. 5. 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 proceed against the person for civil contempt of court pursuant to Rule 13 or the court may issue a warrant for the person's arrest, or both. When it appears to the court that service will be ineffectual, or that the welfare of the child requires that the child be immediately brought into the custody of the court, the court may issue a warrant for immediate custody of the child.

Rule 44.03. Notice of Admit/Deny Hearing

A notice shall be issued by the court notifying the person to whom it is addressed of the specific time and place of a hearing.

Subd. 1. Upon Whom Served.

If the initial hearing is an admit/deny hearing, the court administrator shall serve a summons and petition upon all parties identified in Rule 32, and a notice of hearing and petition upon all participants identified in Rule 33, the county attorney, any attorney representing a party in the matter, and the child through the child's attorney, if represented, or the child's physical custodian.

Subd. 2. Content. A notice shall contain or have attached:

(a) a copy of the petition, but only if it is the initial hearing or the person has intervened or been joined as a party and previously has not been served with a copy of the petition;
(b) a statement of the time and place of the hearing;
(c) a statement describing the purpose of the hearing;
(d) a statement explaining the right to representation pursuant to Rule 36;
(e) a statement explaining intervention as of right and permissive intervention pursuant to Rule 34;
(f) a statement pursuant to Rule 18.01 that failure to appear may result in:
    (1) the child being removed from home pursuant to a child in need of protection or services petition;
    (2) the parent's parental rights being permanently severed pursuant to a termination of parental rights petition;
    (3) permanent transfer of the child's legal and physical custody to a relative;
    (4) a finding that the statutory grounds set forth in the petition have been proved; and
    (5) an order granting the relief requested; and
(g) a statement that it is the responsibility of the individual to notify the court administrator of any change of address.

Subd. 3. Method of Service. If the initial hearing is an admit/deny hearing, the court administrator shall serve the notice of hearing and petition through the E-Filing System or by personal service, U.S. mail, e-mail, or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

Rule 44.04. Notice of Subsequent Hearings

(a) **Upon Whom.** For each hearing following the admit/deny hearing, the court shall order and the court administrator shall serve upon each party, participant, and attorney a written notice of the date, time, and location of the next hearing.
(b) **Form.** The notice may be on a form prepared by the State Court Administrator or included in the order resulting from the hearing.

(c) **Timing.** Unless otherwise ordered by the court, the notice shall be personally served by the close of the current hearing. If not served by the close of the current hearing, the notice shall be served as soon as possible after the hearing, but no later than five days before the date of the next hearing or 10 days before the date of the next hearing if mailed to an address outside of the state.

(d) **Method of Service.** If not served by the close of the current hearing, the notice may be served by U.S. mail, through the E-Filing System, by e-mail, or other electronic means agreed upon in writing by the person to be served, or as directed by the court.

Rule 44.05. 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 attendance of the parties at a stated time and place. Such an order shall be reduced to writing pursuant to Rule 9.

Rule 44.06. Petitioner's Notice Responsibility Under the Indian Child Welfare Act

The petitioner shall provide all notices as required by the Indian Child Welfare Act and as provided in Rule 30.01.

2019 Advisory Committee Comment

Rule 44 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 32.

Rule 44.04 encourages the best practice of personally serving the notice of hearing by the close of the current hearing. The committee recognizes that in some instances the date of the next hearing cannot reasonably be set by the close of the current hearing because of scheduling difficulties. In those instances, the notice may be served by authorized alternative means following the current hearing.

RULE 45. PETITION

Rule 45.01. Drafting and Filing

Subd. 1. Generally. A petition may be drafted and filed by the county attorney or any responsible person. A petition shall be served pursuant to Rule 44.02. If the petition contains any confidential information or confidential documents that are inaccessible to the public under Rule 8.04, the petitioner shall file the confidential information or confidential documents in the manner required by Rule 8.04, subd. 5.

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 as authorized by Minn. Stat. § 260C.143. 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. If the child is alleged to be a runaway, the place where the offense was committed may be stated as either the child's parent's residence or lawful placement or where the child was found by the officer. If 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.

Rule 45.02. Content

Subd. 1. Generally. Every petition filed with the court in a juvenile protection matter, or an affidavit accompanying the petition, shall be verified by a person having knowledge of the facts, and may be verified on information and belief. The petition or accompanying affidavit 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, current address unless stating the address would endanger the child or seriously risk disruption of the current placement, and, if the child is believed to be an Indian child, the name of the child's tribe;

(c) the names, races, dates of birth, residences, and mailing addresses of the child's parents when known;

(d) the name, residence, and mailing address of the child's legal custodian, the person having custody or control of the child, the nearest known relative if no parent or legal custodian can be found, and, if the child is believed to be an Indian child, the name and mailing address of the child's Indian custodian, if any, and the Indian custodian's tribal affiliation;

(e) the name, residence, and mailing address of the child's spouse, if any;

(f) the statutory grounds upon which the petition is based, together with a recitation of the relevant portions of the subdivision(s);

(g) a statement regarding the applicability of the Indian Child Welfare Act;

(h) the names and addresses of the parties identified in Rule 32, as well as a statement designating them as parties;

(i) the names and address of the participants identified in Rule 33, as well as a statement designating them as participants;

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

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

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

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

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

(k) when appropriate under the circumstances of the case, notice that:

(1) a proceeding to establish a parent and child relationship or to declare the nonexistence of a parent and child relationship may be brought at the same time as the juvenile protection matter; and
(2) parents may apply for parentage establishment and child support services through the county child support agency.

If any information required by this subdivision is unknown at the time of the filing of the petition, as soon as the information becomes known to the petitioner it shall be provided to the court and parties either orally on the record, by affidavit, or by amended petition. If presented orally on the record, the court shall note the information on the record or shall direct the petitioner to file an amended petition to reflect the updated information.

Subd. 2. Out of State Party. If a party resides out of state, or if there is a likelihood of interstate litigation, the petition or an attached affidavit shall include a statement regarding the whereabouts of the party and any other information required by the Uniform Child Custody Jurisdiction and Enforcement Act, Minn. Stat. §§ 518D.01−.317.

Subd. 3. Disclosure of Name and Address − Endangerment. If there is reason to believe that an individual may be endangered by disclosure of a name or address required to be provided pursuant to this rule, that information shall be filed pursuant to Rule 8.04, subd. 2(p).

Rule 45.03. Who May File; Court Review

Any reputable person may file a child in need of protection or services petition. If the petition is filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services, then the petition must meet the requirements in Minn. Stat. § 260C.141, subd. 1(b), and the court administrator and court must review the petition pursuant to Minn. Stat. § 260C.141, subd. 1(b) within three days of filing.

Rule 45.04. Amendment

Subd. 1. Prior to Trial. The petition may be amended at any time prior to the commencement of the trial, including, in a child in need of protection or services matter, adding a child as the subject matter of the petition. The petitioner shall provide written or on-the-record notice of the amendment to all parties and participants. When the petition is amended, the court shall grant all other parties sufficient time to respond to the amendment.

Subd. 2. After Trial Begins. The petition may be amended after the trial has commenced if the court finds that the amendment does not prejudice a party and all parties are given sufficient time to respond to the proposed amendment.

2019 Advisory Committee Comment

Rule 45 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 33.

Former Rule 33 had provisions allowing a petitioner to restrict public access to a name or address if disclosure would endanger a person. This issue is now addressed in Rule 8.04.

RULE 46. ADMIT/DENY HEARING

Rule 46.01. 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 47.

Rule 46.02. Timing

Subd. 1. Child in Placement. When the child is placed out of the child's home by court order, an admit/deny hearing shall be held within 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 pursuant to Rule 42. In matters governed by the Indian Child Welfare Act, an admit/deny hearing shall not be held until the provisions of Rule 30.01, subd. 3, are met.

Subd. 2. Child Not in Placement.

(a) **Generally.** When the child is not placed outside the child's home by court order, an admit/deny hearing shall be held no sooner than three days and no later than 20 days after the filing of the petition. In matters governed by the Indian Child Welfare Act, an admit/deny hearing shall not be held until the provisions of Rule 30.01, subd. 3, are met.

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

Rule 46.03. Hearing Procedure

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

(a) verify the child's name, date of birth, race, gender, current address unless stating the address would endanger the child or seriously risk disruption of the current placement, and, if the child is believed to be an Indian child, the name of the child's tribe;

(b) pursuant to Rule 29, inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe, parent, and Indian custodian have been notified;

(c) determine whether all parties are present and identify those present for the record;

(d) advise any child and the child's parent or legal custodian who appears in court and is not represented by counsel of the right to representation pursuant to Rule 36;

(e) determine whether notice requirements have been met and, if not, whether the affected person waives notice;

(f) if a child who is a party or the child's parent or legal custodian appears without counsel, explain basic trial rights listed in Rule 49.02, subd. 2(a);

(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;

(h) explain the purpose of the proceeding 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 Minn. Stat. §§ 260C.503−.521;

(i) if the admit/deny hearing is the first hearing in the juvenile protection matter, and if the court knows or has reason to know that the child is an Indian child, determine whether notice has been sent pursuant to Rule 30.01 and 25 U.S.C. § 1912(a);

(j) if the admit/deny hearing is not the first hearing and the determination that the child is an Indian child has not been made as required in Rule 42.08, subd. 2, attempt to determine whether the child is an Indian child through review of the petition, other documents, and an on-the record inquiry as required by Rule 29.02. If the court is unable to determine whether the child is an Indian child, the court shall direct the petitioner to make further inquiry and provide to the court and parties additional information regarding whether the child is an Indian child;

(k) if the court finds from review of the petition or other information that an Indian child is a ward of tribal court, pursuant to Rule 31.02, subd. 1, adjourn the hearing to consult with the tribal court regarding the safe and expeditious return of the child to the jurisdiction of the tribe and dismiss the juvenile protection matter;

(l) attempt to determine the applicability of the Indian Child Welfare Act, 25 U.S.C. §§ 1901−1963, based on the information received from the tribe or tribes required to receive notice pursuant to 25 U.S.C. § 1912(a). The court shall order the petitioner to make further inquiry of the tribe or tribes until the court can determine whether the Indian Child Welfare Act applies; and

(m) advise all persons present that if the petition is proven and the child is not returned home:

(1) a permanency progress review hearing shall be held within six months of the date of the child's placement in foster care or in the home of a noncustodial or nonresident parent; and

(2) a permanent placement determination hearing must be held within 12 months of the date of the child's placement in foster care or the home of a noncustodial or nonresident parent.

Subd. 2. Initial Determinations. In each child in need of protection or services matter, after completing the initial inquiries set forth in subdivision 1, the court shall determine whether the petition establishes a prima facie showing that a juvenile protection matter exists and that the child is the subject of the petition, unless the prima facie determination was made at the

emergency protective care hearing pursuant to Rule 42.08. 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 the matter. If the child is an Indian child, the court shall apply Rules 28-31 and the requirements of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act.

Subd. 3. Motions. The court shall hear any motion 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.

Subd. 4. Scheduling Order. The court shall issue a scheduling order pursuant to Rule 6.

2019 Advisory Committee Comment

Rule 46 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 34.

RULE 47. ADMISSION OR DENIAL

Rule 47.01. Generally

Subd. 1. Parent or Legal Custodian. 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.

Subd. 2. Child.

(a) **Generally.** Except as otherwise provided in this rule, the child shall not admit or deny the petition.

(b) **Child's Behavior.** In matters where the sole allegation is that the child's behavior is the basis for the petition, only 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. The county attorney 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 47.02. Denial

Subd. 1. Denial Without Appearance. A written denial or a denial on the record of the statutory grounds set forth in a petition may be entered by counsel without the personal appearance of the person represented by counsel.

Subd. 2. Scheduling Order. When a denial by any party is entered, the court shall schedule further proceedings pursuant to Rule 48 or Rule 49, and shall issue a scheduling order pursuant to Rule 6.

Rule 47.03. Admission

Subd. 1. Admission Under Oath. Any admission must be made under oath.

Subd. 2. Admission Without Appearance. Upon approval of the court, a written admission of the statutory grounds set forth in the petition, made under oath, may be entered by counsel without personal appearance of the person represented by counsel.

Subd. 3. Questioning of Person Making Admission.

(a) **Generally.** Before accepting an admission the court shall determine on the record or by a written document signed by the person admitting and the person's counsel, if represented, whether:
   (1) the person admitting acknowledges an understanding of:
      (i) the nature of the statutory grounds set forth in the petition;
      (ii) if unrepresented, the right to representation pursuant to Rule 36;
      (iii) the right to a trial;
      (iv) the right to testify; and
      (v) the right to subpoena witnesses; and
   (2) the person admitting acknowledges an understanding that the facts being admitted establish the statutory grounds set forth in the petition.

(b) **Child in Need of Protection or Services Matters, and Habitual Truant, Runaway, and Sexually Exploited Child 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 a sexually exploited child, the court shall also determine on the record or by a written document signed by the person admitting and the person's counsel, if represented, whether the person admitting acknowledged an understanding that:
   (1) 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 other permanent placement option including termination of parental rights to the child; and
   (2) if the child is in out-of-home placement, a permanency progress review hearing will be held within six months of the date the child is ordered placed in foster care or in the home of a noncustodial or nonresident parent, and a permanent placement determination hearing will be held within 12 months of the date the child is ordered placed in foster care or in the home of a noncustodial or nonresident parent.

Subd. 4. Basis for Admission. The court shall refuse to accept an admission unless there is a factual basis for the admission.

(a) **Full Admission.** A party may admit all of the statutory grounds set forth in the petition.

(b) **Partial Admission.** Pursuant to a Rule 19 settlement agreement, a party may admit some, but not all, of the statutory grounds set forth in the petition.

Subd. 5. Withdrawal of Admission. An admission may be withdrawn upon filing a motion with the court:

(a) before a finding on the petition, for any fair and just reason; or

(b) at any time, upon a showing that withdrawal is necessary to correct a manifest injustice.

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. Further Proceedings. If the court makes a finding that the admission is accepted and the statutory grounds admitted are proved, or that the admission is conditionally accepted pending the court's approval of a settlement agreement pursuant to Rule 19, the court shall enter an order with respect to adjudication pursuant to Rule 50 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 48 or Rule 49.

2019 Advisory Committee Comment

Rule 47 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 47 was formerly codified as Rule 35. The amendments to Rule 47 are not intended to substantively change the rule's meaning.

RULE 48. PRETRIAL HEARING

Rule 48.01. Timing

The court shall convene a pretrial hearing at least 10 days prior to trial.

Rule 48.02. Purpose

The purposes of a pretrial hearing shall be to:

(a) determine whether a settlement of any or all of the issues has occurred or is possible;

(b) determine whether all parties have been served and, if not, review the efforts that have taken place to date to serve all parties;

(c) advise any child or the child's parent or legal custodian who appears in court and is unrepresented of the right to representation pursuant to Rule 36. If counsel is appointed at the pretrial hearing, the hearing shall be reconvened at a later date;
(d) determine whether the child shall be present and testify at trial and, if so, under what circumstances;
(e) identify any unresolved discovery matters;
(f) resolve any pending pretrial motions;
(g) identify and narrow issues of law and fact for trial, including identification of:
    (1) the factual allegations admitted or denied;
    (2) the statutory grounds admitted or denied;
    (3) any stipulations to foundation and relevance of documents; and
    (4) any other stipulations, admissions, or denials;
(h) exchange witness lists and a brief summary of each witness' testimony;
(i) exchange exhibit lists;
(j) confirm the trial date and estimate the length of trial;
(k) determine the need for, and date for submission of, proposed findings; and
(l) determine any other relevant issues.

Rule 48.03. Pretrial Order

The pretrial order shall be filed within 10 days of the hearing, shall include the information specified in Rule 48.02, and shall specify all factual allegations and statutory grounds admitted and denied.

Rule 48.04. Continuing Obligation to Update Information

From the date of the pretrial hearing through the conclusion of trial, the parties shall have a continuing obligation to update information provided during the pretrial hearing.

2019 Advisory Committee Comment

Rule 48 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 48 was formerly codified as Rule 36.

Rule 48.02(d) addresses the need to determine whether the child will testify. The intent of the rule is to provide that an order protecting the child from testifying or placing conditions on the child's testimony can only be made after notice of motion and a hearing. Consistent with committee recommendations dating back to 1999, the 2019 Advisory Committee intends that any such motion be heard and resolved at the pretrial conference.

Rule 48.04 is amended to clarify that the continuing obligation to update information continues through the duration of the trial. Before 2019, the rule referred to a continuing obligation to update information provided during the pretrial hearing through the "date of trial." The amended language makes clear that this obligation extends until the trial is concluded.

RULE 49. TRIAL

Rule 49.01. Timing

Subd. 1. Trial. Pursuant to Rule 43, subd. 3, a trial regarding a child in need or protection or services matter shall commence within 60 days from the date of the emergency protective care hearing or the admit/deny hearing, whichever is earlier. Testimony shall be concluded within 30 days from the commencement of the trial, and whenever possible should be over consecutive days.

Subd. 2. Continuance. The court may, either on its own motion or upon motion of a party or the county attorney, continue or adjourn a trial to a later date upon written or oral findings made on the record that a continuance is necessary for the protection of the child, for accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown, so long as the permanency time requirements set forth in these rules are not delayed. Failure to conduct a pretrial hearing shall not constitute good cause. Continuances and adjournments shall comply with Rule 5.01, subd. 2.

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 30 days of the order.

Rule 49.02. Procedure

Subd. 1. Initial Procedure. At the beginning of the trial the court shall on the record:

(a) verify the name, age, race, and current address of the child who is the subject of the matter, unless stating the address would endanger the child or seriously risk disruption of the current placement;

(b) inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe has been notified;

(c) determine whether all parties are present and identify those present for the record;

(d) determine whether any child or the child's parent or legal custodian is present without counsel and, if so, explain the right to representation pursuant to Rule 36;

(e) determine whether notice requirements have been met and, if not, whether the affected person waives notice;

(f) if a child who is a party or the child's parent or legal custodian appears without counsel, explain basic trial rights listed in subd. 2(a);

(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 Minn. Stat. § 260C.503−.521.

Subd. 2. Conduct and Procedure.

(a) **Trial Rights.** The parties and the county attorney shall have the right to:

(1) present evidence;
(2) present witnesses;
(3) cross-examine witnesses;
(4) present arguments in support of or against the statutory grounds set forth in the petition; and
(5) ask the court to order that witnesses be sequestered.

(b) **Trial Procedure.** The trial shall proceed as follows:
(1) the petitioner may make an opening statement confined to the facts expected to be proved;
(2) the other parties, in order determined by the court, may make an opening statement or may make a statement immediately before offering evidence, and the statement shall also be confined to the facts expected to be proved;
(3) the petitioner shall offer evidence in support of the petition;
(4) the other parties, in order determined by the court, may offer evidence;
(5) the petitioner may offer evidence in rebuttal;
(6) the other parties, in order determined by the court, may offer evidence in rebuttal;
(7) when evidence is presented, other parties may, in order determined by the court, cross-examine witnesses;
(8) at the conclusion of the evidence the parties, other than the petitioner, in order determined by the court, may make a closing statement;
(9) the petitioner may make a closing statement; and
(10) if written argument is to be submitted, it shall be submitted within 15 days of the conclusion of testimony, and the trial is not considered completed until the time for written arguments to be submitted has expired.

Rule 49.03. Standard of Proof

Pursuant to Minn. Stat. § 260C.163, subd. 1(a), and the Indian Child Welfare Act, 25 U.S.C. § 1912(e), in a child in need of protection or services matter, the standard of proof is clear and convincing evidence.

Rule 49.04. Decision

Subd. 1. Timing. Within 15 days of the conclusion of the testimony, during which time the court may require simultaneous written arguments to be filed and served, the court shall issue its findings and order regarding whether one or more statutory grounds set forth in the petition have been proved. The court may extend the period for issuing an order for an additional 15 days if the court finds that an extension of time is required in the interests of justice and the best interests of the child.

Subd. 2. Decision. The court shall dismiss the petition if the statutory grounds have not been proved. If the court finds that one or more statutory grounds set forth in the petition have been proved, the court shall either enter or withhold adjudication pursuant to Rule 50 and schedule the matter for further proceedings pursuant to Rule 51. The findings and order shall be filed with the court administrator, who shall proceed pursuant to Rule 9.

2019 Advisory Committee Comment

Rule 49 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 49 was formerly codified as Rule 39.

Former Rule 39.01 consisted of a definition of the term "trial." The committee believed it was unnecessary to define the term "trial," and so the former Rule 39.01 was deleted. Rule 49.01, subd. 1(f) is amended to clarify that the "basic trial rights" the court must explain are the rights listed in subd. 2(a) of the rule. The remaining amendments are not intended to substantively change the rule's meaning.

RULE 50. ADJUDICATION

Rule 50.01. Adjudication

If a court makes a finding that the statutory grounds set forth in a petition alleged a child to be in need of protection or services are proved, the court shall:

(a) adjudicate the child as in need or protection or services and proceed to disposition pursuant to Rule 51; or

(b) withhold adjudication of the child pursuant to Rule 50.02.

Rule 50.02. Withholding Adjudication

Subd. 1. Generally. When it is in the best interests of the child to do so, the court may withhold an adjudication that the child is in need of protection or services. The court may withhold adjudication for a period not to exceed 90 days from the finding that the statutory grounds set forth in the petition have been proved. During the withholding of an adjudication, the court may enter a disposition order pursuant to Rule 51.

Subd. 2. Further Proceedings. At a hearing, which shall be held within 90 days following the court's withholding of adjudication, the court shall either:

(a) dismiss the matter without an adjudication if both the child and the child's legal custodian have complied with the terms of the continuance; or

(b) adjudicate the child in need of protection or services if either the child or the child's legal custodian has not complied with the terms of the continuance. If the court enters an adjudication, the court shall proceed to disposition pursuant to Rule 51.

2019 Advisory Committee Comment

Rule 50 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 50 was formerly codified as Rule 40.

RULE 51. DISPOSITION

Rule 51.01. Disposition

After an adjudication that a child is in need of protection or services pursuant to Rule 50.01, the court shall conduct a hearing to determine disposition and order disposition accordingly as provided in Minn. Stat. §§ 260C.193 and .201 and any other applicable statutes.

Rule 51.02. Timing

To the extent practicable, the court shall conduct a disposition hearing and enter a disposition order the same day it makes a finding that the statutory grounds set forth in the petition have been proved. In the event disposition is not ordered at the same time as the adjudication, the disposition order shall be issued within 10 days of the date the court finds that the statutory grounds set forth in the petition have been proved.

Rule 51.03. Hearings to Review Disposition

When the disposition is an award of legal custody to the responsible social services agency, the court shall review the disposition in court at least every 90 days. Any party or the county attorney may request a review hearing before 90 days. When the disposition is protective supervision, the court shall review the disposition in court at least every six months from the date of disposition.

2019 Advisory Committee Comment

Rule 51 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 51 was formerly codified as Rule 41. The committee recommended reducing the rule to the provisions that address the timing of disposition hearings. The committee believes the rest of former Rule 41 was unnecessary, because it restated provisions of the Juvenile Court Act.

G. Permanency or Termination of Parental Rights Proceedings

RULE 52. PERMANENCY OR TERMINATION OF PARENTAL RIGHTS PROCEEDINGS TIMELINE

Rule 52.01. Petitioner Timelines

Subd. 1. Permanency or Termination of Parental Rights − Generally. Pursuant to Minn. Stat. § 260C.505, a permanency or termination of parental rights petition must be filed at or prior to the time the child has been in foster care or in the care of a noncustodial or nonresident parent for 11 months. A party other than the responsible social services agency may file a petition to transfer permanent legal and physical custody to a relative, but the petition must be filed not later than the date required by Minn. Stat. § 260C.515, subd. 4(6).

Subd. 2. Permanency or Termination of Parental Rights − Expedited Manner. If the expedited petition provisions of Minn. Stat. § 260C.503, subd. 2 apply, the county attorney shall file the permanency or termination of parental rights petition in a manner that permits the

court to complete service at least 10 days before the admit/deny hearing scheduled pursuant to Rule 52.02, subd. 2.

Rule 52.02. Court Timelines

Subd. 1. Admit/Deny Hearing. An admit/deny hearing shall be held not less than 10 days after service of the summons and petition upon the parties. In a permanency or termination of parental rights matter ordered under Rule 43, subd. 9(b), the admit/deny hearing shall be held within 10 days of the filing of the petition. Additionally, the admit/deny hearing shall be held within the timelines required by Minn. Stat. § 260C.507. In matters governed by the Indian Child Welfare Act, an admit/deny hearing shall not be held until the provisions of Rule 30.01, subd. 3, are met.

Subd. 2. Scheduling Order. The court shall issue a scheduling order at the admit/deny hearing, or within 15 days of the admit/deny hearing. The scheduling order shall comply with the requirements of Rule 6.

Subd. 3. Pretrial Hearing. The court shall convene a pretrial hearing at least 10 days prior to trial.

Subd. 4. Trial. If the statutory grounds set forth in the petition are denied, a trial regarding a permanency or termination of parental rights matter shall commence within 60 days of the first admit/deny hearing. A trial required by Minn. Stat. § 260C.204(d)(2)−(3) following a permanency progress review hearing shall be commenced within 60 days of the filing of the petition required by that statute. Testimony shall be concluded within 30 days from the commencement of the trial, and whenever possible should be over consecutive days. Continuances and adjournments shall comply with Rule 5.01, subd. 2.

Subd. 5. Findings/Adjudication. Within 15 days of the conclusion of the testimony, during which time the court may require simultaneous written arguments to be filed and served, the court shall issue its findings and order regarding whether one or more of the statutory grounds set forth in the petition have or have not been proved. The court may extend the period for issuing an order for an additional 15 days if the court finds that an extension of time is required in the interests of justice and the best interests of the child.

Subd. 6. Disposition. To the extent practicable, the court shall conduct a disposition hearing and enter a disposition order the same day it makes a finding that one or more statutory grounds set forth in the petition have been proved. In the event disposition is not ordered at the same time as adjudication, the disposition order shall be issued within 10 days of the date the court finds one or more statutory grounds set forth in the petition have been proved.

2019 Advisory Committee Comment

Rule 52 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 4.03, subd. 3, Rule 33.05, subd. 2, Rule 41, and Rule 42.01, subd. 6. The amendment is intended to make it easier for judges, attorneys, and other individuals involved with a permanency or termination of

parental rights matter to identify the applicable timelines. Timing provisions that apply to juvenile protection matters in general are located in Rules 4 and 5.

RULE 53. COMMENCEMENT OF PROCEEDINGS − PERMANENCY OR TERMINATION OF PARENTAL RIGHTS

Rule 53.01. Commencement

A permanency or termination of parental rights matter is commenced by filing a petition with the court. If a child in need of protection or services file exists, the permanency or termination of parental rights petition shall be filed in a separate file.

Rule 53.02. Summons

A summons shall be issued by the court ordering the initial appearance in court of the person(s) to whom it is directed.

Subd. 1. Upon Whom Served; Method; Cost.

(a) **Generally.** The court shall serve a summons and petition upon each party identified in Rule 32; the child's parents, except alleged fathers who shall be served a notice pursuant to Rule 44.03; and any other person whose presence the court deems necessary to a determination concerning the best interests of the child. Additionally, the court shall serve the summons and petition upon the county attorney, any guardian ad litem for the child's parent or legal guardian, and any attorney representing a party in an ongoing child in need of protection or services matter involving the subject child. A summons shall not be served upon a putative father, as defined in Minn. Stat. § 259.21, subd. 12, who has failed to timely register with the Minnesota Fathers' Adoption Registry under Minn. Stat. § 259.52, unless that individual also meets the requirements of Minn. Stat. § 257.55 or is required to be given notice under Minn. Stat. § 259.49, subd. 1. The cost of service of a summons and petition filed by someone other than a non-profit or public agency shall be paid by the petitioner.

(b) **Methods of Service.** Unless the court orders service by publication pursuant to Rule 16.02, subd. 3, the summons and petition shall be personally served upon the child's parents or legal guardian. Service of the summons and petition upon other parties and attorneys shall be made through the E-Filing System or by personal service, U.S. mail, e-mail, or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court. Alleged parents and participants shall be served a notice of hearing and petition pursuant to Rule 44.03.

Subd. 2. Content. A summons shall contain or have attached:

(a) a copy of the petition, supporting documents, and ex parte order for emergency protective care, if any; however, these documents shall not be

contained in or attached to the summons if the court has authorized service of the summons by publication pursuant to Rule 44.02, subd. 3(a);

(b) a statement of the time and place for the hearing;

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

(d) a statement explaining the right to representation pursuant to Rule 36;

(e) for a permanency matter other than a termination of parental rights matter, a statement that failure to appear may result in:

(1) permanent out-of-home placement of the child pursuant to a permanency petition;

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

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

(4) an order granting the relief requested;

(f) for a termination of parental rights matter, a statement that failure to appear may result in:

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

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

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

(4) an order granting the relief requested; and

(g) a statement pursuant to Rule 18.01 that:

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

(2) the hearing may result in termination of the person's parental rights.

Subd. 3. Timing of Service of Summons and Petition. In any permanency or termination of parental rights matter, the summons and petition shall be served upon all parties in a manner that will allow for completion of service at least 10 days prior to the date set for the admit/deny hearing. In cases where publication of a summons is ordered, published notice shall be made pursuant to Rule 16.02, subd. 3 at least once per week for three weeks with the last publication at least 10 days before the date of the hearing. Notice sent by certified mail to the last known address shall be mailed at least 20 days before the date of the hearing.

Subd. 4. Waiver. Service is waived by voluntary appearance in court or by a written waiver of service filed with the court. Pursuant to Minn. Stat. § 260C.307, subd. 3, in a termination of parental rights matter a waiver by a parent who is a minor or is incompetent is only effective if the parent's guardian ad litem concurs in writing.

Subd. 5. 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 proceed against the person for civil contempt of court pursuant to Rule 13 or the court may issue a warrant for the person's arrest, or both.

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

Rule 53.03. Notice of Admit/Deny Hearing

A notice shall be issued by the court notifying the person(s) to whom it is addressed of the specific time and place of a hearing.

Subd. 1. Upon Whom Served.

The court administrator shall serve a summons and petition upon all parties identified in Rule 32, and a notice of hearing and petition upon all participants identified in Rule 33, the county attorney, any attorney representing a party in the matter, and the child through the child's attorney, if represented, or the child's physical custodian. In a permanency matter other than a termination of parental rights matter, the court administrator shall serve a notice of hearing upon relatives if required by Minn. Stat. § 260C.204(b). In a termination of parental rights matter, the court administrator shall serve a notice of hearing on the child's grandparents if required by Minn. Stat. § 260C.307, subd. 3.

Subd. 2. Content. A notice shall contain or have attached:

(a) a copy of the petition, but only if it is the initial hearing or the person has intervened or been joined as a party and previously has not been served with a copy of the petition;
(b) a statement of the time and place of the hearing;
(c) a statement describing the purpose of the hearing;
(d) a statement explaining the right to representation pursuant to Rule 36;
(e) a statement explaining intervention as of right and permissive intervention pursuant to Rule 34;
(f) for a permanency matter other than a termination of parental rights matter, a statement pursuant to Rule 18.01 that failure to appear may result in:
    (1) permanent out-of-home placement of the child pursuant to a permanency petition;
    (2) permanent transfer of the child's legal and physical custody to a relative;
    (3) a finding that the statutory grounds set forth in the petition have been proved; and
    (4) an order granting the relief requested;
(g) for a termination of parental rights matter, a statement pursuant to Rule 18.01 that failure to appear may result in:
    (1) the parent's parental rights being permanently severed pursuant to a termination of parental rights petition;
    (2) permanent transfer of the child's legal and physical custody to a relative;
    (3) a finding that the statutory grounds set forth in the petition have been proved; and
    (4) an order granting the relief requested; and
(h) a statement that it is the responsibility of the individual to notify the court administrator of any change of address.

Subd. 3. Method of Service.

If the initial hearing is an admit/deny hearing, the court administrator shall serve the notice of hearing and petition through the E-Filing System or by personal service, U.S. mail, e-mail, or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

Rule 53.04. Notice of Subsequent Hearings

(a) **Upon Whom.** For each hearing following the admit/deny hearing, the court shall order and the court administrator shall serve upon each party, participant, and attorney a written notice of the date, time, and location of the next hearing.

(b) **Form.** The notice may be on a form prepared by the State Court Administrator or included in the order resulting from the hearing.

(c) **Timing.** Unless otherwise ordered by the court, the notice shall be personally served by the close of the current hearing. If not served by the close of the current hearing, the notice shall be served as soon as possible after the hearing, but no later than five days before the date of the next hearing or 10 days before the date of the next hearing if mailed to an address outside of the state.

(d) **Method of Service.** If not served by the close of the current hearing, the notice may be served by U.S. mail, through the E-Filing System, by e-mail, or other electronic means agreed upon in writing by the person to be served, or as directed by the court.

Rule 53.05. 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 attendance of the parties at a stated time and place. Such an order shall be reduced to writing pursuant to Rule 9.

Rule 53.06. Petitioner's Notice Responsibility Under the Indian Child Welfare Act

The petitioner shall provide all notices as required by the Indian Child Welfare Act and as provided in Rule 30.01.

2019 Advisory Committee Comment

Rule 53 is added in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule is the counterpart to Rule 44 for permanency and termination of parental rights matters.

Rule 53.04 encourages the best practice of personally serving the notice of hearing by the close of the current hearing. The committee recognizes that in some instances the date of the next hearing cannot reasonably be set by the close of the current

hearing because of scheduling difficulties. In those instances, the notice may be served by authorized alternative means following the current hearing.

RULE 54. PETITION − PERMANENCY OR TERMINATION OF PARENTAL RIGHTS

Rule 54.01. Drafting and Filing; Title

Subd. 1. Generally. A petition may be drafted and filed by any person listed in Rule 54.03. A petition shall be served pursuant to Rule 53.02. If the petition contains any confidential information or confidential documents that are inaccessible to the public under Rule 8.04, the petitioner shall file the confidential information or confidential documents in the manner required by Rule 8.04, subd. 5.

Subd. 2. Title. Every petition in a permanent placement matter, or an affidavit accompanying the petition, shall contain a title denoting the relief sought:

(a) A transfer of permanent legal and physical custody matter shall be entitled "Juvenile Protection Petition to Transfer Permanent Legal and Physical Custody" and shall name a fit and willing relative as a proposed permanent legal and physical custodian.

(b) A request for permanent custody to the agency shall be entitled "Juvenile Protection Petition for Permanent Custody to the Agency."

(c) A request for temporary legal custody to the agency for a child adjudicated to be in need of protection or services solely on the basis of the child's behavior shall be entitled "Juvenile Protection Petition for Temporary Legal Custody to the Agency."

(d) A termination of parental rights petition shall be entitled "Petition to Terminate Parental Rights."

Rule 54.02. Content

Subd. 1. Generally. Every petition filed with the court in a permanency or termination of parental rights matter, or an affidavit accompanying the petition, shall be verified by a person having knowledge of the facts, and may be verified on information and belief. The petition or accompanying affidavit 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, current address unless stating the address would endanger the child or seriously risk disruption of the current placement, and, if the child is believed to be an Indian child, the name of the child's tribe;

(c) the names, races, dates of birth, residences, and mailing addresses of the child's parents when known;

(d) the name, residence, and mailing address of the child's legal custodian, the person having custody or control of the child, the nearest known relative if no parent or legal custodian can be found, and, if the child is believed to be an Indian child, the

name and mailing address of the child's Indian custodian, if any, and the Indian custodian's tribal affiliation;

(e) the name, residence, and mailing address of the child's spouse, if any;

(f) the statutory grounds upon which the petition is based, together with a recitation of the relevant portions of the subdivision(s);

(g) a statement regarding the applicability of the Indian Child Welfare Act;

(h) the names and addresses of the parties identified in Rule 32, as well as a statement designating them as parties;

(i) the names and address of the participants identified in Rule 33, as well as a statement designating them as participants; and

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

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

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

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

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

If any information required by this subdivision is unknown at the time of the filing of the petition, as soon as the information becomes known to the petitioner it shall be provided to the court and parties either orally on the record, by affidavit, or by amended petition. If presented orally on the record, the court shall note the information on the record or shall direct the petitioner to file an amended petition to reflect the updated information.

Subd. 2. Out of State Party. If a party resides out of state, or if there is a likelihood of interstate litigation, the petition or an attached affidavit shall include a statement regarding the whereabouts of the party and any other information required by the Uniform Child Custody Jurisdiction and Enforcement Act, Minn. Stat. §§ 518D.01−.317.

Subd. 3. Disclosure of Name and Address − Endangerment. If there is reason to believe that an individual may be endangered by disclosure of a name or address required to be provided pursuant to this rule, that information shall be filed pursuant to Rule 8.04, subd. 2(p).

Rule 54.03. Who May File; Court Review

Subd. 1. Permanent Placement Petitions. The county attorney may file a permanent placement petition in juvenile court to determine the permanent placement of a child. The county attorney or an agent of the Commissioner of Human Services may seek any alternative permanent placement relief, and any other party may seek only termination of parental rights or transfer of permanent legal and physical custody to a relative. 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 the other parties. A petition seeking alternative permanent placement relief shall identify which proposed 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 is sought for each child and why that option is in the best interest of the child. At the admit/deny hearing on a petition that seeks alternative relief, each party shall identify on the record the permanent placement option that is in the best interests of the child.

Subd. 2. Termination of Parental Rights Petitions. Any person authorized by Minn. Stat. § 260C.307, subd. 1 may file a petition for termination of parental rights. If the petition is filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services, then the petition must meet the requirements in Minn. Stat. § 260C.141, subd. 1(b), and the court administrator must review the petition pursuant to Minn. Stat. § 260C.141, subd. 1(b).

Rule 54.04. Amendment

Subd. 1. Prior to Trial. The petition may be amended at any time prior to the commencement of the trial. The petitioner shall provide written or on-the-record notice of the amendment to all parties and participants. When the petition is amended, the court shall grant all other parties sufficient time to respond to the amendment.

Subd. 2. After Trial Begins. The petition may be amended after the trial has commenced if the court finds that the amendment does not prejudice a party and all parties are given sufficient time to respond to the proposed amendment.

2019 Advisory Committee Comment

Rule 54 is added in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule is the counterpart to Rule 45 for permanency and termination of parental rights matters.

The pre-2019 rules had provisions allowing a petitioner to restrict public access to a name or address if disclosure would endanger a person. This issue is now addressed in Rule 8.04.

RULE 55. ADMIT/DENY HEARING − PERMANENCY OR TERMINATION OF PARENTAL RIGHTS

Rule 55.01. 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 56.

Rule 55.02. Timing

An admit/deny hearing shall be held not less than 10 days after service of the summons and petition upon the parties. In a permanency or termination of parental rights matter ordered under Rule 43, subd. 9(b), the admit/deny hearing shall be held within 10 days of the filing of the petition. Additionally, the admit/deny hearing shall be held within the timelines required by

Minn. Stat. § 260C.507. In matters governed by the Indian Child Welfare Act, an admit/deny hearing shall not be held until the provisions of Rule 30.01, subd. 3, are met.

Rule 55.03. Hearing Procedure

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

(a) verify the child's name, date of birth, race, gender, current address unless stating the address would endanger the child or seriously risk disruption of the current placement, and, if the child is believed to be an Indian child, the name of the child's tribe;

(b) pursuant to Rule 29, inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe, parent, and Indian custodian have been notified;

(c) determine whether all parties are present and identify those present for the record;

(d) advise any child and the child's parent or legal custodian who appears in court and is not represented by counsel of the right to representation pursuant to Rule 36;

(e) determine whether notice requirements have been met and, if not, whether the affected person waives notice;

(f) if a child who is a party or the child's parent or legal custodian appears without counsel, explain basic trial rights as listed in Rule 58.02, subd. 2(a);

(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;

(h) explain the purpose of the proceeding 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 Minn. Stat. §§ 260C.503−.521;

(i) if the admit/deny hearing is the first hearing in the juvenile protection matter, and if the court knows or has reason to know that the child is an Indian child, determine whether notice has been sent pursuant to Rule 30.01 and 25 U.S.C. § 1912(a);

(j) if the admit/deny hearing is not the first hearing and the determination that the child is an Indian child has not been made as required in Rule 42.08, subd. 2, attempt to determine whether the child is an Indian child through review of the petition, other documents, and an on-the record inquiry as required by Rule 29.02. If the court is unable to determine whether the child is an Indian child, the court shall direct the petitioner to make further inquiry and provide to the court and parties additional information regarding whether the child is an Indian child;

(k) if the court finds from review of the petition or other information that an Indian child is a ward of tribal court, pursuant to Rule 31.02, subd. 1, adjourn the hearing to consult with the tribal court regarding the safe and expeditious return of the child to the jurisdiction of the tribe and dismiss the juvenile protection matter;

(l) attempt to determine the applicability of the Indian Child Welfare Act, 25 U.S.C. §§ 1901−1963, based on the information received from the tribe or tribes required to receive notice pursuant to 25 U.S.C. § 1912(a). The court shall order the

petitioner to make further inquiry of the tribe or tribes until the court can determine whether the Indian Child Welfare Act applies; and

(m) in a permanency matter other than a termination of parental rights matter, advise all persons present that at the conclusion of the permanency proceedings, the court will:

(1) order the child returned to the care of the parent or guardian from whom the child was removed; or

(2) if it is in the child's best interests, order a permanency disposition or a termination of parental rights; or

(n) in a termination of parental rights matter, advise all persons present that:

(1) if the court determines that the child is in need of protection or services, the court will either enter or withhold adjudication pursuant to Rule 50 and schedule further proceedings pursuant to Rule 51; and

(2) if the court finds that one or more statutory grounds set forth in the termination of parental rights petition are proved, the court may terminate parental rights.

Subd. 2. Initial Determinations.

(a) After completing the initial inquiries set out in Rule 55.03, subd. 1, the court shall review the facts set forth in the petition, consider any arguments made by the parties, and determine whether the petition states a prima facie case in support of one or more of the permanent placement options. If the child is an Indian child, the court shall apply Rules 28−31 and the requirements of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act.

(b) When the petition alleges that reasonable efforts, or active efforts in the case of an Indian child, have been made to reunify the child with the parent or legal custodian, the court shall make a separate finding regarding whether the factual allegations contained in the petition state a prima facie case that the agency has provided reasonable efforts, or active efforts in the case of an Indian child, to reunify the child and the parent or legal custodian. In the alternative, the court may make a finding that reasonable efforts to reunify the child and the parent or legal custodian were not required under Minn. Stat. § 260.012.

(c) If the court determines that the petition states a prima facie case in support of termination of parental rights, the court shall proceed pursuant to Rule 56. If the court determines that the petition fails to state a prima facie case in support of termination of parental rights, the court shall:

(i) return the child to the care of the parent or legal custodian;

(ii) give the petitioner 10 days to file an amended petition or supplementary information if the petitioner represents there are additional facts which, if presented to the court, would establish a prima facie case in support of termination of parental rights;

(iii) give the petitioner 10 days to file a child in need of protection or services petition; or

(iv) dismiss the petition.

2019 Advisory Committee Comment

Rule 55 is added in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule is the counterpart to Rule 46 for permanency and termination of parental rights matters.

RULE 56. ADMISSION OR DENIAL − PERMANENCY OR TERMINATION OF PARENTAL RIGHTS

Rule 56.01. Generally

Subd. 1. Permanent Placement Matters. In a permanent placement matter other than a termination of parental rights matter, only the legal custodian of the child who is not a petitioner is required to admit or deny the petition. Any party has the right to object to an admission or to contest the basis of a petition.

Subd. 2. Transfer of Permanent Legal and Physical Custody to a Relative. When there is a petition for transfer of permanent legal and physical custody to 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:

(a) the legal consequences of a transfer of permanent legal and physical custody;
(b) the nature and amount of financial support and services that will be available to help care for the child;
(c) how the custody order can be modified; and
(d) any other permanent placement options available for the subject child.

Subd. 3. Termination of Parental Rights Matters. In a termination of parental rights matter, only parents of the child are required to admit or deny the petition. Any party has the right to object to an admission or to contest the basis of a petition. The county attorney 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 56.02. Denial

Subd. 1. Denial Without Appearance. A written denial or a denial on the record of the statutory grounds set forth in a petition may be entered by counsel without the personal appearance of the person represented by counsel.

Subd. 2. Scheduling Order. When a denial by any party is entered, the court shall schedule further proceedings pursuant to Rule 57 or Rule 58, and shall issue a scheduling order. The scheduling order shall establish deadlines 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.

The scheduling order shall comply with the requirements of Rule 6.

Rule 56.03. Admission

Subd. 1. Admission Under Oath. Any admission must be made under oath.

Subd. 2. Admission Without Appearance. Upon approval of the court, a written admission of the statutory grounds set forth in the petition, made under oath, may be entered by counsel without personal appearance of the person represented by counsel. In a termination of parental rights matter, a written admission by a parent who is a minor or incompetent shall be effective only if the parent's guardian ad litem concurs in writing.

Subd. 3. Questioning of Person Making Admission.

Before accepting an admission the court shall determine on the record or by a written document signed by the person admitting and the person's counsel, if represented, whether:

(a) the person admitting acknowledges an understanding of:
    (1) the nature of the statutory grounds set forth in the petition;
    (2) if unrepresented, the right to representation pursuant to Rule 36;
    (3) the right to a trial;
    (4) the right to testify; and
    (5) the right to subpoena witnesses; and
(b) the person admitting acknowledges an understanding that the facts being admitted establish the statutory grounds set forth in the petition.

Subd. 4. Basis for Admission. The court shall refuse to accept an admission unless there is a factual basis for the admission.

(a) **Full Admission.** A party may admit all of the statutory grounds set forth in the petition.

(b) **Partial Admission.** Pursuant to a Rule 19 settlement agreement, a party may admit some, but not all, of the statutory grounds set forth in the petition.

Subd. 5. Withdrawal of Admission. An admission may be withdrawn upon filing a motion with the court:

(a) before a finding on the petition, for any fair and just reason; or
(b) at any time, upon a showing that withdrawal is necessary to correct a manifest injustice.

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. Further Proceedings. If the court makes a finding that the admission is accepted and the statutory grounds admitted are proved, or that the admission is conditionally accepted pending the court's approval of a settlement agreement pursuant to Rule 19, the court shall enter an order with respect to adjudication pursuant to Rule 50 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 57 or Rule 58.

2019 Advisory Committee Comment

Rule 56 is added in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule is the counterpart to Rule 47 for permanency and termination of parental rights matters.

Rule 56.03, subd. 2, provides that the court may only accept a written admission in a termination of parental rights matter from a parent who is a minor or incompetent if the parent's guardian ad litem concurs in writing. This is to be consistent with Minn. Stat. § 260C.307, subds. 3 and 4, which generally require written agreement by a guardian ad litem when a parent who is a minor or incompetent consents to termination of parental rights.

RULE 57. PRETRIAL HEARING − PERMANENCY OR TERMINATION OF PARENTAL RIGHTS

Rule 57.01. Timing

The court shall convene a pretrial hearing at least 10 days prior to trial.

Rule 57.02. Purpose

The purposes of a pretrial hearing shall be to:
(a) determine whether a settlement of any or all of the issues has occurred or is possible;
(b) determine whether all parties have been served and, if not, review the efforts that have taken place to date to serve all parties;
(c) advise any child or the child's parent or legal custodian who appears in court and is unrepresented of the right to representation pursuant to Rule 36. If counsel is appointed at the pretrial hearing, the hearing shall be reconvened at a later date;
(d) determine whether the child shall be present and testify at trial and, if so, under what circumstances;
(e) identify any unresolved discovery matters;
(f) resolve any pending pretrial motions;
(g) identify and narrow issues of law and fact for trial, including identification of:

(1) the factual allegations admitted or denied;
(2) the statutory grounds admitted or denied;
(3) any stipulations to foundation and relevance of documents; and
(4) any other stipulations, admissions, or denials;

(h) exchange witness lists and a brief summary of each witness' testimony;
(i) exchange exhibit lists;
(j) confirm the trial date and estimate the length of trial;
(k) determine the need for, and date for submission of, proposed findings; and
(l) determine any other relevant issues.

Rule 57.03. Pretrial Order

The pretrial order shall be filed within 10 days of the hearing, shall include the information specified in Rule 57.02, and shall specify all factual allegations and statutory grounds admitted and denied.

Rule 57.04. Continuing Obligation to Update Information

From the date of the pretrial hearing through the conclusion of the trial, the parties shall have a continuing obligation to update information provided during the pretrial hearing.

2019 Advisory Committee Comment

Rule 57 is added in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule is the counterpart to Rule 48 for permanency and termination of parental rights matters.

Rule 57.02(d) addresses the need to determine whether the child will testify. The intent of the rule is to provide that an order protecting the child from testifying or placing conditions on the child's testimony can only be made after notice of motion and a hearing. Consistent with committee recommendations dating back to 1999, the 2019 Advisory Committee intends that any such motion be heard and resolved at the pretrial conference.

RULE 58. TRIAL − PERMANENCY OR TERMINATION OF PARENTAL RIGHTS

Rule 58.01. Timing

Subd. 1. Trial. Pursuant to Rule 52.02, subd. 4, a trial regarding a permanency or termination of parental rights matter shall commence within 60 days of the first admit/deny hearing. A trial required by Minn. Stat. § 260C.204(d)(2)−(3) following a permanency progress review hearing shall be commenced within 60 days of the filing of the petition required by that statute. Testimony shall be concluded within 30 days from the commencement of the trial, and whenever possible should be over consecutive days. Continuances and adjournments shall comply with Rule 5.01, subd. 2.

Subd. 2. Continuance. The court may, either on its own motion or upon motion of a party or the county attorney, continue or adjourn a trial to a later date upon written or oral findings made on the record that a continuance is necessary for the protection of the child, for accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown, so long as the permanency time requirements set forth in these rules are not delayed. Failure to conduct a pretrial hearing shall not constitute good cause. Continuances and adjournments shall comply with Rule 5.01, subd. 2.

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 30 days of the order.

Rule 58.02. Procedure

Subd. 1. Initial Procedure. At the beginning of the trial the court shall on the record:

(a) verify the name, age, race, and current address of the child who is the subject of the matter, unless stating the address would endanger the child or seriously risk disruption of the current placement;

(b) pursuant to Rule 29.02, inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe has been notified;

(c) determine whether all parties are present and identify those present for the record;

(d) determine whether any child or the child's parent or legal custodian is present without counsel and, if so, explain the right to representation pursuant to Rule 36;

(e) determine whether notice requirements have been met and, if not, whether the affected person waives notice;

(f) if a child who is a party or the child's parent or legal custodian appears without counsel, explain basic trial rights as listed in subd. 2(a);

(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 Minn. Stat. § 260C.503−.521.

Subd. 2. Conduct and Procedure.

(a) **Trial Rights.** The parties and the county attorney shall have the right to:

(1) present evidence;

(2) present witnesses;

(3) cross-examine witnesses;

(4) present arguments in support of or against the statutory grounds set forth in the petition; and

(5) ask the court to order that witnesses be sequestered.

(b) **Trial Procedure.** The trial shall proceed as follows:

(1) the petitioner may make an opening statement confined to the facts expected to be proved;

(2) the other parties, in order determined by the court, may make an opening statement or may make a statement immediately before offering evidence, and the statement shall also be confined to the facts expected to be proved;
(3) the petitioner shall offer evidence in support of the petition;
(4) the other parties, in order determined by the court, may offer evidence;
(5) the petitioner may offer evidence in rebuttal;
(6) the other parties, in order determined by the court, may offer evidence in rebuttal;
(7) when evidence is presented, other parties may, in order determined by the court, cross-examine witnesses;
(8) at the conclusion of the evidence the parties, other than the petitioner, in order determined by the court, may make a closing statement;
(9) the petitioner may make a closing statement; and
(10) if written argument is to be submitted, it shall be submitted within 15 days of the conclusion of testimony, and the trial is not considered completed until the time for written arguments to be submitted has expired.

Rule 58.03. Standard of Proof

Subd. 1. Permanency Matter. In a permanency matter other than a termination of parental rights matter, the standard of proof is clear and convincing evidence.

Subd. 2. Termination of Parental Rights Matter.

(a) **Non-Indian Child.** Pursuant to Minn. Stat. § 260C.317, subd. 1, in a termination of parental rights matter involving a non-Indian child, the standard of proof is clear and convincing evidence.

(b) **Indian Child.** Pursuant to the Indian Child Welfare Act, 25 U.S.C. §1912(f), and Rule 28.04, in a termination of parental rights matter involving an Indian child, the standard of proof is beyond a reasonable doubt.

Rule 58.04. Decision

(a) **Timing.** Within 15 days of the conclusion of the testimony, during which time the court may require simultaneous written arguments to be filed and served, the court shall issue its findings and order regarding whether one or more statutory grounds set forth in the petition have been proved. The court may extend the period for issuing an order for an additional 15 days if the court finds that an extension of time is required in the interests of justice and the best interests of the child.

(b) **Decision − Permanency Matter.** Pursuant to Minn. Stat. § 260C.509, after a permanency trial the court shall order the child returned to the care of the parent or guardian from whom the child was removed; or, if it is in the child's best interests, order a permanency disposition or a termination of parental rights. The court shall issue a decision consistent with Minn. Stat. §§ 260C.511−.513, and shall include in its order the findings required by Minn. Stat. § 260C.517. The

court shall order further hearings if required by Minn. Stat. § 260C.519, and shall conduct any further review as required by Minn. Stat. § 260C.521.

(c) **Decision − Termination of Parental Rights Matter.**

(1) **Generally.** If the court finds that the statutory grounds set forth in the petition are not proved, the court shall either dismiss the petition or determine that the child is in need of protection or services. If the court determines that the child is in need of protection or services, the court shall either enter or withhold adjudication pursuant to Rule 50 and schedule further proceedings pursuant to Rule 51. If the court finds that one or more statutory grounds set forth in the termination of parental rights petition are proved, the court may terminate parental rights.

(2) **Particularized Findings – Non-Indian Child.** In addition to making the findings required in paragraph (c)(1), the court shall also make findings as follows:

(i) In any termination of parental rights matter, the court shall make specific findings regarding the nature and extent of efforts made by the responsible social services agency to rehabilitate the parent and reunite the family, including, where applicable, a statement that reasonable efforts to prevent placement and for rehabilitation and reunification are not required as provided by Minn. Stat. § 260.012(a).

(ii) Before ordering termination of parental rights, the court shall make a specific finding that termination is in the best interests of the child and shall analyze:

1. the child's interests in preserving the parent-child relationship;
2. the parent's interests in preserving the parent-child relationship; and
3. any competing interests of the child.

(iii) As provided in Minn. Stat. § 260C.301, subd. 7, the interests of the child are paramount.

(3) **Particularized Findings – Indian Child.** In any termination of parental rights proceeding involving an Indian child, the court shall make specific findings as provided in Rule 28.07, subd. 4. The best interests of the child shall be determined consistent with the Indian Child Welfare Act, 25 U.S.C. §§ 1901−1963.

2019 Advisory Committee Comment

Rule 58 is added in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule is the counterpart to Rule 49 for permanency and termination of parental rights matters.

Rule 58.03 addresses the standards of proof for permanency and termination of parental rights matters. For an Indian child in a permanency proceeding, under Rule 28.04, subd. 3 and the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1912(e), the standard of proof is clear and convincing evidence. The same standard of proof applies to a non-Indian child in a permanency proceeding. In re D.L.D., 865 N.W.2d 315, 322 (Minn. Ct. App. 2015) (relying on an earlier version of the Rules of Juvenile Protection Procedure to determine the standard of proof.) For an Indian child in a termination of parental rights matter, under Rule 28.04, subd. 3 and ICWA, 25 U.S.C. § 1912(f), the standard of proof is beyond a reasonable doubt. For a non-Indian child in a termination of parental rights matter, the standard of proof is clear and convincing evidence under the Juvenile Court Act, Minn. Stat. § 260C.317, subd. 1.

RULE 59. REESTABLISHMENT OF LEGAL PARENT AND CHILD RELATIONSHIP

A petition for reestablishment of the legal parent and child relationship may be filed by the county attorney under the Family Reunification Act of 2013, Minn. Stat. § 260C.329. The petition shall be reviewed by the court, and the resulting order processed by court administration, as provided in Minn. Stat. § 260C.329.

2019 Advisory Committee Comment

Rule 59 is added in 2019 as part of a revision of the Rules of Juvenile Protection Procedure.

H. Voluntary Placement Proceedings

RULE 60. REVIEW OF CHILDREN IN VOLUNTARY FOSTER CARE FOR TREATMENT

Rule 60.01. Generally

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

Subd. 2. Jurisdiction. The court assumes jurisdiction to review a voluntary foster care placement of a child pursuant to Minn. Stat. § 260D.01 upon the filing of a report by the responsible social services agency or licensed child-placing agency pursuant to Minn. Stat. § 260D.06.

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

Rule 60.02. Report by Agency

The agency shall file a report with the contents and within the timeline required by Minn. Stat. § 260D.06.

Rule 60.03. Court Review and Determinations Based on Court Report

Upon the filing of a report under Rule 60.02, the court shall review the report and make determinations within ten days of filing, as required by Minn. Stat. § 260D.06. The court administrator shall serve copies of the order, and notices of required permanency review, as required by Minn. Stat. § 260D.06, subd. 2(h)−(i) and additionally upon an Indian child's tribe. Any hearing required by Minn. Stat. § 260D.06, subd. 2(j) shall be held within 10 days of the court's determinations.

Rule 60.04. Court Review of Agency Determination Under § 260D.07

If judicial approval is required of an agency's determination that there are compelling reasons to continue a child in a voluntary foster care arrangement, the agency shall file a "Petition for Permanency Review Regarding a Child in Voluntary Foster Care for Treatment" as provided in Minn. Stat. § 260D.07. The petition shall be drafted, filed, processed, and reviewed as provided in Minn. Stat. § 260D.07, except:

(a) the petition shall be under oath or under penalty of perjury pursuant to Minn. Stat. § 358.116; and

(b) the court administrator shall serve the notice of hearing and petition through the E-Filing System or by personal service, U.S. mail, e-mail, or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court upon the persons listed in Minn. Stat. § 260D.07(e).

The court shall give the notice of continued review requirements, and conduct annual review, as provided in Minn. Stat. § 260D.08.

Rule 60.05. Review of Voluntary Foster Care After Adjudication Under Chapter 260C

When an agency and a parent agree to enter into a voluntary foster care arrangement under Minn. Stat. § 260D.09, the agency shall file the motion and petition required under Minn. Stat. § 260D.09(b). The petition shall be drafted, filed, processed, and reviewed as provided in Minn. Stat. § 260D.09, except:

(a) the petition shall be under oath or under penalty of perjury pursuant to Minn. Stat. § 358.116; and

(b) the court administrator shall serve the notice of hearing and petition through the E-Filing System or by personal service, U.S. mail, e-mail, or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court upon the persons listed in Minn. Stat. § 260D.07(e).

2019 Advisory Committee Comment

Rule 60 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure, and was formerly codified as Rule 43. The amendments remove

language that duplicates statutory provisions. Instead, the amended rule cites the applicable statutes.

RULE 61. REVIEW OF VOLUNTARY PLACEMENT MATTERS

Rule 61.01. Generally

Subd. 1. Scope of Rule. This rule governs review of all voluntary foster care placements made pursuant to Minn. Stat. § 260C.227.

Subd. 2. Jurisdiction. The court assumes jurisdiction to review a voluntary foster care placement of a child pursuant to Minn. Stat. § 260C.227 upon the filing of a petition by the agency responsible for the child's placement in foster care.

Subd. 3. Court File Required. Upon the filing of a petition under this rule, the court administrator shall open a juvenile protection file. If a child in need of protection or services file regarding the child already exists, the petition shall be filed in that file.

Rule 61.02. Review of Petition

The agency shall file a petition if required by Minn. Stat. § 260C.227. If the agency files a petition, the court shall review it as provided in Minn. Stat. § 260C.227.

2019 Advisory Committee Comment

Rule 60 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure, and was formerly codified as Rule 44. The amendments remove language that duplicates statutory provisions. Instead, the amended rule cites the applicable statutes.

RULE 62. VOLUNTARY FOSTER CARE FOR CHILDREN OVER 18

Any motions required by Minn. Stat. § 260C.229(b) shall be filed in the juvenile protection matter where the court previously had jurisdiction over the child. As required by Minn. Stat. § 260C.229(c), the court shall conduct a hearing within 30 days of the filing of the motion, and shall conduct any review hearings required by the statute.

2019 Advisory Committee Comment

Rule 62 is added in 2019 as part of a revision of the Rules of Juvenile Protection Procedure.