

JUVENILE COURT

Minnesota Rules of Juvenile Delinquency Procedure

Rules effective May 1, 1983
With amendments received through August 1, 2007

TABLE OF HEADNOTES

Delinquency, Juvenile Petty Offenses and Juvenile Traffic Offenses

Rule 2. Attendance at Hearings and Privacy

- 2.02 Exclusion of Persons Who Have a Right to Attend Hearings

Rule 3. Right to Counsel

- 3.04 Waiver of Right to Counsel
1. Conditions of Waiver
 2. Competency Proceedings
 3. Court Approval/Disapproval

Rule 6. Charging Document

- 6.05 Probable Cause
1. Establishing Probable Cause
 2. When Required
 3. Motion to Dismiss for Lack of Probable Cause
 4. Dismissal

Rule 8. Pleas

- 8.01 Application
1. Juvenile Petty and Traffic Proceedings
 2. Extended Jurisdiction Juvenile Proceedings
 3. Competency Proceedings

Rule 12. Omnibus Hearing

- 12.01 Scheduling of Omnibus Hearing

Rule 15. Delinquency Disposition

- 15.07 Probation Violation
1. Commencement of Proceedings
 2. Detention Hearing
 3. Admit/Deny Hearing
 4. Revocation Hearing

Rule 18. Certification of Delinquency Matters

- 18.05 Hearing
1. In General
 2. Initial Appearance in Certification Proceeding
 3. Probable Cause Determination
 4. Conduct and Procedure for Certification Hearing
- 18.07 Order
1. Decision, Timing, and Content of Order Following Waiver of Certification Hearing and Stipulation to Certification Order
 2. Decision, Timing, and Content of Order Following Contested Hearing
 3. Delay
 4. Final Order
 5. Appeal
- 18.08 Termination of Jurisdiction Upon Certification
1. Child Not in Detention
 2. Child in Detention
 3. Stay

Rule 19. Extended Jurisdiction Juvenile Proceedings and Prosecution

- 19.01 Initiation of Extended Jurisdiction Juvenile Proceedings and Prosecution
 - 1. Authority
 - 2. Definitions
 - 3. Designation by Prosecuting Attorney
 - 4. Motion by Prosecuting Attorney
- 19.04 Hearings on Extended Jurisdiction Juvenile Proceedings
 - 1. In General
 - 2. Initial Appearance and Probable Cause Determination
 - 3. Conduct and Procedure for Extended Jurisdiction Juvenile Proceeding Contested Hearing
- 19.07 Order
 - 1. Decision, Timing, and Content of Order Following Waiver of Extended Jurisdiction Juvenile Hearing and Stipulation to Extended Jurisdiction Juvenile Order
 - 2. Decision, Timing, and Content of Order Following Contested Hearing
 - 3. Delay
 - 4. Venue Transfer
 - 5. Final Order
 - 6. Appeal
- 19.09 Extended Jurisdiction Juvenile Prosecution and Procedure for Seeking an Aggravated Adult Criminal Sentence
 - 1. General Procedure and Timing
 - 2. Notice and Procedure for Seeking an Aggravated Adult Criminal Sentence
- 19.10 Disposition
 - 1. Procedure
 - 2. Length of Stayed Sentence
 - 3. Limitation on Certain Extended Jurisdiction Juvenile Dispositions
 - 4. Venue
 - 5. Record of Proceedings
- 19.11 Revocation
 - 1. Commencement of Proceedings
 - 2. First Appearance
 - 3. Revocation Hearing

Rule 21. Appeals

- 21.03 Appeal by Child
 - 1. Right of Appeal
 - 2. Procedure for Appeals
 - 3. Stay Pending Appeal
 - 4. Release of Child
- 21.04 Appeal by Prosecuting Attorney
 - 1. Scope of Appeal
 - 2. Attorney Fees
 - 3. Procedure for Appeals
 - 4. Stay
 - 5. Conditions of Release
 - 6. Cross-Appeal by Child

Rule 30. Records

- 30.02 Availability of Juvenile Court Records
 - 1. By Statute or Rule
 - 2. No Order Required
 - 3. Court Order Required

TEXT OF RULES

Delinquency, Juvenile Petty Offenses and Juvenile Traffic Offenses

Effective August 1, 1996

[For text of Rule 1, see M.S. 2006, Volume 15]

Rule 2. Attendance at Hearings and Privacy

[For text of 2.01, see M.S. 2006, Volume 15]

2.02 Exclusion of Persons Who Have a Right to Attend Hearings

The court may temporarily exclude any person, except counsel and the guardian ad litem appointed in the delinquency proceeding, when it is in the best interests of the child to do so. The court shall note on the record the reasons a person is excluded. Counsel for the person excluded has the right to remain and participate if the person excluded had the right to participate in the proceeding. An unrepresented child cannot be excluded on the grounds that it is in the best interests of the child to do so.

(Amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007.)

[For text of 2.03 to 2.05, see M.S. 2006, Volume 15]

Rule 3. Right to Counsel

[For text of 3.01 to 3.03, see M.S. 2006, Volume 15]

3.04 Waiver of Right to Counsel

Subdivision 1. Conditions of Waiver. The following provision does not apply to Juvenile Petty Offenses, which are governed by Rule 17. Any waiver of counsel must be made knowingly, intelligently, and voluntarily. Any waiver shall be in writing or on the record. The child must be fully and effectively informed of the child's right to counsel and the disadvantages of self-representation by an in-person consultation with an attorney, and counsel shall appear with the child in court and inform the court that such consultation has occurred. In determining whether a child has knowingly, voluntarily, and intelligently waived the right to counsel, the court shall look to the totality of the circumstances including, but not limited to: the child's age, maturity, intelligence, education, experience, ability to comprehend, and the presence of the child's parents, legal guardian, legal custodian or guardian ad litem appointed in the delinquency proceeding. The court shall inquire to determine if the child has met privately with the attorney, and if the child understands the charges and proceedings, including the possible disposition, any collateral consequences, and any additional facts essential to a broad understanding of the case.

Subd. 2. Competency Proceedings. Any child subject to competency proceedings pursuant to Rule 20 shall not be permitted to waive counsel.

Subd. 3. Court Approval/Disapproval. If the court accepts the child's waiver, it shall state on the record the findings and conclusions that form the basis for its decision and shall appoint standby counsel as required by Rule 3.02.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007.)

[For text of 3.05 to Rule 5, see M.S. 2006, Volume 15]

Rule 6. Charging Document

[For text of 6.01 to 6.04, see M.S. 2006, Volume 15]

6.05 Probable Cause

Subdivision 1. Establishing Probable Cause. The facts establishing probable cause may be set forth in writing in the charging document or police reports may be attached to the charging document. If police reports are attached to the charging document to establish probable cause, the child shall have the right to demand a statement establishing probable cause with specificity. Once demanded, the prosecuting attorney shall have ten (10) days to file with the court and serve on opposing counsel, the specific statement of probable cause. Probable cause may also be presented by sworn affidavits attached to a charging document or by sworn testimony presented to the court. If testimony is presented, a verbatim record of the proceedings shall be made and a transcript of the proceedings prepared and filed with the court.

Subd. 2. When Required. There must be a finding of probable cause:

- (A) before the court may issue a warrant pursuant to Rule 4;
- (B) before a detention hearing is held for a child taken into custody without a warrant;
- (C) within ten (10) days of a court order directing the prosecuting attorney to establish probable cause on the charge(s) alleged in a charging document. The court for any reason may order the prosecutor to show probable cause and the court shall order the prosecutor to show probable cause on demand of the child; or
- (D) when competency of the child has been challenged.

Subd. 3. Motion to Dismiss for Lack of Probable Cause. The child may bring a motion to dismiss the charging document for lack of probable cause. The probable cause determination is governed by the procedure set out in Minnesota Rules of Criminal Procedure 11.03.

Subd. 4. Dismissal. The court shall dismiss a charging document when a showing of probable cause has not been made. A dismissal for failure to show probable cause shall not prohibit the filing of a new charging document and further proceedings on the new charging document.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007.)

[For text of 6.06 and Rule 7, see M.S. 2006, Volume 15]

Rule 8. Pleas

8.01 Application

Subdivision 1. Juvenile Petty and Traffic Proceedings. Pleas in juvenile petty or juvenile traffic proceedings are governed by Rule 17.06.

Subd. 2. Extended Jurisdiction Juvenile Proceedings. Pleas in extended jurisdiction juvenile proceedings are governed by Rule 19.10, subdivision 5 and Minnesota Rules of Criminal Procedure 15.

Subd. 3. Competency Proceedings. Any child subject to competency proceedings pursuant to Rule 20 shall not be permitted to enter a plea until the court determines that the child is competent.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007.)

[For text of 8.02 to Rule 11, see M.S. 2006, Volume 15]

Rule 12. Omnibus Hearing

12.01 Scheduling of Omnibus Hearing

The court shall hold an omnibus hearing pursuant to Minnesota Rules of Criminal Procedure 11 any time before trial to determine issues raised pursuant to Rules 6, 10, or 11 upon its own motion or upon motion of the child's counsel or the prosecuting attorney.

Where new information, evidence, or issues arise during trial, the court may consider these issues at trial. Any issue not determined prior to trial shall be determined as part of the trial.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007.)

[For text of 12.02 to Rule 14, see M.S. 2006, Volume 15]

Rule 15. Delinquency Disposition

[For text of 15.01 to 15.06, see M.S. 2006, Volume 15]

15.07 Probation Violation

Subdivision 1. Commencement of Proceedings. Proceedings for revocation of probation may be commenced based upon a written report showing probable cause to believe the juvenile has violated any conditions of probation. Based upon the report, the court may issue a warrant as provided by Rule 4.03, or the court may schedule a review hearing and provide notice of the hearing as provided in Rule 25. If the juvenile fails to appear in response to a summons, the court may issue a warrant.

(A) *Contents of Probation Violation Report.* The probation violation report and supporting affidavits, if any, shall include:

- (1) the name, date of birth and address of the child;
- (2) the name and address of the child's parent(s), legal guardian, or legal custodian;
- (3) the underlying offense or offenses and date(s) of offense for which violation of probation is alleged; and
- (4) a description of the surrounding facts and circumstances upon which the request for revocation is based.

(B) *Notice.* The court shall give notice of the admit/deny hearing on the probation violation to all persons entitled to notice pursuant to Rule 25.

Subd. 2. Detention Hearing. Detention pending a probation violation hearing is governed by Rule 5.

Subd. 3. Admit/Deny Hearing. The child shall either admit or deny the allegations of the probation violation report at the admit/deny hearing.

(A) *Timing.* The admit/deny hearing shall be held:

- (1) for a child in custody, at or before the detention hearing; or
- (2) for a child not in custody, within a reasonable time of the filing of the motion.

(B) *Advisory.* Prior to the child admitting or denying the violation, the court shall advise the child of the following:

(1) that the child is entitled to counsel appointed at public expense at all stages of the proceedings;

(2) that, unless waived, a revocation hearing will be commenced to determine whether there is clear and convincing evidence that the child violated a dispositional order of the court and whether the court should change the existing dispositional order because of the violation;

(3) that before the revocation hearing, all evidence to be used against the child shall be disclosed to the child and the child shall be provided access to all official records pertinent to the proceedings;

(4) that at the hearing, both the prosecuting attorney and the child shall have the right to offer evidence, present arguments, subpoena witnesses, and call and cross-examine witnesses. Additionally, the child shall have the right at the hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation; and

(5) that the child has the right of appeal from the determination of the court following the revocation hearing.

(C) *Denial.* If the child denies the allegations, the matter shall be set for a revocation hearing which shall be held in accordance with the provisions of Rule 15.07, subdivision 4.

Subd. 4. Revocation Hearing.

(A) *Generally.* At the hearing, both the prosecuting attorney and the child shall have the right to offer evidence, present arguments, subpoena witnesses, and call and cross-examine witnesses, provided, however, that the child may be denied confrontation by the court when good cause is shown that a substantial risk of serious harm to others would exist if it were allowed. Additionally, the child shall have the right at the hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation.

(B) *Timing.* The revocation hearing shall be held within seven (7) days after the child is taken into custody or, if the child is not in custody, within a reasonable time after the filing of the denial. If the child has allegedly committed a new offense, the court may postpone the revocation hearing pending disposition of the new offense whether or not the child is in custody.

(C) *Violation Not Proved.* If the court finds that a violation of the dispositional order has not been established by clear and convincing evidence, the revocation proceedings shall be dismissed, and the child shall continue under the dispositional order previously ordered by the court.

(D) *Violation Proved.* If the court finds by clear and convincing evidence, or the child admits violating the terms of the dispositional order, the court may proceed as follows:

(1) order a disposition pursuant to Minnesota Statutes, section 260B.198; or

(2) for a child who was previously granted a continuance without adjudication pursuant to Rule 15.05, subdivision 4, adjudicate the child and order a disposition pursuant to Minnesota Statutes, section 260B.198.

Rule 15.02 governs the timing of dispositional orders in probation violation matters. (Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007.)

[For text of 15.08, see M.S. 2006, Volume 15]

Comments—Rule 15

The disposition for a child who has been designated as extended jurisdiction juvenile is also governed by Minn. R. Juv. Del. P. 19.10.

Dispositional choices are enumerated in Minnesota Statutes, section 260B.198, subds. 1 and 2 (2002). Probation revocation proceedings for a child who has been designated an extended jurisdiction juvenile are governed by Minn. R. Juv. Del. P. 19.11.

Minn. R. Juv. Del. P. 15.02, subd. 3 is intended to address the deficiency noted by various appellate decisions that the juvenile rules do not specify a sanction for violation of the time limits in this rule. *See In re Welfare of C.T.T.*, 464 N.W.2d 751, 753 (Minn. Ct. App. 1991) *pet. for rev. denied* (Minn. Mar. 15, 1991); *In re Welfare of J.D.K.*, 449 N.W.2d 194, 196 (Minn. Ct. App. 1989).

The juvenile court and court personnel should make every effort to utilize culturally-specific evaluation and assessment programs whenever predisposition reports for juveniles are ordered under Minn. R. Juv. Del. P. 15.03. The juvenile court should also keep in mind possible cultural issues and biases when evaluating predisposition reports, particularly when a culture-specific evaluation program is not available. *See Minnesota Supreme Court Task Force on Racial Bias in the Judicial System, Final Report* p. 46–47, 104, 108 (1994).

Before placing a child in a secure treatment facility the court may conduct a subjective assessment to determine whether the child is a danger to self or others or would abscond from a nonsecure facility or if the child's health or welfare would be endangered if not placed in a secure facility; conduct a culturally appropriate psychological evaluation which includes a functional assessment of anger and abuse issues; and conduct an educational and physical assessment of the juvenile. *See Minnesota Statutes, section 260B.198, subd. 4* (2002).

When the child has counsel, counsel has the right and the duty to appear at and participate in the disposition hearing.

As a matter of due process, the child has the absolute right to call and cross-examine the authors of any reports, object to the competency of the evidence contained in the reports, and otherwise respond to any adverse facts contained therein. *See In re Welfare of N.W.*, 405 N.W.2d 512, 516–17 (Minn. Ct. App. 1987) (citing *Scheibe v. Scheibe*, 241 N.W.2d 100 (Minn. 1976); *VanZee v. VanZee*, 226 N.W.2d 865 (Minn. 1974); *Stanford v. Stanford*, 123 N.W.2d 187 (Minn. 1963)).

The child and other participants in the disposition hearing have the right to cross-examine the authors of any written report. However, Rules 15.03 and 15.04 do not mandate that the authors appear at the disposition hearing. Counsel may subpoena the authors of written reports for purposes of cross-examination.

Under Minn. R. Juv. Del. P. 15.05, subd. 1, the decision to either adjudicate the child or grant a continuance without adjudication and the choice of disposition shall be made at the same time and in a single dispositional order. *Accord* Minn. R. Juv. Del. P. 21.03, subd. 1. The purpose of this rule is to eliminate multiple appeals. Because both an adjudicatory order and a dispositional order are final, appealable orders, if the court adjudicates the child or grants a continuance without adjudication and then enters a dispositional order at a later date, the child is forced to appeal twice: once from the adjudicatory order and once from the dispositional order. By requiring the court to defer the adjudicatory decision until the time of disposition, the child can appeal both orders at the same time in one appeal.

Requiring that the adjudicatory decision be deferred until the time of disposition should also eliminate the problem that arose in *In re Welfare of M.D.S.*, 514 N.W.2d 308 (Minn. Ct. App. 1994). There, the juvenile court entered an order finding that the allegations of the petition has been proved. The order also stated that adjudication was withheld but only for the purpose of transferring the case to the child's home county for disposition and further proceedings. The child attempted to appeal the order finding that the allegations of the petition had been proved. The appellate court held that the order was not appealable because it neither adjudicated the child delinquent nor finally determined that adjudication was withheld. Because the juvenile court is prohibited from adjudicating the child or granting a continuance without adjudication until the time of disposition under Minn. R. Juv. Del. P. 15.05, subd. 1, it should be clear that there can be no appeal of the finding that the allegations of the charging document have been proved until after the court enters a dispositional order.

An order adjudicating a child delinquent prior to disposition is ineffective and not appealable. But the order becomes appealable as part of the disposition once a dispositional order is made. *See In re Welfare of G.M.*, 533 N.W.2d 883, C9–95–812 (Minn. Ct. App. July 3, 1995).

A copy of the order adjudicating a child delinquent for committing felony-level criminal sexual conduct should be forwarded to the Bureau of Criminal Apprehension by the court in accordance with Minnesota Statutes, section 260B.171, subd. 2(a) (2002).

Minnesota Statutes, section 260B.198, subd. 1 (2002) requires written findings on disposition in every case. Although this statute seemingly invades the province of the judiciary to govern its own procedures. Minn. R. Juv. Del. P. 15.05, subd. 2(A) reiterates the statutory principle.

Minn. R. Juv. Del. P. 15.05, subd. 2(B) recites some of the general principles relating to dispositions that have developed under Minnesota law.

a. The content of Minn. R. Juv. Del. P. 15.05, subd. 2(B) is largely derived from Minnesota Statutes, section 260B.001, subd. 2 (2002); Minnesota Statutes, section 260B.198, subd. 1 (2002); *In re Welfare of A.R.W. & Y.C.W.*, 268 N.W.2d 414, 417 (Minn. 1978) *cert. denied* 439 U.S. 989 (1978); *In re Welfare of D.S.F.*, 416 N.W.2d 772 (Minn. Ct. App. 1987) *pet. for rev. denied* (Minn. Ct. App. 1985); and *In re Welfare of L.K.W.*, 372 N.W.2d 392 (Minn. Ct. App. 1985). See also Institute of Judicial Administration-American Bar Association, *Juvenile Justice Standards: Standards Relating to Dispositions* (1980). This rule does not create any substantive standards or limit the development of the law but is intended to assist the court when choosing a disposition by focusing on those standards that are already part of established Minnesota law. The court is not required to make findings on each of these factors in every case, although such findings may be helpful in contentious cases.

b. The overriding purpose in every juvenile delinquency disposition, declared by statute, is to "promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior." Minnesota Statutes, section 260B.001, subd. 2 (2002). This statute and another declare the means to be employed by the juvenile court to serve its public safety purpose. First, the purpose of the court "should be pursued through means that are fair and just, that recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth." *Id.* Second, the court is to employ dispositions that are "deemed necessary to the rehabilitation of the child." Minnesota Statutes, section 260B.198, subd. 1 (2002). Each judicial district, after consultation with local county attorneys, public defenders, corrections personnel, victim advocates, and the public, is required to have written criteria for determining delinquency dispositions developed by September 1, 1995. See 1994 Minn. Laws ch. 576, section 59.

Where appropriate, the court should make every effort to use any available culturally-specific programs when making a disposition for a juvenile. The court should also be aware of racial disparities in dispositions among similarly situated juveniles, particularly for those offenses which have historically resulted in more severe sanctions for minorities. See Minnesota Supreme Court Task Force on Racial Bias in the Judicial System, Final Report p. 103-04, 108-09.

Minn. R. Juv. Del. P. 15.05, subd. 3 provides that a dispositional order that transfers legal custody of the child under Minnesota Statutes, section 260B.198, subd. 1(c) (2002) shall be for a specified length of time. See Minnesota Statutes, section 260B.198, subd. 9 (2002).

The duration of a disposition that transfers custody of the child to the Commissioner of Corrections pursuant to Minnesota Statutes, section 260B.198, subd. 1(d) (2002) is determined by the Commissioner. See *In re Welfare of M.D.A.*, 237 N.W.2d 827 (Minn. 1975).

"Withholding of adjudication" was redesignated as "continuance without adjudication" to conform with the statutory language of Minnesota Statutes, section 260.185, subd. 3 (1994). Continuance without adjudication is now authorized by Minnesota Statutes, section 260B.198, subd. 7 (2002). The court must find that the allegations of the charging document have been proved before it can continue a case without adjudication. *Id.* The court may not grant a continuance without adjudication in an extended juvenile jurisdiction proceeding. *Id.*

Continuance without adjudication (or withholding of adjudication) has a material effect on a child's juvenile record. Prior to 1983, the Minnesota Sentencing Guidelines as-

signed one criminal history point for every two felony-level "juvenile adjudications." *See Minnesota Sentencing Guidelines II.B.4* (1982). In *State v. Peterson*, 331 N.W.2d 483 (Minn. 1983), the defendant claimed that it was error to use juvenile offenses for which there had been findings but no adjudication when calculating his criminal history score under the sentencing guidelines. The supreme court did not reach the defendant's argument but suggested that the Sentencing Guidelines Commission amend the guidelines to avoid the issue raised by defendant. *Id.* at 486. The guidelines were subsequently amended in 1983 to assign one criminal history point for every two felony-level offenses "committed and prosecuted as a juvenile", provided the juvenile court made findings pursuant to an admission or trial. *Minnesota Sentencing Guidelines II.B.4* (2002). Because *Minnesota Statutes*, section 260B.198, subd. 7 requires a finding that the juvenile committed the offense alleged in the charging document before the court may continue the case without an adjudication, which finding satisfies the requirements of the sentencing guidelines for counting a juvenile offense in the criminal history score, a continuance without adjudication (or withholding of adjudication) will not exclude the juvenile offense from a subsequent criminal history score. *See John O. Sons-teng, et. al. 12 Minnesota Practice* at 215 (1997). Continuance without adjudication may prevent the operation of some statutes which will require that the child be adjudicated delinquent. *See, e.g., Minnesota Statutes*, section 609.117, subd. 1(3) (2002) (provision of biological specimens for DNA analysis).

A continuance without adjudication or continuance for dismissal under Minn. R. Juv. Del. P. 14 are not the only options available for dealing with an alleged juvenile offender without formal process. Every county attorney should have a pretrial diversion program established for certain juveniles subject to juvenile court jurisdiction, as an alternative to formal adjudication. *See Minnesota Statutes*, section 388.24 (2002). With statutory pretrial diversion readily available for less serious juvenile offenders, presumably the use of continuance without adjudication and continuance for dismissal under these rules will become less common.

Much of Minn. R. Juv. Del. P. 15.07 was taken from Minn. R. Crim. P. 27.04. There was question as to whether probation officers could detain juveniles pending a probation violation hearing for 72 hours pursuant to *Minnesota Statutes*, sections 244.195, subd. 2 (2004) and 401.025, subd. 1 (2004). Minn. R. Juv. Del. P. 1507, subd. 2, was clarified to indicate that the maximum period for the detention of juveniles pending a probation violation hearing is 36 hours pursuant to Minn. R. Juv. Del. P. 5 and *Minnesota Statutes*, section 260B.176, subd. 2 (2004).

The three-step *Austin* analysis (*see State v. Austin*, 295 N.W.2d 246 (Minn. 1980)) is not required when revoking a juvenile's probation under Minn. R. Juv. Del. P. 15.07, subd. 4(D) "because the juvenile rules afford non-EJJ juvenile probationers better protection against the reflexive execution of a stayed disposition requiring confinement in a secure facility than *Austin* would afford." *In re Welfare of R.V.*, 702 N.W.2d 294 (Minn. Ct. App. 2005).

Unless all the parties agree to a proposed modification, the court may not order the modification of the disposition after an informal review without commencing a modification proceeding pursuant to Minn. R. Juv. Del. P. 15.08 in order to give the parties an opportunity to contest the proposed modification before it is imposed.

Under Minn. R. Juv. Del. P. 15.08, subd. 2, the court is not required to hold a hearing to examine a modification agreement on the record in every case. But agreements to make upward modifications to a disposition will normally require a court appearance and approval on the record in order to ensure that the proposed modification complies with the law, and that the child appreciates the significance of the modification and voluntarily consents to the modification. The discretion to approve a modification without an appearance is intended to be reserved for relatively minor, usually downward, modifications.

Rule 15.08 does not apply to probation revocations, the procedure for which is governed by Rule 15.07.

Minnesota Statutes, section 260B.154 (2002) addresses the court's authority to issue a warrant for immediate custody for the child. *Minnesota Statutes*, section 260B.175, subd. 1(c) addresses the authority of a peace officer or probation officer to take a child into custody for allegedly violating the terms of probationary supervision.

Counsel for the child has the right and duty to appear at and participate in all probation revocation and modification proceedings and hearings. See Minn. R. Juv. Del. P. 3.02, subd. 4.

Reference in this rule to "counsel for the parent(s), legal guardian, or legal custodian" includes the parent, legal guardian, or legal custodian who is proceeding pro se. Minn. R. Juv. Del. P. 1.01.

(Comment amended July 21, 2003; amended July 11, 2005; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007.)

[For text of Rules 16 and 17, see M.S. 2006, Volume 15]

Rule 18. Certification of Delinquency Matters

[For text of 18.01 to 18.04, see M.S. 2006, Volume 15]

18.05 Hearing

Subdivision 1. In General.

(A) *Limited Public Access.* The court shall exclude the general public from certification hearings and shall admit only those persons who, in the discretion of the court, have a direct interest in the case or the work of the court, including victims. The court shall open the hearings to the public in certification proceedings where the child is alleged to have committed an offense or has been proven to have committed an offense that would be a felony if committed by an adult and the child was at least sixteen (16) years of age at the time of the offense, except that the court may exclude the public from portions of a certification hearing to consider psychological material or other evidence that would not be accessible to the public in an adult proceeding.

(B) *Timing.* The certification hearing shall be held within thirty (30) days of the filing of the certification motion. Only if good cause is shown by the prosecuting attorney or the child may the court extend the time for a hearing for another sixty (60) days. Unless the child waives the right to the scheduling of the hearing within specified time limits, if the hearing is not commenced within thirty (30) days, or within the extended period ordered pursuant to this subdivision, the child, except in extraordinary circumstances, shall be released from custody subject to such nonmonetary release conditions as may be required by the court under Rule 5.

(C) *Waiver.* The child may waive the right to a certification hearing provided that the child does so knowingly, voluntarily, and intelligently on the record after being fully and effectively informed of the right to a certification hearing by counsel. In determining whether the child has knowingly, voluntarily, and intelligently waived this right the court shall look at the totality of the circumstances. These circumstances include but are not limited to: the presence of the child's parent(s), legal guardian, legal custodian or guardian ad litem appointed in the delinquency proceeding; and the child's age, maturity, intelligence, education, experience, and ability to comprehend the proceedings and consequences.

(D) *Discovery.* The child and prosecuting attorney are entitled to discovery pursuant to Rule 10.

Subd. 2. Initial Appearance in Certification Proceeding. At the initial appearance following the motion for certification the court shall:

(A) verify the name, age and residence of the child who is the subject of the matter;

(B) determine whether all necessary persons are present and identify those present for the record;

(C) appoint counsel, if not previously appointed;

(D) determine whether notice requirements have been met and if not whether the affected persons waive notice;

(E) schedule further hearings including: a probable cause hearing, unless waived; the certification hearing under Rule 18.05, subdivision 4; and a pre-hearing conference if requested; and

(F) order studies pursuant to Rule 18.04, if appropriate.

Subd. 3. Probable Cause Determination.

(A) *Timing.* Unless waived by the child or based upon an indictment, a hearing and court determination on the issue of probable cause shall be completed within fourteen (14) days of filing the certification motion. The court may, on the record, extend this time for good cause.

(B) *Standard.* A showing of probable cause to believe the child committed the offense alleged by the delinquency petition shall be made pursuant to Minnesota Rules of Criminal Procedure 11.

(C) *Presumption.* Upon a finding of probable cause, the court shall determine whether the presumption for certification under Rule 18.06, subdivision 1 applies.

(D) *Waiver.* The child may waive a probable cause hearing and permit a finding of probable cause without a hearing, provided that the child does so knowingly, voluntarily, and intelligently on the record after being fully and effectively informed of the right to a probable cause hearing by counsel.

Subd. 4. Conduct and Procedure for Certification Hearing.

(A) *Hearing Rights.* The child's counsel and the prosecuting attorney shall have the right to:

- (1) present evidence;
- (2) present witnesses;
- (3) cross-examine witnesses; and
- (4) present arguments for or against certification.

(B) *Evidence.* All evidence considered by the court on the certification question shall be made a part of the court record. The court may receive any information, except privileged communication, that is relevant to the certification issue, including reliable hearsay and opinions.

(C) Order of Hearing; Presumptive Certification.

(1) The child's counsel may make an opening statement, confining the statement to the facts that the child expects to prove.

(2) The prosecuting attorney may make an opening statement, or may make it immediately before offering evidence. The statement shall be confined to the facts expected to be proved.

(3) The child's counsel shall offer evidence against certification.

(4) The prosecuting attorney may offer evidence in support of the motion for certification.

(5) The child's counsel may offer evidence in rebuttal of the evidence for certification, and the prosecuting attorney may then offer evidence in rebuttal of the child's rebuttal evidence. In the interests of justice, the court may permit either party to offer additional evidence.

(6) At the conclusion of the evidence, the prosecuting attorney may make a closing argument.

(7) The child's counsel may make a closing argument.

(D) Order of Hearing; Non-presumptive Certification.

(1) The prosecuting attorney may make an opening statement, confining the statement to the facts that the prosecutor expects to prove.

(2) The child's counsel may make an opening statement, or may make it immediately before offering evidence. The statement shall be confined to a statement of the defense and the facts expected to be proved.

(3) The prosecuting attorney shall offer evidence in support of certification, or alternatively, designation as an extended jurisdiction juvenile proceeding.

(4) The child's counsel may offer evidence in defense of the child.

(5) The prosecuting attorney may offer evidence in rebuttal of the defense evidence, and the child's counsel may then offer evidence in rebuttal of the prosecuting attorney's evidence.

ney's rebuttal evidence. In the interests of justice the court may permit either party to offer additional evidence.

(6) At the conclusion of the evidence, the prosecuting attorney may make a closing argument.

(7) The child's counsel may make a closing argument.

(E) *Burdens of Proof.* In a presumptive certification hearing under Rule 18.06, subdivision 1, the child shall have the burden to prove by clear and convincing evidence that retaining the proceeding in juvenile court serves public safety. In non-presumptive certification hearings under Rule 18.06, subdivision 2, the prosecuting attorney shall have the burden to prove by clear and convincing evidence that retaining the proceeding in juvenile court does not serve public safety.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007.)

[For text of 18.06, see M.S. 2006, Volume 15]

18.07 Order

Subdivision 1. Decision, Timing, and Content of Order Following Waiver of Certification Hearing and Stipulation to Certification Order. When a child waives the right to a certification hearing and stipulates to certification, the court shall, within five (5) days of that hearing, file an order with written findings of fact and conclusions of law that states:

(A) that adult court prosecution is to occur on the alleged offense(s) specified in the certification order;

(B) a finding of probable cause in accordance with Rule 18.05, subdivision 3, unless the accused was presented by means of an indictment;

(C) findings of fact as to:

(1) the child's date of birth; and

(2) the date of the alleged offense; and

(D) if the child is currently being detained, that:

(1) the child be detained in an adult detention facility; and

(2) the child be brought before the appropriate court (as determined pursuant to Rule 18.08) without unnecessary delay, and in any event, not more than thirty-six (36) hours after filing of the certification order, exclusive of the day of filing, Sundays, or legal holidays, or as soon thereafter as a judge is available.

Subd. 2. Decision, Timing, and Content of Order Following Contested Hearing. Within fifteen (15) days of the certification hearing the court shall file an order with written findings of fact and conclusions of law as set forth in this subdivision.

(A) *Certification of the Alleged Offense for Prosecution under the Criminal Laws.* If the court orders a certification for adult prosecution, the order shall state:

(1) that adult court prosecution is to occur on the alleged offense(s) specified in the certification order;

(2) a finding of probable cause in accordance with Rule 18.05, subdivision 3 unless the accusation was presented by means of an indictment;

(3) findings of fact as to:

(a) the child's date of birth;

(b) the date of the alleged offense;

(c) why the court upheld the presumption of certification under Rule 18.06, subdivision 1 or, if the presumption of certification does not apply but the court orders certification, why public safety, as defined in Rule 18.06, subdivision 3, is not served by retaining the proceeding in juvenile court; and

(4) if the child is currently being detained, that (a) the child be detained in an adult detention facility, and (b) the child be brought before the appropriate court (as determined

pursuant to Rule 18.08) without unnecessary delay, and in any event, not more than thirty-six (36) hours after filing of the certification order, exclusive of the day of filing, Sundays or legal holidays or as soon thereafter as a judge is available.

(B) *Retention of Jurisdiction by Juvenile Court as an Extended Jurisdiction Juvenile.*

(1) If the court does not order certification in a presumptive certification case, the court shall designate the proceeding an extended jurisdiction juvenile prosecution. The order shall state why certification is not ordered with specific reference as to why designation as an extended jurisdiction juvenile prosecution serves public safety under the factors listed in Rule 18.06, subdivision 3.

(2) If the court does not order certification in a non-presumptive certification case, the court may designate the proceeding an extended jurisdiction juvenile prosecution pursuant to Rule 18.06, subdivision 5(B). The order shall state why certification was not ordered and why the proceeding was designated as an extended jurisdiction juvenile prosecution.

If the court designates the case as an extended jurisdiction juvenile prosecution, the case shall proceed pursuant to Rule 19.09.

(C) *Retention of Jurisdiction by Juvenile Court.* If the court does not order certification or extended jurisdiction juvenile prosecution in a non-presumptive certification case, the order shall state why certification or extended jurisdiction juvenile prosecution was not ordered with specific reference to why retention of the matter in juvenile court serves public safety, considering the factors listed in Rule 18.06, subdivision 3. Further proceedings shall be held pursuant to Rule 7.

Subd. 3. Delay. For good cause, the court may extend the time period to file its order for an additional fifteen (15) days. If the order is not filed within fifteen (15) days, or within the extended period ordered by the court pursuant to this subdivision, the child, except in extraordinary circumstances, shall be released from custody subject to such nonmonetary release conditions as may be required by the court under Rule 5.

Subd. 4. Final Order. Any order issued pursuant to this rule is a final order.

Subd. 5. Appeal. An appeal of the final order pursuant to this rule shall follow the procedure set forth in Rule 21.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007.)

18.08 Termination of Jurisdiction Upon Certification

Subdivision 1. Child Not in Detention. Once the court enters an order certifying a proceeding, the jurisdiction of the juvenile court terminates immediately over a child who is not then detained in custody. All subsequent steps in the case are governed by the Minnesota Rules of Criminal Procedure.

Subd. 2. Child in Detention. If the child is detained at the time certification is ordered:

(A) If the alleged offense was committed in the same county where certification is ordered, juvenile court jurisdiction terminates immediately and the prosecuting attorney shall file an appropriate adult criminal complaint at or before the time of the next appearance of the child that is stated in the certification order pursuant to Rule 18.07, subdivision 2(A)(4).

(B) If the alleged offense was committed in a county other than where certification is ordered, juvenile court jurisdiction terminates in five (5) days or before if the prosecuting attorney files a complaint as provided under Minnesota Rules of Criminal Procedure 2. If juvenile court jurisdiction has terminated under this subsection before an appearance of a detained child following issuance of an order certifying the case, the appearance shall constitute a first appearance in criminal proceedings as provided in the Minnesota Rules of Criminal Procedure. If juvenile court jurisdiction has not terminated by the time a detained juvenile first appears following issuance of an order certifying, the juvenile court shall determine conditions of release in accordance with the provisions of Minnesota Rules of Criminal Pro-

cedure 5.05 and 6; for these purposes, the juvenile court petition shall serve in lieu of a criminal complaint as the charging instrument.

Subd. 3. Stay. Notwithstanding the preceding provisions of subdivisions 1 and 2, certification and the termination of juvenile court jurisdiction may be stayed as provided in Rule 21.03, subdivision 3. A motion for stay of the certification order pending appeal shall first be heard by the juvenile court.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007.)

[For text of 18.09, see M.S. 2006, Volume 15]

Rule 19. Extended Jurisdiction Juvenile Proceedings and Prosecution

19.01 Initiation of Extended Jurisdiction Juvenile Proceedings and Prosecution

Subdivision 1. Authority. Extended jurisdiction juvenile prosecutions are initiated pursuant to Minnesota Statutes, sections 260B.125 and 260B.130, Rule 18.06, subdivision 5(A) and (B), and Rule 19.

Subd. 2. Definitions.

(A) "Extended jurisdiction juvenile" is a child who has been given a stayed adult criminal sentence, a disposition under Minnesota Statutes, section 260B.198, and for whom jurisdiction of the juvenile court may continue until the child's twenty-first (21st) birthday.

(B) "Extended jurisdiction juvenile proceeding" includes the process to determine whether a child should be prosecuted as an extended jurisdiction juvenile. Extended jurisdiction juvenile proceedings may be initiated pursuant to Rule 19.01, subdivisions 3 and 4.

(C) "Extended jurisdiction juvenile prosecution" includes the trial, disposition, and subsequent proceedings after the determination that a child should be prosecuted as an extended jurisdiction juvenile. Extended jurisdiction juvenile prosecutions may be initiated pursuant to Rule 19.06.

Subd. 3. Designation by Prosecuting Attorney. The court shall commence an extended jurisdiction juvenile proceeding when a delinquency petition filed pursuant to Rule 6:

(A) alleges a felony offense committed after the child's sixteenth (16th) birthday and the offense would, if committed by an adult, result in a presumptive commitment to prison under the sentencing guidelines and applicable statutes, or a felony offense in which the child allegedly used a firearm; and

(B) the prosecuting attorney designates on the petition that the case should be an extended jurisdiction juvenile prosecution.

This designation may be made at the time the petition is filed, and may be withdrawn by the prosecuting attorney any time before jeopardy attaches.

Subd. 4. Motion by Prosecuting Attorney. The prosecuting attorney may make a written motion pursuant to this Rule to have the court commence an extended jurisdiction juvenile proceeding when a delinquency petition has been filed pursuant to Rule 6 alleging a felony offense committed after the child's fourteenth (14th) birthday. The motion may be made at the first appearance on the delinquency petition, or within ten (10) days after the first appearance pursuant to Rules 5 and 7 or before jeopardy attaches, whichever of the later two occurs first.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007.)

[For text of 19.02 and 19.03, see M.S. 2006, Volume 15]

19.04 Hearings on Extended Jurisdiction Juvenile Proceedings

Subdivision 1. In General.

(A) *Limited Public Access.* The court shall exclude the general public from extended jurisdiction juvenile proceedings and shall admit only those persons who, in the discretion of the court, have a direct interest in the case or the work of the court including victims. The court shall open the hearings to the public in extended jurisdiction juvenile proceedings where the child is alleged to have committed an offense or has been proven to have committed an offense that would be a felony if committed by an adult and the child was at least sixteen (16) years of age at the time of the offense, except that the court may exclude the public from portions of an extended jurisdiction juvenile proceedings hearing to consider psychological material or other evidence that would not be accessible to the public in an adult proceeding.

(B) *Timing.* The contested hearing to determine whether the matter will be an extended jurisdiction juvenile prosecution shall be held within thirty (30) days of the filing of the extended jurisdiction juvenile proceeding motion.

Only if good cause is shown by the prosecuting attorney or the child may the court extend the time for the contested hearing for up to an additional sixty (60) days.

(C) *Waiver.* The child may waive the right to an extended jurisdiction juvenile proceeding hearing provided that the child does so knowingly, voluntarily, and intelligently on the record after being fully and effectively informed of all rights by counsel. In determining whether the child has knowingly, voluntarily, and intelligently waived this right the court shall look at the totality of the circumstances. These circumstances include but are not limited to: the presence of the child's parent(s), legal guardian, legal custodian or guardian ad litem appointed in the delinquency proceeding, the child's age, maturity, intelligence, education, experience, and ability to comprehend the proceedings and consequences.

(D) *Discovery.* The child and prosecuting attorney are entitled to discovery pursuant to Rule 10.

Subd. 2. Initial Appearance and Probable Cause Determination.

(A) *Timing.* Unless waived by the child, or based upon an indictment, an initial appearance and court determination on the issue of probable cause shall be completed within fourteen (14) days of the filing of the petition designating an extended jurisdictional juvenile proceeding or the filing of the extended jurisdictional juvenile proceedings motion. The court may, on the record, extend this time for good cause.

(B) At the initial appearance hearing, the court shall:

(1) verify the name, age, race, and residence of the child who is the subject of the matter;

(2) determine whether all necessary persons are present, and identify those persons for the record;

(3) appoint counsel if not previously appointed;

(4) determine whether notice requirements have been met and if not whether the affected persons waive notice;

(5) schedule further hearings including: a probable cause hearing, unless waived; the contested hearing required by Rule 19.04, subdivision 3; and a pre-hearing conference if requested; and

(6) order studies pursuant to Rule 19.03, if appropriate.

(C) *Offense Probable Cause.* A showing of probable cause to believe that the child committed the offense alleged by the delinquency petition shall be made pursuant to Minnesota Rules of Criminal Procedure 11.

(D) *Designation Probable Cause.* If the prosecuting attorney has designated the proceeding an extended jurisdiction juvenile proceeding pursuant to Rule 19.01, subdivision 3 and the court finds that:

(1) probable cause exists for an offense that, if committed by an adult, would be a presumptive commitment to prison under the Sentencing Guidelines and applicable statutes or alleges a felony offense in which the child allegedly used a firearm; and

(2) the child was at least sixteen (16) years old at the time of the offense, the court shall order that the matter proceed as an extended jurisdiction juvenile prosecution pursuant to Rule 19.09.

(E) *Waiver.* The child may waive a probable cause hearing and permit a finding of probable cause without a hearing, provided that the child does so knowingly, voluntarily, and intelligently on the record after being fully and effectively informed of the right to a probable cause hearing by counsel.

Subd. 3. Conduct and Procedure for Extended Jurisdiction Juvenile Proceeding Contested Hearing.

(A) *Hearing Rights.* The child's counsel and the prosecuting attorney shall have the right to:

- (1) present evidence;
- (2) present witnesses;
- (3) cross-examine witnesses; and
- (4) present arguments for or against extended jurisdiction juvenile prosecution.

(B) *Evidence.* All evidence considered by the court on the extended juvenile jurisdiction question shall be made a part of the court record. The court may receive any information, except privileged communication, that is relevant to the issue of extended jurisdiction juvenile prosecution, including reliable hearsay and opinions.

(C) Order of Hearing.

(1) The prosecuting attorney may make an opening statement, confining the statement to the facts expected to be proved.

(2) The child's counsel may make an opening statement, or may make it immediately before offering evidence. The statement shall be confined to a statement of the defense and the facts expected to be proved.

(3) The prosecuting attorney shall offer evidence in support of extended jurisdiction juvenile prosecution.

(4) The child's counsel may offer evidence on behalf of the child.

(5) The prosecuting attorney may offer evidence in rebuttal of the defense evidence, and the child's counsel may then offer evidence in response to the prosecuting attorney's rebuttal evidence. In the interests of justice the court may permit either party to offer additional evidence.

(6) At the conclusion of the evidence, the prosecuting attorney may make a closing argument.

(7) The child's counsel may make a closing argument.

(D) *Burdens of Proof.* The prosecuting attorney shall prove by clear and convincing evidence that the case meets the criteria for extended jurisdiction juvenile prosecution, pursuant to Rule 19.05.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007.)

[For text of 19.05 and 19.06, see M.S. 2006, Volume 15]

19.07 Order

Subdivision 1. Decision, Timing, and Content of Order Following Waiver of Extended Jurisdiction Juvenile Hearing and Stipulation to Extended Jurisdiction Juvenile Order. When a child waives the right to a contested hearing and stipulates to entry of an order that the child is subject to an extended jurisdiction juvenile prosecution, the court shall, within five (5) days of that hearing, enter a written order stating:

(A) that extended jurisdiction juvenile prosecution shall occur for the offense(s) alleged in the delinquency petition filed pursuant to Rule 6.03;

(B) a finding of probable cause in accordance with Rule 19.04, subdivision 2(C), unless the accusation was presented by means of an indictment; and

(C) findings of fact as to:

- (1) the child's date of birth; and
- (2) the date of the alleged offense(s).

Subd. 2. Decision, Timing, and Content of Order Following Contested Hearing.

Within fifteen (15) days of the contested hearing, the court shall enter an order with written findings of fact and conclusions of law as provided in this subdivision.

(A) If the court orders that the proceeding be an extended jurisdiction juvenile prosecution, the order shall state:

- (1) that extended jurisdiction juvenile prosecution shall occur for the offense(s) alleged in the delinquency petition filed pursuant to Rule 6.03;
- (2) a finding of probable cause in accordance with Rule 19.04, subdivision 2(C), unless the accusation was presented by means of an indictment; and
- (3) findings of fact as to:
 - (a) the child's date of birth;
 - (b) the date of the alleged offense(s); and
 - (c) why the court found that designating the proceeding as an extended jurisdiction juvenile prosecution serves public safety pursuant to Rule 19.05.

(B) If the court does not order that the proceeding be an extended jurisdiction juvenile prosecution, the court order shall state:

- (1) that the case shall proceed as a delinquency proceeding in juvenile court;
- (2) a finding of probable cause in accordance with Rule 19.04, subdivision 2(C), unless the accusation was presented by means of an indictment; and
- (3) findings of fact as to:
 - (a) the child's date of birth;
 - (b) the date of the alleged offense(s); and
 - (c) why the court found that retaining the proceeding in juvenile court serves public safety pursuant to Rule 19.05.

If the court orders that the matter is not an extended jurisdiction juvenile prosecution, further proceedings shall be held pursuant to Rule 7.

Subd. 3. Delay. For good cause, the court may extend the time period to file its order for an additional fifteen (15) days. If the order is not filed within fifteen (15) days, or within the extended period ordered by the court pursuant to this subdivision, the child, except in extraordinary circumstances, shall be released from custody subject to such nonmonetary release conditions as may be required by the court under Rule 5.

Subd. 4. Venue Transfer. When the court deems it appropriate, taking into account the best interest of the child or of society, or the convenient administration of the proceedings, the court may transfer venue of the case to the juvenile court of the county of the child's residence. With the consent of the receiving court, the court may also transfer the case to the juvenile court of the county where the child is found or the county where the alleged offense occurred. The transfer shall be processed in the manner provided by Minnesota Statutes, section 260B.105. The receiving court thereafter has venue for purposes of all proceedings under Rules 19.10 (disposition and sentencing upon conviction in extended jurisdiction juvenile proceedings) and 19.11 (revocation of stay of adult criminal sentence).

Subd. 5. Final Order. Any order issued pursuant to this rule is a final order.

Subd. 6. Appeal. An appeal of the final order pursuant to this rule shall follow the procedure set forth in Rule 21.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight October 1, 2006.)

[For text of 19.08, see M.S. 2006, Volume 15]

19.09 Extended Jurisdiction Juvenile Prosecution and Procedure for Seeking an Aggravated Adult Criminal Sentence

Subdivision 1. General Procedure and Timing. Minnesota Statutes, chapters 260 and 260B and these Rules apply to extended jurisdiction juvenile prosecutions. However, every child who is the subject of an extended jurisdiction juvenile prosecution is entitled to trial by jury on the underlying offense pursuant to Minnesota Rules of Criminal Procedure 26. The court shall schedule a hearing for the child to enter a plea to the charges. If the child pleads not guilty, the court shall schedule an omnibus hearing prior to the trial and shall also schedule the trial. The trial shall be scheduled pursuant to Rule 13.02, except:

(A) The time shall run from the date of the filing of the extended jurisdiction juvenile order.

(B) In cases where the child is in detention, if the extended jurisdiction juvenile hearing is commenced within thirty (30) days of the prosecution motion for EJJ designation, the trial shall be scheduled within sixty (60) days of the court's order designating the child an extended jurisdiction juvenile, unless good cause is shown why the trial should not be held within that time. If the hearing on the motion to designate the child as an extended jurisdiction juvenile is commenced more than thirty (30) days from the filing of the motion, the trial shall be commenced within thirty (30) days of entry of the court's order designating the child an extended jurisdiction juvenile.

Subd. 2. Notice and Procedure for Seeking an Aggravated Adult Criminal Sentence.

(A) *Notice.* Within seven (7) days after filing of a designation of the proceeding as an extended jurisdiction juvenile prosecution by the court or prosecutor, or at such later time if permitted by the court upon good cause shown and upon such conditions as will not unfairly prejudice the child, the prosecutor shall serve and file on the child's attorney written notice of intent to seek an aggravated adult criminal sentence as defined in Minnesota Rules of Criminal Procedure 1.04(d). The notice shall include the grounds or statutes relied upon and a summary statement of the factual basis supporting the aggravated adult criminal sentence.

(B) *Procedure.* If the prosecutor has filed and served notice under this rule of intent to seek an aggravated adult criminal sentence, a hearing shall be held to determine whether the law and proffered evidence support an aggravated adult criminal sentence and, if so, whether the issues will be presented to the jury in a unitary or bifurcated trial. The hearing shall be held prior to trial.

In deciding whether to bifurcate the trial, the court shall consider whether the evidence in support of an aggravated adult criminal sentence is otherwise admissible in the guilt phase of the trial and whether unfair prejudice would result to the child in a unitary trial. A bifurcated trial shall be ordered where evidence in support of an aggravated adult criminal sentence includes evidence that is inadmissible during the guilt phase of the trial or would result in unfair prejudice to the child. If the court orders a unitary trial the court may still order separate final arguments on the issues of guilt and the aggravated adult criminal sentence.

Except as modified by these rules, procedures relating to an aggravated adult criminal sentence are governed by the Minnesota Rules of Criminal Procedure.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight October 1, 2006.)

19.10 Disposition

Subdivision 1. Procedure. Upon a guilty plea or conviction, the court shall:

(A) order one or more dispositions under Minnesota Statutes, section 260B.198; and

(B) impose an adult criminal sentence under Minnesota Law, except that the court shall stay execution of that sentence on the conditions that the child not violate the provisions of the disposition ordered in subdivision 1(A) above or commit a new offense.

Subd. 2. Length of Stayed Sentence. Unless the stayed sentence is executed after a revocation hearing pursuant to Rule 19.11, jurisdiction of the juvenile court shall terminate on the child's twenty-first (21st) birthday or at the end of the maximum probationary term, whichever occurs first. The court may terminate jurisdiction earlier pursuant to Rule 15.08.

Subd. 3. Limitation on Certain Extended Jurisdiction Juvenile Dispositions. If an extended jurisdiction juvenile prosecution, initiated by designation by the prosecuting attorney, results in a guilty plea or a conviction for an offense other than a presumptive commitment to prison under the Minnesota Sentencing Guidelines or a felony committed using a firearm, the court shall only impose one or more dispositions under Minnesota Statutes, section 260B.198. But if the child has plead guilty and consents, even if the plea or the conviction is for an offense other than a presumptive commitment under the guidelines, the court may also impose a stayed adult criminal sentence under Rule 19.10, subdivision 1.

Subd. 4. Venue. If the child's county of residence is not the same county where the offense occurred, venue of the case may be transferred as provided by Minnesota Statutes, section 260B.105. The conditions under which the execution of any adult sentence are stayed shall be determined by the juvenile court having jurisdiction to impose and supervise any juvenile court disposition. The stayed adult sentence may be pronounced by the judge who presided over the trial or who accepted a plea of guilty. If venue for the juvenile disposition is being transferred to the child's county of residence, prior to making the transfer, the transferring court shall prepare and file with the receiving court, a copy of the juvenile's file, including the plea and sentencing transcript, if any, and the adult stayed sentence form or order.

Subd. 5. Record of Proceedings. (A) A verbatim record shall be made of all plea and sentencing proceedings.

(B) A record of the adult stayed sentence shall also be recorded in a sentencing form or order that, at a minimum, contains:

- (1) the child's name;
- (2) case number;
- (3) for each count:
 - (a) if the child pled guilty to or was found guilty of the offense:
 - (i) the offense date;
 - (ii) a citation to the offense statute and level of offense;
 - (iii) the precise terms of the adult criminal sentence, and that execution has been stayed;
 - (iv) the level of sentence; and
 - (v) the amount of time spent in custody, if any; or
 - (b) if the child did not plead guilty to or was not found guilty of the offense, that the child was acquitted or the count was dismissed; and
- (4) the signatures of the sentencing judge and child.

Where venue is transferred as provided in subdivision 4, a copy of the sentencing form or order shall be filed with the transferring court.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective November 14, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007.)

19.11 Revocation

Subdivision 1. Commencement of Proceedings.

(A) *Issuance of Revocation Warrant or Summons.* Proceedings for the revocation of a stayed sentence shall be commenced by the issuance of a warrant or a summons by the court. The warrant or summons shall be based upon a written report showing probable cause to believe that the probationer has violated any of the provisions of the disposition order or committed a new offense. The written report shall include a description of the surrounding facts

and circumstances upon which the request for revocation is based. The court may issue a summons instead of a warrant whenever it is satisfied that a warrant is unnecessary to secure the appearance of the probationer. The court may issue a warrant for immediate custody of the probationer if the court finds that there is probable cause to believe that the probationer has violated the terms of probation or a court order, and:

- (1) the probationer failed to appear after having been personally served with a summons or subpoena, or reasonable efforts to personally serve the probationer have failed, or there is a substantial likelihood that the probationer will fail to respond to a summons; or
- (2) the probationer or others are in danger of imminent harm; or
- (3) the probationer has left the custody of the detaining authority without permission of the court.

(B) *Contents of Warrant and Summons.* Both the warrant and summons shall contain the name of the probationer, a description of the stayed sentence sought to be revoked, the signature of the issuing judge or judicial officer of the district court, and shall be accompanied by the written report upon which it was based. The amount of any bail or other conditions of release may be set by the issuing judge or judicial officer and endorsed on the warrant. The warrant shall direct that the probationer be brought promptly before the court. The warrant shall direct that the probationer be brought before a judge or judicial officer without unnecessary delay, and in any event not later than thirty-six (36) hours after the arrest exclusive of the day of arrest. The summons shall summon the probationer to appear at a stated time and place to respond to the revocation charges.

(C) *Place of Detention.* If the probationer is under eighteen (18) years of age and is to be detained prior to the revocation hearing, the probationer may only be detained in a juvenile facility. If the probationer is eighteen (18) years of age or older and is to be detained, the probationer may be detained in an adult facility.

(D) *Execution or Service of Warrant or Summons; Certification.* Execution, service, and certification of the warrant or summons shall be as provided in Minnesota Rules of Criminal Procedure 3.03.

Subd. 2. First Appearance.

(A) *Advice to Probationer.* A probationer who initially appears before the court pursuant to a warrant or summons concerning an alleged probation violation, shall be advised of the nature of the violation charged. The probationer shall also be given a copy of the written report upon which the warrant or summons was based if the probationer has not previously received such report. The judge, judicial officer, or other duly authorized personnel shall further advise the probationer substantially as follows:

(1) the probationer is entitled to counsel at all stages of the proceedings, and if financially unable to afford counsel, one will be appointed for the probationer and if counsel is waived standby counsel will be appointed;

(2) unless waived, a revocation hearing will be held to determine whether there is clear and convincing evidence that the probationer violated any provisions of the disposition order or committed a new offense and that the stayed sentence should therefore be revoked;

(3) before the revocation hearing all evidence to be used against the probationer shall be disclosed to the probationer and the probationer shall be provided access to all official records pertinent to the proceedings;

(4) at the hearing both the prosecuting attorney and the probationer shall have the right to offer evidence, present arguments, subpoena witnesses, and call and cross examine witnesses, provided, however, the probationer may be denied confrontation by the court when good cause is shown that a substantial risk of serious harm to others would exist if it were allowed. Additionally, the probationer shall have the right at the revocation hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation; and

(5) the probationer has the right of appeal from the determination of the court following the revocation hearing.

(B) *Appointment of Counsel.* If the probationer is financially unable to afford counsel, one will be appointed for the probationer and, if counsel is waived, standby counsel shall be appointed.

(C) *Conditions of Release.* The probationer may be released pending appearance at the revocation hearing. In deciding whether and upon what conditions to release the probationer, the court shall take into account the conditions of release and the factors determining the conditions of release as provided by Rule 5 and Minnesota Rules of Criminal Procedure 6.02, subdivisions 1 and 2. The probationer has the burden of establishing that he or she will not flee or will not be a danger to any other person or the community.

(D) *Time of Revocation Hearing.* The court shall set a date for the revocation hearing to be held within a reasonable time. If the probationer is in custody as a result of the revocation proceedings, the revocation hearing shall be held within seven (7) days. If the probationer has allegedly committed a new offense the court may postpone the revocation hearing pending disposition of the new offense whether or not the probationer is in custody.

(E) *Record.* A verbatim record shall be made of the proceedings at the probationer's initial appearance.

Subd. 3. Revocation Hearing.

(A) *Hearing Procedures.* The hearing shall be held in accordance with the provisions of Rule 19.11, subdivisions 2(A)(1), (2), (3), and (4).

(B) *Finding of No Violation of Terms and Conditions of Disposition.* If the court finds that a violation of the terms and conditions of the disposition order was not established by clear and convincing evidence, the revocation proceedings shall be dismissed, and the probationer's stayed sentence shall be continued under conditions ordered by the court.

(C) Finding of Violation of Terms and Conditions of Disposition.

(1) If the court finds upon clear and convincing evidence that any provisions of the disposition order were violated, or if the probationer admits the violation, the court may revoke the probationer's extended jurisdiction juvenile status. Upon revocation of extended jurisdiction juvenile status, the court shall treat the offender as an adult and may order any of the adult sanctions authorized by Minnesota Statutes, section 609.14, subdivision 3.

(2) To execute the stayed prison sentence after revocation of extended jurisdiction juvenile status, the court must make written findings that:

- (a) one or more conditions of probation were violated;
- (b) the violation was intentional or inexcusable; and
- (c) the need for confinement outweighs the policies favoring probation.

(3) If the extended jurisdiction juvenile conviction was for an offense with a presumptive prison sentence or the probationer used a firearm, and the court has made findings pursuant to clause (2), the court shall order execution of the sentence unless the court makes written findings indicating the mitigating factors that justify continuing the stay.

(D) *Jail Credit for Juvenile Facility Custody.* If the court revokes the probationer's extended jurisdiction juvenile status, the court shall ensure that the record accurately reflects all time spent in custody in connection with the underlying offense at juvenile facilities where the level of confinement and limitations are the functional equivalent of a jail, workhouse, or regional correctional facility. Such time shall be deducted from any adult sentence imposed pursuant to Minnesota Statutes, section 609.14, subdivision 3.

(E) *Record of Findings.* A verbatim record shall be made of the proceedings at the revocation hearing and in any contested hearing the court shall make written findings of fact on all disputed issues including a summary of the evidence relied upon and a statement of the court's reasons for its determination.

(F) *Appeal.* The probationer or the prosecuting attorney may appeal from the court's decision according to the procedure provided for appeal in Rule 21.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective November 14, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight July 1, 2004; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005;

amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007.)

Comment—Rule 19

The determination of “presumptive prison” under the Minnesota Sentencing Guidelines should be analyzed pursuant to those guidelines.

The sanction for delay in Minn. R. Juv. Del. P. 19.04, subd. 1(B) and 19.06, subd. 3 is modeled after Minn. R. Crim. P. 11.10. See *In re Welfare of J.J.H.*, 446 N.W.2d 680, 681–82 (Minn. Ct. App. 1989) (order issued 66 days after hearing, 38 days after submission of written argument; because rule contains no sanction, reversal denied). See also *McIntosh v. Davis*, 441 N.W.2d 115 (Minn. 1989) (where alternative remedies available mandamus not appropriate to enforce time limit of Minn. R. Crim. P. 11.10 speedy trial rule).

Most of the waiver language in Minn. R. Juv. Del. P. 19.04, subd. 1(C) is taken from the 1983 version of Minn. R. Juv. P. 15.03.

Minn. R. Juv. Del. P. 19.04 does not address the consequences of the child’s testimony at a hearing or whether it can be subsequently used against the child. See *Simmons v. United States*, 390 U.S. 377 (1968); *State v. Christenson*, 371 N.W.2d 228 (Minn. Ct. App. 1985) (impeachment); cf. *Harris v. New York*, 401 U.S. 222 (1971).

On continuation questions under Minn. R. Juv. Del. P. 19.04, subd. 1(B), the victim should have input but does not have the right of a party to appear and object.

Previously, the last sentence to Rule 19.04, subd. 2(A) stated, “If witnesses are to be called, the court may continue the hearing.” This statement was deleted because the committee felt it was redundant in light of the previous sentence, which allows the court to extend the time of the hearing for good cause.

Much of the content of Minn. R. Juv. Del. P. 19.04, subd. 3 is modeled after Minn. R. Crim. P. 11.03 and 18.06, subd. 1. The court may employ police statements for probable cause determinations in the same manner as permitted in adult proceedings under Minn. R. Crim. P. 11.03. Also note, *In re Welfare of E.Y.W.*, 496 N.W.2d 847, 850 (Minn. Ct. App. 1993) (juvenile not entitled to exclusionary hearing before decision on probable cause).

Minn. R. Juv. Del. P. 19.04, subd. 3 eliminates the need for a probable cause finding when a delinquency accusation is presented by an indictment. Accusation by indictment is uncommon, but might occur more often as a result of grant jury proceedings conducted after 1994 statutory amendments on the question of whether a child is to be accused of first degree murder in adult proceedings. See Minnesota Statutes, section 260B.007, subd. 6 (2002).

When a juvenile waives probable cause solely for the purpose of an extended jurisdiction juvenile proceeding, that waiver does not preclude the child from litigating probable cause in a subsequent prosecution on the underlying offense.

Minn. R. Juv. Del. P. 19.04, subd. 3(B) is consistent with case law. Because the extended jurisdiction juvenile prosecution question is dispositional in nature, strict application of the rules of evidence is thought to be inappropriate.

The public safety factors listed in Minn. R. Juv. Del. P. 19.05 mirror those set forth in Minnesota Statutes, section 260B.125, subd. 4 (2002), and eliminate the need for non-offense related evidence of dangerousness. See *In re Welfare of D.M.D.*, 607 N.W.2d 432 (Minn. 2000).

Rule 19.09(B) was amended to clarify that a continuance beyond the timelines prescribed by the Rule may be necessary in limited circumstances. For example, a reasonable delay may be appropriate to facilitate necessary scientific testing. The Committee adopted a “good cause” standard for use in determining whether to grant a continuance. “Good cause” is defined in case law; however, the Committee intends a strict application of the standard. Time is of the essence in an extended jurisdiction juvenile prosecution. Juvenile dispositional options and treatment opportunities may be lost if the trial is unnecessarily delayed. The court should consider the unique nature of extended jurisdiction juvenile when deciding whether to grant a continuance for good cause.

Following the presentation of evidence by the prosecuting attorney the child may move the court for directed relief on the grounds that the burden of proof has not been met.

Under Minnesota Statutes, section 260B.163, subd. 7 (2002) the custodial parent or guardian of the child alleged or found to be delinquent or prosecuted as an extended jurisdiction juvenile, must accompany the child at each hearing held during the delinquency or extended juvenile jurisdiction proceedings, unless the court excuses the parent or guardian from attendance for good cause shown. The failure of a parent or guardian to comply with this duty may be punished as provided in Minnesota Statutes, section 260B.154 (2002).

Pursuant to Minnesota Statutes, section 260B.245 (2002), if a child is convicted as an extended jurisdiction juvenile, the child will be assigned points for the purpose of computing a criminal history score pursuant to the Minnesota Sentencing Guidelines, as if the child were an adult.

A disposition form developed by the Minnesota Sentencing Guidelines Commission shall be completed by the court in addition to the findings of facts, conclusions of law and order.

A sentencing worksheet developed by the Minnesota Sentencing Guidelines Commission shall be completed by the probation department pursuant to Minn. R. Crim. P. 27, and Minnesota Statutes, sections 609.115 and 631.20 (2002). The court shall send a copy of this worksheet to the Minnesota Sentencing Guidelines Commission pursuant to Minn. R. Crim. P. 27.03, subd. 4(C).

In accordance with the procedure and law set forth in State v. B.Y., 659 N.W.2d 763 (Minn. 2003), Minn. R. Juv. Del. P. 19.11, subd. 3 incorporates consideration of the Austin factors (see State v. Austin, 295 N.W.2d 246 (Minn. 1980)) into the court's determination of whether to revoke the stayed prison sentence of an EJJ probationer. This is in contrast to the decision to revoke probation in delinquency cases, for which consideration of the Austin factors is not required. In re Welfare of R.V., 702 N.W.2d 294 (Minn. Ct. App. 2005).

The court's holdings in State v. Garcia, 683 N.W.2d 294 (Minn. 2004) and Asfaha v. State, 665 N.W.2d 523 (Minn. 2003) found Minn. Stat., section 260B.130, subd. 5 (2002) unconstitutional to the extent it denied credit for time spent in custody in juvenile facilities. Minn. R. Juv. Del. P. 19.11, subd. 3 has been amended to require the court to calculate and record the amount of time the probationer spent in custody at juvenile facilities where the level of confinement and limitations were the functional equivalent of a jail, workhouse, or correctional facility. Such time must be deducted from any adult sentence imposed after revocation of extended jurisdiction juvenile status.

The decision in In Re Welfare of T.C.J., 689 N.W.2d 787 (Minn. Ct. App. 2004), that Minnesota Statutes, section 260B.130, subd. 4(b), violates the Equal Protection Clause, raises an issue regarding the application of Minn. R. Juv. Del. P. 19.10, subd. 3, which was modeled after the statute.

References in this rule to "child's counsel" include the child who is proceeding pro se. Minn. R. Juv. Del. P. 1.01.

(Comment amended July 21, 2003; amended April 23, 2004; amended July 11, 2005; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007.)

[For text of Rule 20, see M.S. 2006, Volume 15]

Rule 21. Appeals

[For text of 21.01 and 21.02, see M.S. 2006, Volume 15]

21.03 Appeal By Child

Subdivision 1. Right of Appeal. A child may appeal as of right from an adverse final order and certain non-final orders, as enumerated in Rule 21.03, subdivisions 1(A) and (B). In addition, a child shall be permitted to seek a discretionary appeal as provided for in Minnesota Rules of Criminal Procedure 28.02, subdivision 3. A motion for a new trial is not necessary in order to appeal.

The court shall notify a child of the right to appeal in any case where it issues a final order. A child may combine an appeal from a sentence or a disposition with an appeal from a

judgment of conviction or an order for adjudication. The court shall not determine whether an offense will be adjudicated or continued without adjudication until the time of disposition.

Appeals from disposition or sentence shall only include matters which arose after adjudication or conviction. The court may review any other matter as the interests of justice require. In addition to all powers of review presently existing, the court may review the sentence or disposition to determine whether it is consistent with the standards set forth in Rule 15.05, subdivisions 2 and 3.

(A) *Final Orders.* Final orders include orders for:

(1) certification to adult court, whether the order is entered or stayed pursuant to Rule 21.03, subdivision 3;

(2) continuance without adjudication and disposition in delinquency proceedings pursuant to Minnesota Statutes, section 260B.198, subdivision 1(a) or (b);

(3) adjudication and disposition in delinquency proceedings pursuant to Minnesota Statutes, section 260B.198, subdivision 1;

(4) adjudication and disposition in juvenile petty or juvenile traffic offender proceedings;

(5) denial of motion for new trial or rehearing;

(6) extended jurisdiction juvenile prosecution designation, whether the order is entered or stayed pursuant to Rule 21.03, subdivision 3;

(7) conviction, disposition, and sentencing of an extended jurisdiction juvenile;

(8) an order, on the prosecuting attorney's motion, finding the child incompetent, if the underlying offense would be a felony or a gross misdemeanor if the offense were committed by an adult;

(9) an order modifying a disposition;

(10) an order revoking probation, including an order adjudicating a child delinquent after the child was granted a continuance without adjudication;

(11) an order revoking extended jurisdiction juvenile status; and

(12) an order revoking the stay of the adult sentence of an extended jurisdiction juvenile.

(B) *Non-Final Orders.* A child may appeal from the following non-final orders:

(1) an order refusing or imposing conditions of release; and

(2) an order granting a new trial when a child's motion for acquittal is denied, if the underlying offense would be a felony or a gross misdemeanor if the offense were committed by an adult.

Subd. 2. Procedure for Appeals.

(A) *Orders Revoking Extended Jurisdiction Juvenile Status and Orders Revoking the Stayed Adult Sentence of an Extended Jurisdiction Juvenile.* Probationer appeals under Rule 21.03, subdivision 1(A)(11) and (12), shall be governed by the procedure provided for appeal from a sentence by Minnesota Rules of Criminal Procedure 27.04, subdivision 3(5), and 28.05.

(B) *All Other Appealable Orders.* All other juvenile appeals shall proceed as follows:

(1) *Time for Taking an Appeal.* An appeal shall be taken within thirty (30) days of the filing of the appealable order.

(2) *Notice of Appeal and Filing.* The appellant shall file the following documents with the clerk of the appellate courts:

(a) a notice of appeal naming the party taking the appeal, identifying the order being appealed, and listing the names, addresses, and telephone numbers of all counsel;

(b) proof of service of notice of appeal on the adverse party, the district court administrator, and the court reporter;

(c) a certified copy of the judgment or order appealed from; and

(d) two copies of the statement of the case as provided for by Minnesota Rules of Civil Appellate Procedure 133.03.

When the disposition is ordered in a county other than the one in which the child pled guilty or was found to have committed the offense(s), the appellant shall serve notice of ap-

peal on the prosecuting attorney, district court administrator and court reporter in the county where the child pled guilty or was found to have committed the offense(s) as well as the prosecuting attorney, district court administrator and court reporter where the disposition was ordered. Proof of service of notice of appeal on all of these persons shall be filed with the clerk of the appellate courts.

Whether a filing fee is required shall be determined pursuant to Minnesota Rules of Civil Appellate Procedure 103.01, subdivision 3. A cost bond is not required.

Except for the timely filing of the notice of appeal, if a party fails to comply with these rules, the validity of the appeal may not be affected except as deemed appropriate by the court of appeals.

(3) *Transcript of Proceedings and Transmission of the Transcript and Record.* The Minnesota Rules of Civil Appellate Procedure shall govern the transcription of the proceedings and the transmission of the transcript and record to the court of appeals except as modified here:

(a) Within ten (10) days of filing the notice of appeal, appellant shall order the necessary transcript and notify the court reporter that the transcript is due within thirty (30) days of the court reporter's receipt of the appellant's request for transcript.

(b) For parties represented by the state public defender, payment for transcripts will be made after receipt of the transcripts.

(c) Any videotape or audiotape exhibits admitted at trial or hearing shall be transcribed at the request of either party and shall be included as part of the record.

(4) *Briefs.* The Minnesota Rules of Civil Appellate Procedure shall govern the form and filing of briefs except as modified here:

(a) *Extended Jurisdiction Juvenile and Certification Determinations.*

(i) The appellant shall serve and file the appellant's brief and appendix within thirty (30) days after delivery of the transcript by the reporter. If the transcript is obtained prior to appeal or if the record on appeal does not include a transcript, then the appellant shall serve and file the appellant's brief and appendix within thirty (30) days after the filing of the notice of appeal.

(ii) The appellant's brief shall contain a statement of the procedural history.

(iii) The respondent shall serve and file the respondent's brief and appendix, if any, within thirty (30) days after service of the brief of appellant.

(iv) The appellant may serve and file a reply brief within fifteen (15) days after service of the respondent's brief.

(b) *Briefs For Cases Other Than Extended Jurisdiction Juvenile and Certification Determinations.*

(i) The appellant shall serve and file the appellant's brief and appendix within forty-five (45) days after delivery of the transcript by the reporter. If the transcript is obtained prior to appeal or if the record on appeal does not include a transcript, then the appellant shall serve and file the appellant's brief and appendix within forty-five (45) days after the filing of the notice of appeal.

(ii) The appellant's brief shall contain a statement of the procedural history.

(iii) The respondent shall serve and file the respondent's brief and appendix, if any, within thirty (30) days after service of the brief of appellant.

(iv) The appellant may serve and file a reply brief within fifteen (15) days after service of the respondent's brief.

Subd. 3. Stay Pending Appeal.

(A) *Generally.* Pending an appeal, a stay may be granted by the juvenile court or the court of appeals. A motion for stay initially shall be presented to the juvenile court.

In cases certified to adult court, if a stay was granted by the juvenile court, the district court shall stay further adult criminal proceedings pending the filing of a final decision on appeal. By agreement of the parties, the adult case may proceed through the omnibus hearing.

If a stay is granted, conditions of release must be set pursuant to Rule 21.03, subdivision 4(B).

(B) *Placement Pending Appeal.*

(1) *Upon Certification.* If the district court determines that a certified child should be detained, placement pending appeal shall be governed by Minnesota Rules of Criminal Procedure 6.02, and detention in an adult facility shall be presumed.

(2) *Other Cases.* If the child is detained, the reasons for the place of detention must be stated on the record, and the detention must comply with Minnesota Statutes, section 260B.176.

Subd. 4. Release of Child.

(A) *Motion for Release Pending Appeal.* When release is not addressed in the motion for a stay, application for release pending appeal shall be made to the trial court. If the trial court refuses to release a child pending appeal, or imposes conditions of release, the court shall state the reasons on the record. Thereafter, if an appeal is pending, a motion for release or for modification of the conditions of release pending review, may be made to the court of appeals. The motion shall be determined upon such papers, affidavits, and portions of the record as the parties shall present. The court of appeals may order the release of a child with or without conditions, pending disposition of the motion. The motion shall be determined on an expedited basis.

(B) *Conditions of Release.* Minnesota Rules of Criminal Procedure 6.02 shall govern conditions of release upon certification. If a stay is granted under Rule 21.03, subdivision 3 of this rule, Minnesota Statutes, section 260B.176 shall govern conditions of release. The child has the burden of proving that the appeal is not frivolous or taken for delay and that the child does not pose a risk for flight, is not likely to commit a serious crime, and is not likely to tamper with witnesses. The court shall make written findings on each of the above factors. The court shall take into consideration that:

(1) the child may be compelled to serve the sentence or disposition imposed before the appellate court has an opportunity to decide the case; and

(2) the child may be confined for a longer time pending the appeal than would be possible under the potential sentence or disposition for the offense charged.

(C) *Credit for Time Spent in Custody.* The time a child is in custody pending an appeal may be considered by the court in determining the disposition imposed in juvenile proceedings.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007.)

21.04 Appeal by Prosecuting Attorney

Subdivision 1. Scope of Appeal. The prosecuting attorney may appeal as of right from:

(A) sentences or dispositions imposed or stayed in extended jurisdiction juvenile cases;

(B) denial of a motion for certification or denial of a motion for designation as an extended jurisdiction juvenile prosecution;

(C) denial of a motion to revoke extended jurisdiction juvenile status following an admission of a violation of probation or a determination that a violation of probation has been proven;

(D) denial of a motion to revoke the stay of the adult sentence of an extended jurisdiction juvenile following an admission of a violation of probation or a determination that a violation of probation has been proven;

(E) pretrial orders, including suppression orders; and

(F) orders dismissing the charging document for lack of probable cause when the dismissal was based solely on a question of law.

Appeals from disposition or sentence shall only include matters that arose after adjudication or conviction. In addition to all powers of review presently existing, the court may review the sentence or disposition to determine whether it is consistent with the standards set forth in Rule 15.05, subdivisions 2 and 3.

Subd. 2. Attorney Fees. The child shall be allowed reasonable attorney fees and costs incurred for appeal. The child's attorney fees and costs shall be paid by the governmental unit responsible for prosecution of the case.

Subd. 3. Procedure for Appeals.

(A) Prosecutorial appeals under Rule 21.04, subdivision 1(A), (B), and (F) shall be governed by Rule 21.03, subdivision 2.

(B) Prosecutorial appeals under Rule 21.04, subdivision 1(C) and (D) shall be governed by the procedure provided for appeal from a sentence by Minnesota Rules of Criminal Procedure 27.04, subdivision 3(5) and 28.05.

(C) Prosecutorial appeals under Rule 21.04, subdivision 1(E) shall proceed as follows:

(1) *Time for Appeal.* The prosecuting attorney may not appeal until all issues raised during the evidentiary hearing and pretrial conference have been determined by the trial court. The appeal shall be taken within five (5) days after notice of entry of the appealable order is served upon the prosecuting attorney by the district court administrator. An appeal by the prosecuting attorney under this rule bars any further appeal by the prosecuting attorney from any existing orders not included in the appeal. No appeal of a pretrial order by the prosecuting attorney shall be taken after jeopardy has attached. An appeal under this rule does not deprive the trial court of jurisdiction over pending matters not included in the appeal.

(2) *Notice of Appeal and Filing.* Rule 21.03, subdivision 2(B) shall govern notice of appeal and filing of an appeal by the prosecuting attorney except that the prosecuting attorney must file a statement of the case as provided for by Minnesota Rules of Civil Appellate Procedure 133.03. In addition, if a transcript of the proceedings is necessary, the prosecuting attorney must file a copy of the request for transcript with the clerk of the appellate court.

(3) *Briefs.* The Minnesota Rules of Civil Appellate Procedure shall govern the form and filing of briefs except as modified here:

(a) Within fifteen (15) days of delivery of the transcripts, appellant shall file the appellant's brief with the clerk of the appellate courts together with proof of service upon the respondent.

(b) The appellant's brief shall contain a statement of the procedural history.

(c) Within eight (8) days of service of appellant's brief upon respondent, the respondent shall file the respondent's brief with the appellate court clerk together with proof of service upon the appellant.

Subd. 4. Stay. Upon oral notice that the prosecuting attorney intends to appeal a pretrial order, the trial court shall order a stay of the proceedings for five (5) days to allow time to perfect the appeal.

Subd. 5. Conditions of Release. Upon appeal by the prosecuting attorney of a pretrial order, the conditions for the child's release pending the appeal shall be governed by Rule 5 or, for children certified to adult court, Minnesota Rules of Criminal Procedure 6.02, subdivisions 1 and 2. The court shall consider whether the child may be confined for a longer time pending the appeal than would be possible under the potential sentence or disposition for the offense charged.

Subd. 6. Cross-Appeal by Child. Upon appeal by the prosecuting attorney, the child may obtain review of any pretrial order which will adversely affect the child by filing a notice of cross-appeal with the clerk of the appellate courts and the trial court administrator together with proof of service on the prosecuting attorney. The notice of cross-appeal shall be filed within ten (10) days after service of notice of the appeal by the prosecuting attorney. Failure to serve the notice does not deprive the court of appeals of jurisdiction over a child's cross-appeal but is ground for such action as the court of appeals deems appropriate, including dismissal of the cross-appeal.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003;

amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007.)

[For text of 21.05 to Rule 29, see M.S. 2006, Volume 15]

Rule 30. Records

[For text of 30.01, see M.S. 2006, Volume 15]

30.02 Availability of Juvenile Court Records

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

Subd. 2. No Order Required.

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

(B) *Child's Counsel, Guardian Ad Litem, and Counsel for Child's Parent(s), Legal Guardian, or Legal Custodian.* Juvenile court records of the child shall be available for inspection, copying and release to the following without court order:

(1) the child's counsel and guardian ad litem appointed in the delinquency proceeding;

(2) counsel for the child's parent(s), legal guardian or legal custodian subject to restrictions on copying and release imposed by the court.

(C) *Prosecuting Attorney.* Juvenile court records shall be available for inspection, copying or release to the prosecuting attorney.

(D) *Other.* The juvenile court shall forward data to agencies and others as required by Minnesota Statute.

Subd. 3. Court Order Required.

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

(1) a representative of a state or private agency providing supervision or having custody of the child under order of the court; or

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

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

(B) *Public.* A court order is required before any inspection, copying, disclosure or release to the public of the record of a child. Before any court order is made the court must find that inspection, copying, disclosure or release is:

(1) in the best interests of the child; or

(2) in the interests of public safety; or

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

(C) *Disclosure Prohibited.* The record of the child shall not be inspected, copied, disclosed or released to any present or prospective employer of the child or the military services.

(D) *Disclosure Limited.* The inspection, copying, disclosure, or release of the juvenile records listed below is limited pursuant to the identified Rules of Juvenile Delinquency Procedure:

(1) predisposition report (Rule 15.03, subd. 4);

(2) juvenile certification study (Rule 18.04, subd. 4);

(3) extended jurisdiction juvenile study (Rule 19.03, subd. 4); and

(4) competency examination (Rule 20.02, subd. 5).

(Amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight July 1, 2004; amended effective for guardian ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007.)

[For text of Rule 31 and Juvenile Delinquency Forms, see M.S. 2006, Volume 15]

Minnesota Rules of Juvenile Protection Procedure

Rules effective March 1, 2000

Renumbered effective January 1, 2004

With amendments received through August 1, 2007

TABLE OF HEADNOTES

A. Scope and Purpose

Rule 2. Definitions

- 2.01. Definitions

B. General Operating Rules

Rule 4. Time; Timeline

- 4.03. Timeline
1. Child in Need of Protection or Services Matters
 2. Permanent Placement Matters
 3. Termination of Parental Rights Matters

Rule 7. Referees and Judges

- 7.07. Removal of Judge
1. Disability of Judge
 2. Interest or Bias
 3. Notice to Remove
 4. Termination of Parental Rights Matters and Permanent Placement Matters

Rule 8. Accessibility of Juvenile Protection Case Records

- 8.04. Records Not Accessible to the Public or Parties

Rule 10. Orders

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

Rule 15. Motions

- 15.03. Ex Parte Motion and Hearing
1. Motion
 2. Hearing
- 15.05. Motion to Strike Document
- 15.06. Timing of Decision

Rule 16. Signing of Pleadings, Motions, and Other Papers; Service and Filing of Motions and Other Documents; Sanctions

- 16.01. Signature
1. Generally
 2. Exception – Social Worker and Guardian Ad Litem Reports
- 16.02. Representations to Court
- 16.03. Service and Filing of Motions and Other Documents
- 16.04. Sanctions

Rule 18. Default

- 18.02. Default Order

C. Parties and Participants

Rule 21. Parties

- 21.01. Party Status
1. Parties Generally
 2. Habitual Truant, Runaway, and Child Prostitution Matters
 3. Termination of Parental Rights Matters and Permanent Placement Matters

Rule 22. Participants

- 22.01. Participant Status
- 22.02. Rights of Participants
 - 1. Generally
 - 2. Foster Parents, Pre-Adoptive Parents, and Relatives Providing Care

Rule 25. Right to Representation; Appointment of Counsel

- 25.02. Appointment of Counsel
 - 1. Child
 - 2. Parent or Legal Custodian
 - 3. Guardian Ad Litem
 - 4. Child's Preference
- 25.03. Reimbursement
- 25.06. Withdrawal or Discharge of Counsel

Rule 26. Guardian Ad Litem

- 26.01. Appointment for Child
 - 1. Mandatory Appointment Generally Required
 - 2. Discretionary Appointment
 - 3. Timing; Method of Appointment
 - 4. Responsibilities; Rights
 - 5. Guardian Ad Litem Not Also Attorney for Child
- 26.02. Discretionary Appointment for Child's Parent or Legal Custodian
 - 1. Appointment
 - 2. Attorney Not Discharged
 - 3. Responsibilities; Rights
- 26.05. Reimbursement

D. Course of Case**Rule 28. Emergency Protective Care Order and Notice**

- 28.02. Ex Parte Order for Emergency Protective Care
 - 1. Generally
 - 2. Habitual Truant, Runaway, Prostitution, Delinquent Under Age 10, Incompetent to Proceed, and Domestic Abuse Matters

Rule 30. Emergency Protective Care Hearing

- 30.09. Factors
 - 1. Generally
 - 2. Determination Regarding Reasonable or Active Efforts
 - 3. Cases Permitting By-Pass of Child in Need of Protection or Services Proceedings
- 30.10. Protective Care Findings and Order

Rule 31. Methods of Filing and Service

- 31.01. Types of Filing
 - 1. Generally
 - 2. Filing by Facsimile Transmission
- 31.02. Types of Service
 - 1. Personal Service
 - 2. U.S. Mail
 - 3. Publication
 - 4. Facsimile Service
- 31.04. Service Upon Counsel; Social Services Agency
- 31.07. Proof of Service
 - 1. Generally
 - 2. Exceptions

Rule 32. Summons and Notice

- 32.02. Summons
 - 1. Definition
 - 2. Upon Whom; Cost
 - 3. Service
 - 4. Content
 - 5. Timing of Service of Summons and Petition
 - 6. Waiver
 - 7. Failure to Appear
- 32.03. Notice of Emergency Protective Care or Admit/Deny Hearing
 - 1. Definition
 - 2. Upon Whom
 - 3. Content
 - 4. Service by Mail or Delivery at Hearing
- 32.04. Notice of Subsequent Hearings
- 32.06. Petitioner's Notice Responsibility Under Indian Child Welfare Act

Rule 33. Petition

- 33.01. Drafting; Filing; Service
 - 1. Generally
 - 2. Habitual Truant and Runaway Matters
 - 3. Termination of Parental Rights Matters
 - 4. Permanent Placement Matters
- 33.02. Content
 - 1. Generally
 - 2. Child in Need of Protection or Services Matters
 - 3. Termination of Parental Rights Matters
 - 4. Permanent Placement Matters
 - 5. Out of State Party
 - 6. Disclosure of Name and Address – Endangerment
- 33.04. Amendment
 - 1. Prior to Trial
 - 2. After Trial Begins

Rule 34. Admit/Deny Hearing

- 34.02. Timing
 - 1. Child in Placement
 - 2. Child Not in Placement
 - 3. Possession of Petition
- 34.03. Hearing Procedure
 - 1. Initial Procedure
 - 2. Child in Need of Protection or Services Matters
 - 3. Termination of Parental Rights Matters
 - 4. Permanent Placement Matters
 - 5. Motions

Rule 35. Admission or Denial

- 35.01. Generally
 - 1. Parent or Legal Custodian
 - 2. Child
 - 3. Contested Petition
- 35.03. Admission
 - 1. Admission Under Oath
 - 2. Admission Without Appearance
 - 3. Questioning of Person Making Admission
 - 4. Basis for Admission
 - 5. Withdrawal of Admission
 - 6. Acceptance or Non-Acceptance of Admission
 - 7. Further Proceedings

Rule 36. Pretrial Hearing

- 36.01. Timing
- 36.02. Purpose
- 36.03. Pretrial Order
- 36.04. Continuing Obligation to Update Information

Rule 37. Case and Out-of-Home Placement Plans

- 37.01. Case and Out-of-Home Placement Plans and Reports Generally
- 37.02. Child in Court-Ordered Foster Care: Out-of-Home Placement Plan
 - 1. Plan Required
 - 2. Timing
 - 3. Content
 - 4. Procedure for Approving or Ordering Out-of-Home Placement Plan Prior to Disposition
 - 5. Procedure for Ordering Out-of-Home Placement Plan at Disposition
- 37.03. Child in Voluntary Foster Care: Out-of-Home Placement Plan
 - 1. Child in Voluntary Foster Care Not Due Solely to Child's Disability
 - 2. Child in Voluntary Foster Care Due Solely to Child's Disability
 - 3. Procedure for Approving Out-of-Home Placement Plan for Child in Voluntary Foster Care
- 37.04. Child Not in Foster Care: Child Protective Services Case Plan
- 37.05. Child with Disability: Case Plan
 - 1. Procedure
 - 2. Timing

Rule 38. Reports to the Court

- 38.01. Social Services Court Reports – Generally
 - 1. Periodic Reports Required
 - 2. Content
 - 3. Timing of Reports
- 38.02. Social Services Court Reports – Child Ordered into Foster Care
 - 1. Content
 - 2. Reports Between Disposition Review Hearings
- 38.03. Social Services Court Reports – Child Not in Foster Care
- 38.05. Reports to the Court by Child's Guardian Ad Litem
 - 1. Periodic Reports Required
 - 2. Content
 - 3. Timing of Reports
 - 4. Objections to Guardian Ad Litem's Report or Recommendations

Rule 39. Trial

- 39.02. Timing
 - 1. Commencement of Trial
 - 2. Continuance
 - 3. Effect of Mistrial; Order for New Trial
- 39.05. Decision
 - 1. Generally
 - 2. Child in Need of Protection or Services Matters and Habitual Truant, Runaway, and Prostitution Matters

- 3. Termination of Parental Rights Matters
- 4. Permanent Placement Matters

Rule 41. Disposition

- 41.01. Disposition
- 41.03. Pre-Disposition Reports
 - 1. Investigations and Evaluations
 - 2. Advisory
 - 3. Pre-Disposition Reports
 - 4. Discussion of Contents of Reports
 - 5. Discussion of Content of Report – Limitation by Court
- 41.05. Disposition Order
 - 1. Findings
 - 2. Content
- 41.06. Hearings to Review Disposition
 - 1. Timing
 - 2. Procedure in Reviewing Disposition
 - 3. Procedure
 - 4. Modification of Disposition;
 - Modification of Case or Out-of-Home Placement Plan
 - 5. Notice
 - 6. Procedure
 - 7. Findings and Order

Rule 42. Permanent Placement Matters

- 42.01. Timing and Purpose
 - 1. Timing
 - 2. Purpose
- 42.02. Calculating Time Period
- 42.03. Accumulation of Out-of-Home Placement Time
- 42.04. Procedures for Permanency Progress Review
 - Hearing and Permanent Placement Determination Hearing
 - 1. Permanency Progress Review Hearing: Child Under Eight (8) Years of Age
 - 2. Child Eight (8) Years of Age or Older or a Child Under Age Eight (8) for Whom Permanency Has Not Been Ordered; Admit/Deny Hearing Required at Month 12
- 42.05. Permanent Placement Order
 - 1. Timing
 - 2. Order
- 42.06. Motion by Responsible Social Services Agency to Modify Adjudication and Transfer of Custody Order for a Child Who Continues in Placement Due Solely to the Child's Emotional Disturbance or Developmental Disability
 - 1. Motion to Continue Foster Care on Voluntary Basis When Conditions Leading to Foster Care Placement Have Been Corrected
 - 2. Contemporaneous Execution of Voluntary Placement Agreement
 - 3. Required Findings to Proceed under Rule 44.02, subdivision 1
 - 4. Vacate Adjudication and Order for Legal Custody to Responsible Social Services Agency

Rule 43. Termination of Parental Rights Matters

- 43.03. Further Proceedings
 - 1. Review when Plan is Adoption
 - 2. Long Term Foster Care For State Wards
 - 3. Review when Child is Ordered into Long-Term Foster Care
- 43.04. Voluntary Termination of Parental Rights Matters

Rule 44. Review of Voluntary Placement Matters

- 44.01. Generally
 - 1. Scope of Review
 - 2. Jurisdiction
 - 3. Court File Required
- 44.02. Petition and Hearing
 - 1. Child in Placement Due to Developmental Disability or Emotional Disturbance
 - 2. Other Voluntary Placements
 - 3. Child Determined to be in Need of Protection or Services

Rule 45. Post-Trial Motions

- 45.01. Procedure and Timing
 - 1. Timing
 - 2. Basis of Motion
 - 3. Time for Serving Affidavits
- 45.03. Amendment of Findings
- 45.04. Grounds for New Trial
- 45.05. Decision
- 45.06. Relief

Rule 46. Relief from Order

- 46.02. Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud

Rule 47. Appeal

- 47.02. Procedure
 - 1. Appealable Order
 - 2. Timing
 - 3. Service and Filing of Notice of Appeal
 - 4. Notice to Court Administrator
 - 5. Failure to File Proof of Service
 - 6. Notice to Legal Custodian
- 47.03. Application for Stay of Trial Court Order

TEXT OF RULES**A. SCOPE AND PURPOSE**

[For text of Rule 1, see M.S. 2006, Volume 15]

RULE 2. DEFINITIONS**Rule 2.01. Definitions**

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

(a) “**Adjudicated Father**” means an individual determined by a court, or pursuant to a Recognition of Parentage under Minnesota Statutes, section 257.75 to be the biological father of the child.

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

(c) **“Child placing agency”** means any agency licensed pursuant to Minnesota Statutes, sections 245A.02 to 245A.16 or 252.28, subdivision 2.

(d) **“Emergency protective care”** means the placement status of a child when:

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

(2) returned home before an Emergency Protective Care Hearing pursuant to Rule 30 with court ordered conditions of release.

(e) **“Foster care”** means the 24-hour-a-day substitute care for a child placed away from the child’s parents or guardian and for whom a responsible social services agency has placement and care responsibilities under Minnesota Statutes, section 260C.007, subdivision 18.

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

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

(h) **“Indian custodian”** as defined in the Indian Child Welfare Act, 25 U.S.C. section 1903(6), and Minnesota Statutes, section 260.755, subdivision 10, means an Indian person who has legal custody of an Indian child under tribal law or custom or under state law, or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

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

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

(k) **“Juvenile protection matter”** means any of the following types of matters:

(1) child in need of protection or services matters as defined in Minnesota Statutes, section 260C.007, subdivision 6, including habitual truant and runaway matters;

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

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

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

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

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

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

(m) **“Parent”** as adapted from Minnesota Statutes, section 260C.007, subdivision 25, means the birth, legally adjudicated, or adoptive parent of a minor child. For an Indian child, parent also includes any Indian person who has legally adopted an Indian child including a person who has adopted a child by tribal law or custom as provided in Minnesota Statutes, section 260.755, subdivision 22, but it does not include an unmarried father whose paternity has not been acknowledged or established.

(n) **“Person”** as defined in Minnesota Statutes, section 260C.007, subdivision 26, includes any individual, association, corporation, partnership, and the state or any of its political subdivisions, departments, or agencies.

(o) **“Presumed Father”** means an individual who is presumed to be the biological father of a child under Minnesota Statutes, section 257.55, subdivision 1.

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

(q) **“Protective supervision”** as referenced in Minnesota Statutes, section 260C.201, subdivision 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.

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

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

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

(u) **“Relative”** as defined in Minnesota Statutes, section 260C.007, subdivision 27, means a person related to the child by blood, marriage, or adoption, or an individual who is an important friend with whom the child has resided or had significant contact. For an Indian child, relative includes members of the extended family as defined by the law or custom of the Indian child’s tribe or, in the absence of laws or custom, nieces, nephews, or first or second cousins, as provided in the Indian Child Welfare Act of 1978, 25 U.S.C. section 1903.

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

(w) **“Shelter care facility”** as adapted from Minnesota Statutes, section 260C.007, subdivision 30, means a physically unrestricting facility, including but not limited to, a hospital, a group home, or a facility licensed for foster care pursuant to Minnesota Statutes, Chapter 245A, used for the temporary care of a child during the pendency of a juvenile protection matter.

(x) **“Trial Home Visit”** as defined in Minnesota Statutes, section 260C.201, subdivision 1(a)(3), means the child is returned to the care of the parent or legal custodian from

whom the child was removed for a period not to exceed six months, with agency authority and responsibilities as set forth in the statute.

(Amended effective January 1, 2004; amended effective January 1, 2007.)

[For text of Rule 3, see M.S. 2006, Volume 15]

B. GENERAL OPERATING RULES

RULE 4. TIME; TIMELINE

[For text of 4.01 and 4.02, see M.S. 2006, Volume 15]

Rule 4.03. Timeline

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

(a) **Emergency Protective Care Hearing.** If a child has been removed from the home of the parent or legal custodian pursuant to Rule 30.01, the court shall hold an emergency protective care hearing with seventy-two (72) hours of the child's removal.

(b) **Admit/Deny Hearing.** Pursuant to Rule 34.02, subdivision 1, when the child is removed from home by court order, an admit/deny hearing shall be held within ten (10) days of the date of the emergency protective care hearing. Pursuant to Rule 34.02, subdivision 2, when the child is not removed from home by court order, an admit/deny hearing shall be held no sooner than five (5) days, and no later than twenty (20) days after the parties have been served with the petition. In the case of an Indian child, no foster care placement proceeding or termination of parental rights proceeding shall be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior, provided, however, that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty (20) additional days to prepare for such proceeding.

(c) **Pretrial Conference.** Pursuant to Rule 36.01, a pretrial conference may be held any time after the admit/deny hearing, but not later than ten (10) days before the date the trial is scheduled to commence.

(d) **Trial.** Pursuant to Rule 39.02, when the statutory grounds set forth in the petition are denied, a trial shall be commenced within sixty (60) days of the emergency protective care hearing or the admit/deny hearing, whichever is earlier.

(e) **Findings/Adjudication.** Pursuant to Rule 39.05, subdivision 2, the court shall issue its findings and order concerning adjudication within fifteen (15) days of the date that the trial is completed. If written argument is to be submitted, such argument shall be submitted within fifteen (15) days of the conclusion of testimony. For good cause, the court may extend this period for an additional fifteen (15) days. The trial is not considered completed until the time for written arguments, if any, has expired.

(f) **Disposition.** Pursuant to Rule 41.02, when practicable, the court may order disposition at the same time as the adjudication. In the event disposition is not ordered at the same time as the adjudication, the court shall include in the adjudication order a date for a disposition hearing which shall take place no later than ten (10) days from the date the court issues its adjudication order.

(g) **Review of Legal Custody.** Pursuant to Rule 41.06, when the disposition is an award of legal custody to the responsible social services agency, the court shall review the disposition in court at least every ninety (90) days. Any party or the county attorney may request a review hearing before ninety (90) days.

(h) **Review of Protective Supervision.** Pursuant to Rule 41.06, when the disposition is protective supervision, the court shall review the disposition in court at least every six (6) months from the date of the disposition.

Subd. 2. Permanent Placement Matters.

In the case of a child who is alleged to be in need of protection or services, the court in its first order shall set the date or deadline for the permanent placement determination hearing and the permanency progress review hearing required for a child who is under age eight (8) at

the time the petition is filed alleging the child to be in need of protection or services. Not later than when the court sets the date or deadline for the permanent placement determination hearing and the permanency progress review hearing, the court shall notify the parties and participants of the following requirements of Minnesota Statutes, section 260C.201, subdivisions 11 and 11a:

(a) Requirement of Six– (6) Month Hearing for Child Under Eight (8) Years of Age.

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

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

Subd. 3. Termination of Parental Rights Matters.

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

(b) Pretrial Conference. Pursuant to Rule 36.01, a pretrial conference may be held any time after the date of the admit/deny hearing, but not later than ten (10) days before the date the trial is scheduled to commence.

(c) Trial. Pursuant to Rule 39.02, a trial shall be commenced within ninety (90) days of the filing of the petition.

(d) Findings/Adjudication. Pursuant to Rule 39.05, the court shall issue its findings and order concerning adjudication within fifteen (15) days of the date that the trial is completed. If written argument is to be submitted, such argument shall be submitted within fifteen (15) days of the conclusion of testimony. For good cause, the court may extend this period for an additional fifteen (15) days. The trial is not considered completed until the time for written arguments, if any, has expired.

(e) Review. Pursuant to Rule 43.03, when the court orders termination of parental rights and adoption as the permanency plan, the court shall conduct a hearing to review progress toward adoptive placement at least every ninety (90) days.

(Amended effective January 1, 2004; amended effective January 1, 2007.)

1999 Advisory Committee Comment (amended 2003)

The timeline set forth in Rule 4.03 is intended as an overall guide for juvenile protection matters and is based upon the requirements of Minnesota Statutes, sections 260C.176; 260C.201, subdivisions 10 and 11; 260C.178, subdivision 6; the Indian Child Welfare Act, 25 U.S.C. sections 1901 to 1963; and the Adoption and Safe Families Act of 1997, 42 U.S.C. sections 601, 603, 622, 629, 653, 675, 670–679, and 1320. Specific time requirements are set forth in each individual rule.

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

<i>Day</i>	<i>Event</i>
<i>1</i>	<i>Child removed from home</i>
<i>3</i>	<i>Emergency Protective Care Hearing</i>
<i>3–13</i>	<i>Admit/Deny Hearing</i>
<i>14–53</i>	<i>Pretrial Conference</i>
<i>63</i>	<i>Trial</i>
<i>79</i>	<i>Findings/Adjudication</i>
<i>79–88</i>	<i>Disposition Hearing</i>
<i>168–178</i>	<i>Review Hearing</i>
<i>258–268</i>	<i>Review Hearing</i>

348–358
365

Review Hearing
Permanent Placement Determination Hearing

(Comment amended effective January 1, 2004; amended effective January 1, 2007.)

[For text of 4.04 to Rule 6, see M.S. 2006, Volume 15]

RULE 7. REFEREES AND JUDGES

[For text of 7.01 to 7.06, see M.S. 2006, Volume 15]

Rule 7.07. Removal of Judge

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

Subd. 2. Interest or Bias. No judge shall preside over any case if that judge is interested in its determination or if that judge might be excluded for bias from acting as a juror in the matter. If there is no other judge of the district who is qualified, the chief judge shall immediately notify the Chief Justice of the Minnesota Supreme Court.

Subd. 3. Notice to Remove.

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

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

(c) **Showing of Prejudice.** After a party or the county attorney has once disqualified a presiding judge as a matter of right, that party may disqualify the substitute judge, but only by making an affirmative showing of prejudice. A showing that the judge might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice.

(d) **Assignment of Another Judge.** Upon the filing of a notice to remove, or if a party or the county attorney makes an affirmative showing of prejudice against a substitute judge, the chief judge of the judicial district shall assign any other judge of any court within the district to hear the matter. If there is no other judge of the district who is qualified, the chief judge shall immediately notify the Chief Justice of the Minnesota Supreme Court.

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

(Amended effective January 1, 2004; amended effective January 1, 2007.)

RULE 8. ACCESSIBILITY OF JUVENILE PROTECTION CASE RECORDS

[For text of 8.01 to 8.03, see M.S. 2006, Volume 15]

Rule 8.04. Records Not Accessible to the Public or Parties

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

- (a) transcripts, stenographic notes, and recordings of testimony of anyone taken during portions of proceedings that are closed by the presiding judge;
 - (b) audio tapes or video tapes of a child alleging or describing physical abuse, sexual abuse, or neglect of any child;
 - (c) victims' statements;
 - (d) portions of juvenile protection case records that identify reporters of abuse or neglect;
 - (e) HIV test results;
 - (f) medical records, chemical dependency evaluations and records, psychological evaluations and records, and psychiatric evaluations and records;
 - (g) sexual offender treatment program reports;
 - (h) portions of photographs that identify a child;
 - (i) application for ex parte emergency protective custody orders, and any resulting orders, until the hearing where all parties have an opportunity to be heard on the custody issue, provided that, if the order is requested in a Child in Need of Protection or Services (CHIPS) petition, only that portion of the petition that requests the order shall be deemed to be the application for purposes of this section (i);
 - (j) records or portions of records that specifically identify a minor victim of an alleged or adjudicated sexual assault;
 - (k) notice of pending court proceedings provided to an Indian tribe by the responsible social services agency pursuant to 25 U.S.C., section 1912 (the Indian Child Welfare Act);
 - (l) records or portions of records which the court in exceptional circumstances has deemed inaccessible to the public; and
 - (m) records or portions of records that identify the name, address, home, or location of any shelter care or foster care facility in which a child is placed pursuant to emergency protective care placement, foster care placement, pre-adoptive placement, adoptive placement, or any other type of court ordered placement.
- (Amended effective January 1, 2004.)

2006 Advisory Committee Comment

The child's name and other identifying information are not to be redacted from records that are accessible to the public, except under Rule 8.04(j) when the child is the victim of an alleged or adjudicated sexual assault and under Rule 8.04(d) where the child is specifically identified as the reporter of the abuse or neglect. In the latter instance, the child's name and other identifying information should be redacted only in those instances where it is used as the reporter of abuse or neglect but should not be redacted when referenced elsewhere in the record.

(Added effective January 1, 2007.)

[For text of 8.05 to Rule 9, see M.S. 2006, Volume 15]

RULE 10. ORDERS

[For text of 10.01 and 10.02, see M.S. 2006, Volume 15]

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

Service of court orders shall be made by the court administrator upon each party, the county attorney, and such other persons as the court may direct, and may be made by delivery at the hearing, by U.S. Mail, or as otherwise directed by the court. If a party is represented by counsel, delivery or service shall be upon counsel. If service of the summons was by publication and the person has not appeared either personally or through counsel, service of court orders upon the person is not required. Service of the order by the court administrator must be accomplished within five (5) days of the date the judicial officer delivers the order to the court administrator.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective July 1, 2007.)

[For text of 10.04 to Rule 14, see M.S. 2006, Volume 15]

RULE 15. MOTIONS

[For text of 15.01 and 15.02, see M.S. 2006, Volume 15]

Rule 15.03. Ex Parte Motion and Hearing

Subdivision 1. Motion. A motion may be made ex parte when permitted by statute or these rules. Every ex parte motion shall be accompanied by an explanation of the efforts made to notify all parties 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 seventy-two (72) hours of the child's removal. Upon issuance of an ex parte order in cases of domestic child abuse, the court shall schedule a hearing pursuant to the requirements of Minnesota Statutes, section 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. (Amended effective January 1, 2007.)

[For text of 15.04, see M.S. 2006, Volume 15]

Rule 15.05. Motion to Strike Document

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

(Amended effective January 1, 2004; amended effective January 1, 2007.)

Rule 15.06. Timing of Decision

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

(Added effective January 1, 2007.)

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

Rule 16.01. Signature

Subdivision 1. Generally. Except as otherwise provided in these rules, every pleading, written motion, and other paper 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 paper shall state the signer's name, address, telephone number, and attorney registration number if signed by an attorney. If providing a party's address and telephone number would endanger the party, the address and telephone number may be provided to the court in a separate information statement and shall not be accessible to the public or to the parties. Upon notice and motion, the court may disclose the address and telephone number as it deems appropriate. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

Subd. 2. Exception – Social Worker and Guardian Ad Litem Reports. Reports filed by social workers and guardians ad litem under Rule 38 need not be signed. (Amended effective January 1, 2007.)

Rule 16.02. Representations to Court

By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, motion, report, or other paper, an attorney or unrepresented party is certifying 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.

(Added effective January 1, 2007.)

Rule 16.03. Service and Filing of Motions and Other Documents

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

(Added effective January 1, 2004.)

Rule 16.04. Sanctions

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

[For text of Rule 17, see M.S. 2006, Volume 15]

RULE 18. DEFAULT

[For text of 18.01, see M.S. 2006, Volume 15]

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. (Added effective January 1, 2004; amended effective January 1, 2007.)

[For text of Rules 19 and 20, see M.S. 2006, Volume 15]

C. PARTIES AND PARTICIPANTS

RULE 21. PARTIES

Rule 21.01. Party Status

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

(a) the child's guardian ad litem;

- (b) the child's legal custodian;
- (c) in the case of an Indian child, the child's Indian custodian and Indian tribe through the tribal representative;
- (d) the petitioner;
- (e) any person who intervenes as a party pursuant to Rule 23;
- (f) any person who is joined as a party pursuant to Rule 24; and
- (g) any other person who is deemed by the court to be important to a resolution that is in the best interests of the child.

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

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

- (a) the child's parents, including any noncustodial parent and any adjudicated or presumed father;
- (b) any person entitled to notice of any adoption proceeding involving the child; and
- (c) any other person who is deemed by the court to be important to a resolution that is in the best interests of the child.

(Amended effective January 1, 2004; amended effective January 1, 2007.)

[For text of 21.02 and 21.03, see M.S. 2006, Volume 15]

RULE 22. PARTICIPANTS

Rule 22.01. Participant Status

Unless already a party pursuant to Rule 21, 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 (2) 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 long-term 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.

(Amended effective January 1, 2004; amended effective July 1, 2007.)

Rule 22.02. Rights of Participants

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

- (a) notice and a copy of the petition pursuant to Rule 32;
- (b) attending hearings pursuant to Rule 27; and
- (c) offering information at the discretion of the court, except as provided in subdivision

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.

(Amended effective January 1, 2004; amended effective July 1, 2007.)

[For text of 22.03 to Rule 24, see M.S. 2006, Volume 15]

RULE 25. RIGHT TO REPRESENTATION; APPOINTMENT OF COUNSEL

[For text of 25.01, see M.S. 2006, Volume 15]

Rule 25.02. Appointment of Counsel

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

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

(b) **Truancy Matters.** In any proceeding where the sole basis for the petition is habitual truancy, the child does not have the right to appointment of a public defender or other counsel at public expense. However, before any out-of-home placement, including foster care or inpatient treatment, can be ordered, the court must appoint a public defender or other counsel at public expense to represent the child.

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

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

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

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

(b) **Truancy Matters.** In any proceeding where the sole basis for the petition is habitual truancy, the parent or legal custodian does not have the right to appointment of a public defender or other counsel at public expense. However, before any out-of-home placement, including foster care or inpatient treatment, can be ordered, the court must appoint a public defender or other counsel at public expense to represent the parent or legal custodian in accordance with subdivision 2(a).

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

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

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

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

(Amended effective January 1, 2004; amended effective January 1, 2007.)

Rule 25.03. Reimbursement

When counsel is appointed for a child, the court may inquire into the ability of the parent or legal custodian to pay for the attorney's services and, after giving the parent or legal custodian a reasonable opportunity to be heard, may order the parent or legal custodian to pay the attorney's fees. The parent or legal custodian shall have an ongoing duty to disclose any change in the person's financial circumstances.

(Amended effective January 1, 2004; amended effective January 1, 2007.)

[For text of 25.04 and 25.05, see M.S. 2006, Volume 15]

Rule 25.06. 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 of all post-trial motions under Rules 45 and 46;

(b) the attorney has been discharged by the client in writing or on the record;

(c) the court grants the attorney's ex parte motion for withdrawal upon good cause shown; or

(d) the court approves the attorney's ex parte written substitution of counsel.

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

(Amended effective January 1, 2007.)

RULE 26. GUARDIAN AD LITEM

Rule 26.01. Appointment for Child

Subdivision 1. Mandatory Appointment Generally Required. Pursuant to the procedures set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court, the court shall issue an order appointing a guardian ad litem to advocate for the best interests of the child in each child in need of protection or services matter, termination of parental rights matter, and other permanent placement matter where such appointment is mandated by Minnesota Statutes, section 260C.163, subdivision 5. 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. Pursuant to the procedures set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court, in all other cases, except as provided in subdivision 1, the court may appoint a guardian ad litem to advocate for the best interests of the child as permitted by Minnesota Statutes, section 260C.163, subdivision 5.

Subd. 3. Timing; Method of Appointment. Appointment of a guardian ad litem shall occur prior to the Emergency Protective Care Hearing or the Admit-Deny Hearing, whichever occurs first. The court may appoint a person to serve as guardian ad litem for more than

one child in a proceeding. The appointment of a guardian ad litem shall be made pursuant to the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court.

Subd. 4. Responsibilities; Rights. The guardian ad litem shall carry out the responsibilities set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court. The guardian ad litem shall have the rights set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court.

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

(Amended effective January 1, 2004; amended effective for guardian ad litem appointments in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005; amended effective January 1, 2007; amended effective July 1, 2007.)

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

Subdivision 1. Appointment. Pursuant to the procedures set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court, the court may sua sponte or upon the written or on-the-record request of a party or participant appoint a guardian ad litem for a parent who is a party or the legal custodian if the court determines that the parent or legal custodian:

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

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

Subd. 2. Attorney Not Discharged. 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.

Subd. 3. Responsibilities; Rights. The guardian ad litem shall carry out the responsibilities set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court. The guardian ad litem shall have the rights set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court.

(Amended effective for guardian ad litem appointments in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005; amended effective January 1, 2007.)

[For text of 26.03 and 26.04, see M.S. 2006, Volume 15]

Rule 26.05. Reimbursement

The court may inquire into the ability of the parent or legal custodian to pay for the guardian ad litem's services and, after giving the parent or legal custodian a reasonable opportunity to be heard, may order the parent or legal custodian to pay the guardian ad litem's fees. The parent or legal custodian shall have an ongoing duty to disclose any change in the person's financial circumstances.

(Added effective January 1, 2004; amended effective January 1, 2007.)

[For text of Rule 27, see M.S. 2006, Volume 15]

D. COURSE OF CASE

RULE 28. EMERGENCY PROTECTIVE CARE ORDER AND NOTICE

[For text of 28.01, see M.S. 2006, Volume 15]

Rule 28.02. Ex Parte Order for Emergency Protective Care

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

- (a) the child has left or been removed from a court-ordered placement; or
- (b) there is a prima facie showing that the child is in surroundings or conditions that endanger the child's health, safety, or welfare and that require that responsibility for the child's care and custody be immediately assumed by the responsible social services agency; and
- (c) continuation of the child in the custody of the parent or legal custodian is contrary to the child's welfare.

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

- (a) there is a prima facie showing that pursuant to Minnesota Statutes, section 260C.007, subdivision 6, the child has engaged in prostitution, is a habitual truant, is a runaway, has committed a delinquent act before becoming ten (10) years of age, has been found incompetent to proceed or not guilty by reason of mental illness or mental deficiency, or has been found by the court to have committed domestic abuse; and
- (b) the child failed to appear after having been personally served with a summons or subpoena, reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons; and
- (c) continuation of the child in the custody of the parent or legal custodian is contrary to the child's welfare.

(Amended effective January 1, 2004; amended effective January 1, 2007.)

[For text of 28.03 to Rule 29, see M.S. 2006, Volume 15]

RULE 30. EMERGENCY PROTECTIVE CARE HEARING

[For text of 30.01 to 30.08, see M.S. 2006, Volume 15]

Rule 30.09. Factors

Subdivision 1. Generally. Except in cases described in subdivision 3, 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 Minnesota Statutes, section 260C.301, subdivision 2, at the emergency protective care hearing the court shall require petitioner to present information regarding the following issues:

- (a) whether the responsible social services agency made reasonable efforts, or active efforts in the case of an Indian child, to prevent placement or eliminate the need for removal of the child from the home;
- (b) whether there are services the court could order that would allow the child to safely return home;
- (c) whether responsible relatives or other responsible adults are available to provide services or to serve as placement options if licensed;
- (d) whether the placement proposed by the agency is the least restrictive and most home-like setting that meets the needs of the child;
- (e) whether restraining orders, or orders expelling an allegedly abusive parent or legal custodian from the home, are appropriate;
- (f) whether orders are needed for examinations, evaluations, or immediate services;
- (g) the terms and conditions for parental visitation; and
- (h) what consideration has been given for financial support of the child.

Subd. 2. Determination Regarding Reasonable or Active Efforts. Based upon the information provided to the court in the petition, sworn affidavit, certified report, or on the record, the court shall make a determination whether reasonable efforts, or active efforts in the case of an Indian child, were made to prevent the child's out-of-home placement. The

court shall also determine whether there are available services that would prevent the need for further placement. In the alternative, the court shall determine that reasonable efforts are not required if the court makes a prima facie determination that one of the circumstances under subdivision 3 exists.

Subd. 3. Cases Permitting By-Pass of Child In Need of Protection or Services Proceedings.

(a) **Permanency Determination.** At the emergency protective care hearing, or at any time prior to adjudication, and upon notice and request of the county attorney, the court shall determine whether a petition has been filed stating a prima facie case that:

(1) the parent has subjected a child to egregious harm as defined in Minnesota Statutes, section 260C.007, subdivision 14;

(2) the parental rights of the parent to another child have been terminated involuntarily;

(3) the child is presumed to be an abandoned infant under Minnesota Statutes, section 260C.301, subdivision 2(a)(2);

(4) the parent's custodial rights to another child have been involuntarily transferred to a relative under Minnesota Statutes, section 260C.201, subdivision 11(d)(1), or a similar law of another jurisdiction; or

(5) the provision of services or the provision of further services for the purpose of rehabilitation and reunification is futile and therefore unreasonable under the circumstances.

(b) **Permanency Hearing Required.** Once the court makes the determination required in subdivision 3(a), the court shall schedule a permanent placement determination hearing pursuant to Rule 42 within thirty (30) days.

(Amended effective January 1, 2004; amended effective January 1, 2007.)

Rule 30.10. Protective Care Findings and Order

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

(a) that the child:

(1) continue in protective care;

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

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

(4) return home with no conditions;

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

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

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

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

(Amended effective January 1, 2004; amended effective January 1, 2007.)

2006 Advisory Committee Comment

When the court orders a child into "protective care," the court is ordering the child placed in foster care. That means the responsible social services agency has the right to temporary physical custody and control of the child. See Rule 2.01(p); Minnesota Statutes, sections 260C.178, subdivision 1; and 260C.007, subdivision 18. The responsible social services agency must make an individualized determination that the placement selected is in the best interests of the child using the eight factors set out in the statute. Minnesota Statutes, sections 260C.201, subdivision 1(a)(2)(ii), and 260C.212, subdivision 2. The agency documents its use of the eight best interest factors in the Out-of-Home Placement Plan required under Minnesota Statutes, section 260C.212, subdivision 1, and Rule 37.02. The court re-

views the agency's use of the eight statutory best interest factors during the hearing required under Rule 41 and Minnesota Statutes, section 260C.193, subdivision 3.

When a child is in foster care, the agency is responsible for the cost of placement, and may seek reimbursement from the child and parent under Minnesota Statutes, section 260C.331, subdivision 1, and, in the case of eligible children, from the federal government under Title IV–E of the Social Security Act, United States Code, title 42, section 670, et al. Federal reimbursement to counties for the cost of foster care in Minnesota is about 50 percent of the cost and offers the opportunity for significant savings to counties. One of the requirements for federal reimbursement is that the agency be the entity responsible for selecting the placement. The federal regulation that accompanies Title IV–E states “FFP [Federal Financial Participation – that is Title IV–E reimbursement] is not available when a court orders a placement with a specific foster care provider.” See Code of Federal Regulations, title 45, section 1356.21(g). The Minnesota Department of Human Services recommends that orders for specific placements be limited to help ensure that Title IV–E reimbursements are not jeopardized. See DHS Bulletin 01–68–04. The only specific authority under Minnesota's statutes for the court to order a particular placement is Minnesota Statutes, section 260C.193, subdivision 3, which permits the court to order a child placed with a relative who qualifies to be licensed if the agency has not made efforts to locate a relative as required under Minnesota Statutes, section 260C.212, subdivision 5. For these reasons, Rule 30.10 omits any requirement that the court order the child placed in a particular facility or with a particular relative.

(Added effective January 1, 2007.)

[For text of 30.11 and 30.12, see M.S. 2006, Volume 15]

RULE 31. METHODS OF FILING AND SERVICE

Rule 31.01. Types of Filing

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

Subd. 2. Filing by Facsimile Transmission.

(a) Any paper may be filed with the court by facsimile transmission. Filing shall be deemed complete at the time that the facsimile transmission is received by the court. The facsimile shall have the same force and effect as the original. Only facsimile transmission equipment that satisfies the published criteria of the supreme court shall be used for filing in accordance with this rule.

(b) Within five (5) days after the court has received the transmission, the party 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 paper is filed by facsimile, the sender's original must not be filed but must be maintained in the files of the party transmitting it for filing and made available to the court or any party to the action upon request.

(d) Upon failure to comply with the requirements of this rule, the court in which the action is pending 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.

(Amended effective January 1, 2004; amended effective January 1, 2007.)

2006 Advisory Committee Comment

Rule 31.01, subdivision 2, regarding facsimile filing is amended in format and substance consistent with the amendments made to the Rules of Civil Procedure. Specifically, it

is amended to delete the requirement that an "original" document follow the filing by facsimile. The requirement of a double filing causes confusion and unnecessary burdens for court administrators, and with the dramatic improvement in quality of received faxes since initial implementation of the Civil Rule in 1988, it no longer serves a useful purpose. Under the amended rule, the document filed by facsimile is the original for all purposes unless an issue arises as to its authenticity, in which case the version transmitted electronically and retained by the sender can be reviewed.

The filing fee for fax filings is changed from \$5 to \$25 because fax filings, even under the streamlined procedures of the amended rule, still impose significant administrative burdens on court staff, and it is therefore appropriate that this fee, unchanged since its adoption in the Rules of Civil Procedure in 1988, be increased. A number of committee members expressed the view that facsimile filing was, and still is, intended to be a process used on a limited basis in exigent or at least unusual circumstances. It 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. (Added effective January 1, 2007.)

Rule 31.02. Types of Service

Subdivision 1. Personal Service. Personal service means personally delivering the original document to the person to be served or leaving it at the person's home or usual place of abode with a person of suitable age and discretion residing therein, unless the court authorizes service by publication. Unless otherwise provided by these rules or ordered by the court, the sheriff or other person not less than 18 years of age and not a party to the action may make personal service of a summons or other process. The social services reports and guardian ad litem reports required under Rule 38 may be served directly by the social worker and guardian ad litem.

(a) **Personal Service Outside State.** Personal service of a summons outside the state, proved by the affidavit of the person making the same sworn to before a person authorized to administer an oath, shall have the same effect as the published notice.

(b) **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 state:

(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 country 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 complaint; 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 a copy of the document in the U.S. mail, first class, postage prepaid, addressed to the person to be served.

Subd. 3. Publication. Service by publication means the publication in full of the summons, notice, or other papers in the regular issue of a qualified newspaper, once each week

for the number of weeks specified pursuant to Rule 32.02. Service by publication substitutes for personal service where authorized by the court. The court shall authorize service by publication only if the petitioner has filed a written statement or affidavit describing unsuccessful efforts to locate the party to be served.

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

(Amended effective January 1, 2004; amended effective January 1, 2007.)

[For text of 31.03, see M.S. 2006, Volume 15]

Rule 31.04. Service Upon Counsel; Social Services Agency

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

(Amended effective January 1, 2004; amended effective January 1, 2007.)

[For text of 31.05 and 31.06, see M.S. 2006, Volume 15]

Rule 31.07. Proof of Service

Subdivision 1. Generally. On or before the date set for appearance, the person serving the document shall file with the court a notarized 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.

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 38 and, instead, shall include with their report a nonnotarized certificate of distribution 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.

(Amended effective January 1, 2007.)

RULE 32. SUMMONS AND NOTICE

[For text of 32.01, see M.S. 2006, Volume 15]

Rule 32.02. Summons

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

Subd. 2. Upon Whom; Cost.

(a) **Generally.** The court shall serve a summons and petition upon each party identified in Rule 21, except as provided in subdivision 3(b), and upon any other person whose pres-

ence 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 nonprofit or public agency shall be paid by the petitioner.

(b) Termination of Parental Rights Matters. In addition to the requirements of subdivision 2(a), in any termination of parental rights matter the court administrator shall serve the summons and petition upon the county attorney, any guardian ad litem for the child's legal custodian, and any attorney representing a party in an ongoing child in need of protection or services proceeding involving the subject child.

Subd. 3. Service.

(a) Generally. Unless the court orders service by publication pursuant to Rule 31.02, subdivision 3, the summons and petition shall be personally served upon the child's parent or legal custodian, and the summons shall be served personally or by U. S. mail upon all other parties and attorneys.

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

(1) Initial Service. Notwithstanding the requirements of subdivisions 2(a) and 3(a), when the sole allegation is that the child is a habitual truant, a runaway, or engaged in prostitution, initial service may be made as follows:

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

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

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

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

Subd. 4. Content.

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

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

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

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

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

(5) a statement that failure to appear may result in:

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

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

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

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

(v) an order granting the relief requested.

(b) Child in Need of Protection or Services Matters. In addition to the content requirements set forth in subdivision (4)(a), in any child in need of protection or services matter the summons shall also contain or have attached a statement 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) a possible consequence of the hearing is that the child may be removed from the home of the parent or legal custodian and placed in foster care, and such removal may lead to other proceedings for permanent out-of-home placement of the child or termination of parental rights.

(c) **Termination of Parental Rights Matters.** In addition to the content requirements set forth in subdivision 4(a), in any termination of parental rights matter the summons shall also contain or have attached a statement pursuant to Rule 18.01 that if the person summoned fails to appear the court may conduct the hearing in the person's absence and the hearing may result in termination of the person's parental rights.

(d) **Permanent Placement Matters.** In addition to the content requirements set forth in subdivision 4(a), in any permanent placement matter the summons shall also contain or have attached a statement pursuant to Rule 18.01 that if the person summoned fails to appear the court may conduct the hearing in the person's absence and the hearing may result in an order granting the relief requested in the petition.

Subd. 5. Timing of Service of Summons and Petition.

(a) **Generally.** The summons and petition shall be served either at or before the emergency protective care hearing held pursuant to Rule 30, or at least three (3) days prior to the admit/deny hearing, whichever is earlier. At the request of a party, the hearing shall not be held at the scheduled time if the summons and petition have been served less than three (3) days before the hearing. If service is made outside the state or by publication, the summons shall be personally served, mailed, or last published at least ten (10) days before the hearing. In cases where publication of a child in need of protection or services petition is ordered, published notice shall be made one time with the last publication at least ten (10) days before the date of the hearing. Service by publication shall be made pursuant to Rule 31.02, subdivision 3.

(b) **Termination of Parental Rights Matters and Permanent Placement Matters.** In any termination of parental rights matter or permanent placement matter the summons and petition shall be served upon all parties in a manner that will allow for completion of service at least ten (10) days prior to the date set for the admit/deny hearing. In cases where publication of a termination of parental rights or other permanency summons is ordered, published notice shall be made once per week for three (3) weeks with the last publication at least ten (10) days before the date of the hearing. Pursuant to Minnesota Statutes, section 260C.307, subdivision 3, notice sent by certified mail to the last known address shall be mailed at least twenty (20) days before the date of the hearing. Service by publication shall be made pursuant to Rule 31.02, subdivision 3.

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

Subd. 7. Failure to Appear. If any person personally served with a summons or subpoena fails, without reasonable cause, to appear or bring the child if ordered to do so, or if the court has reason to believe the person is avoiding personal service, the court may sua sponte or upon the motion of a party or the county attorney pursuant to Rule 15 proceed against the person for contempt of court or the court may issue a warrant for the person's arrest, or both. When it appears to the court that service will be ineffectual, or that the welfare of the child requires that the child be immediately brought into the custody of the court, the court may issue a warrant for immediate custody of the child.

(Amended effective January 1, 2004; amended effective January 1, 2007.)

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

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

Subd. 2. Upon Whom.

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

(b) **Admit/Deny Hearing.** If the initial hearing is an admit/deny hearing, the court administrator shall serve a summons and petition upon all parties identified in Rule 21, and a notice of hearing and petition upon all participants identified in Rule 22, the county attorney,

any attorney representing a party in the matter, and the child through the child's attorney, if represented, or the child's physical custodian.

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

- (a) 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 61;
- (e) a statement explaining intervention as of right and permissive intervention pursuant to Rule 23;
- (f) a statement pursuant to Rule 18.01 that failure to appear may result in:
 - (1) the child being removed from home pursuant to a child in need of protection or services petition;
 - (2) the parent's parental rights being permanently severed pursuant to a termination of parental rights petition;
 - (3) permanent transfer of the child's legal and physical custody to a relative;
 - (4) a finding that the statutory grounds set forth in the petition have been proved;
- and
- (5) an order granting the relief requested; and
- (g) a statement that it is the responsibility of the individual to notify the court administrator of any change of address.

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

(Amended effective January 1, 2004; amended effective January 1, 2007.)

Rule 32.04. Notice of Subsequent Hearings

For each hearing following the emergency protective care or admit/deny hearing, the court administrator shall serve upon each party, participant, and attorney a written notice of the date, time, and location of the next hearing. Such notice shall be delivered at the close of each hearing or mailed at least five (5) days before the date of the hearing or ten (10) days before the date of the hearing if mailed to an address outside the state. If written notice is delivered at the end of the hearing, later written notice is not required.

(Added effective January 1, 2004; amended effective January 1, 2007.)

[For text of 32.05, see M.S. 2006, Volume 15]

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

Pursuant to United States Code, title 25, section 1912(a), in any juvenile protection proceeding where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe of the pending proceedings and of the right of intervention pursuant to Rule 23. Such notice shall be by registered mail with return receipt requested, unless personal service has been accomplished. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary of the Interior in like manner, who shall have fifteen (15) days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior, provided that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty (20) additional days to prepare for such proceeding.

(Amended effective January 1, 2004; amended effective January 1, 2007.)

RULE 33. PETITION

Rule 33.01. Drafting; Filing; Service

Subdivision 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 32.02. If the petition contains any information under Rule 8.04 that is inaccessible to the public, the petitioner shall file with the court the original petition and a copy of the petition from which the inaccessible information has been redacted.

Subd. 2. Habitual Truant and Runaway Matters. A matter based solely on grounds that a child is a habitual truant or a runaway may be initiated by citation issued by a peace officer or school attendance officer. A citation shall contain:

- (a) the name, address, date of birth, and race of the child;
- (b) the name and address of the parent or legal custodian of the child;
- (c) the offense alleged and a reference to the statute which is the basis for the charge; and
- (d) the time and place the alleged offense was committed. In the event the child is alleged to be a runaway, the place where the offense was committed may be stated in the notice as either the child's parent's residence or lawful placement or where the child was found by the officer. In the event the child is alleged to be a habitual truant, the place where the offense was committed may be stated as the school or the place where the child was found by the officer.

Subd. 3. Termination of Parental Rights Matters.

(a) **Drafting.** A termination of parental rights petition may be drafted and filed by the county attorney or any responsible person.

(b) **Filing and Service.** Any termination of parental rights petition shall be filed in the child in need of protection or services file, if one exists. A petition shall be served pursuant to Rule 32.02.

(c) **Egregious Harm, Abandonment of an Infant, Previous Involuntary Termination of Parental Rights, or Previous Involuntary Transfer of Permanent Legal and Physical Custody Matters.** The county attorney shall file a termination of parental rights petition within thirty (30) days of the responsible social services agency determining that a child:

- (1) has been subjected to egregious harm as defined in Minnesota Statutes, section 260C.007, subdivision 14;
- (2) is the sibling of another child who was subjected to egregious harm by the parent;
- (3) is an abandoned infant as defined in Minnesota Statutes, section 260C.301, subdivision 2;
- (4) is a child of a parent whose parental rights to another child have been involuntarily terminated; or
- (5) is the child of a parent whose custodial rights to another child have been involuntarily transferred to a relative under Minnesota Statutes, section 260C.201, subdivision 11, or similar law of another jurisdiction.

(d) **Joinder of Social Services Agency.** If the termination of parental rights petition has been filed by a party other than the responsible social services agency, that party shall join the responsible social services agency as a party pursuant to Rule 24.

(e) **Termination of Parental Rights or Other Permanency Petition.** The county attorney need not file a termination of parental rights petition if the county attorney files with the court:

- (1) a petition for transfer of permanent legal and physical custody to a relative, including a determination that such transfer is in the best interests of the child; or
- (2) a petition alleging the child and, where appropriate, the child's siblings to be in need of protection or services and such petition is accompanied by a case plan or out-of-home placement plan prepared by the responsible social services agency documenting a

compelling reason why filing a termination of parental rights petition is not in the best interests of the child.

Subd. 4. Permanent Placement Matters.

(a) **Generally.** Any permanent placement petition required under Rule 42 shall be filed in the child in need of protection or services file, if one exists.

(b) **Filing by Whom; Service.** The county attorney shall file a permanent placement petition in juvenile court to determine the permanent placement of a child. The county attorney 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 other parties. A petition shall be served pursuant to Rule 32.02.

(Amended effective January 1, 2004; amended effective January 1, 2007.)

Rule 33.02. Content

Subdivision 1. Generally. Every petition filed with the court in a juvenile protection matter, or a sworn affidavit accompanying such petition, shall contain:

- (a) a statement of facts that, if proven, would support the relief requested in the petition;
- (b) the child's name, date of birth, race, gender, and current address unless stating the address would endanger the child or seriously risk disruption of the current placement;
- (c) the names, race, date of birth, residence, and post office addresses of the child's parents when known;
- (d) the name, residence, and post office address of the child's legal custodian, the person having custody or control of the child, or the nearest known relative if no parent or legal custodian can be found;
- (e) the name, residence, and post office address of the spouse of the child;
- (f) the statutory grounds on which the petition is based, together with a recitation of the relevant portion of the subdivision(s);
- (g) a statement regarding the applicability of the Indian Child Welfare Act;
- (h) the names and address of the parties identified in Rule 21, as well as a statement designating them as parties; and
- (i) the names and addresses of the participants identified in Rule 22, as well as a statement designating them as participants.

If any information required by subdivision 1 is unknown at the time of the filing of the petition, as soon as such information becomes known to the petitioner it shall be provided to the court and parties either orally on the record, by sworn affidavit, or by amended petition. If presented orally on the record, the court shall annotate the petition to reflect the updated information.

Subd. 2. Child in Need of Protection or Services Matters.

(a) **Petitions Drafted and Filed by County Attorney.** A child in need of protection or services matter is defined in Minnesota Statutes, section 260C.007, subdivision 6. All child in need of protection or services petitions shall be drafted and filed under the supervision of the county attorney, except as provided in Minnesota Statutes, section 260C.141, subdivision 1, and subdivision 2(b) of this rule.

(b) **Petitions Drafted and Filed By Others.**

(1) **Petition Form.** A child in need of protection or services petition filed by an individual who is not a county attorney or responsible social services agency shall be filed on a form developed by the state court administrator. Copies of the form shall be available from the court administrator in each county.

(2) **Additional Content Requirements for Petitions Not Filed by County Attorney.** In addition to the content requirements set forth in subdivision 1, a petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services shall contain:

(i) a statement that the petitioner has reported the circumstances underlying the petition to the responsible social services agency and that protection or services were not provided to the child;

(ii) a statement, including court file numbers where possible, of pending juvenile or family court proceedings and prior or present juvenile or family court orders relating to the child; and

(iii) a statement regarding the relationship of the petitioner to the child and to any other parties.

(3) Review by Court Administrator. Any petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services shall be reviewed by the court administrator before it is filed to determine whether it is complete. The court administrator may reject the petition as incomplete if it does not indicate that the petitioner has contacted the responsible social services agency.

(4) Court Review. Within three (3) days of the date a petition is filed by a person who is not a county attorney or an agent of the Commissioner of Human Services, the court shall review the petition. If the court determines that the petition and attachments establish a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter, the court shall set the matter for an admit/deny hearing pursuant to Rule 34 and shall direct notice pursuant to Rule 32. The court shall not allow a petition to proceed if it appears that the sole purpose of the petition is to modify custody between the parents or if it fails to set forth the information required in subdivisions 1 and 2(b) of this rule.

(c) Petition Based Upon Prima Facie Case.

(1) When Required. In addition to the content requirements of subdivisions 1 and 2(b), a petition establishing a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter shall be filed with the court:

(i) before the court may issue an ex parte order for emergency protective care pursuant to Rule 28; or

(ii) before an emergency protective care hearing is held pursuant to Rule 30 for a child taken into emergency protective care without a court order.

(2) Manner. The facts establishing a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter may be set forth in writing in or with the petition, or in supporting affidavits, and may be supplemented by sworn testimony of witnesses taken before the court. If such testimony is taken, a note stating this fact shall be made by the court on the petition. The testimony shall be recorded pursuant to Rule 11.

Subd. 3. Termination of Parental Rights Matters.

(a) Generally. A termination of parental rights matter shall be entitled "Petition to Terminate Parental Rights" and shall conform to the requirements of Minnesota Statutes, section 260C.141.

(b) Petitions Drafted and Filed by Others.

(1) Petition Form. A termination of parental rights petition filed by an individual who is not a county attorney or responsible social services agency shall be filed on a form developed by the state court administrator. Copies of the form shall be available from the court administrator in each county.

(2) Additional Content Requirements for Petitions Not Filed by County Attorney. In addition to the content requirements set forth in subdivision 1, a petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services shall contain:

(i) a statement, including court file numbers where possible, of pending juvenile or family court proceedings and prior or present juvenile or family court orders relating to the child;

(ii) a statement regarding the relationship of the petitioner to the child and to any other parties; and

(iii) a statement identifying any past or pending cases involving the child or family that is the subject of the petition.

(3) **Review by Court Administrator.** Any petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services shall be reviewed by the court administrator before it is filed to determine whether it is complete. The court administrator may reject the petition if incomplete.

(c) **Petitions Seeking Alternative Permanent Placement Relief.** In addition to the content requirements set forth in subdivision 1, any termination of parental rights petition filed by the county attorney or agent of the Commissioner of Human Services may seek alternative permanent placement relief, and any other party may seek only transfer of permanent legal and physical custody to a relative as the alternative to termination of parental rights. 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(s) is sought for each child and why that option(s) is in the best interests of the child. At the admit/deny hearing on a petition that seeks alternative relief, each party shall identify on the record the permanent placement option that is in the best interests of the child.

Subd. 4. Permanent Placement Matters.

(a) **Captions and Title.** Every petition in a permanent placement matter, or a sworn affidavit accompanying such petition, shall contain a title denoting the permanency relief sought:

(1) A transfer of permanent legal and physical custody matter shall be entitled "Juvenile Protection Petition to Transfer Permanent Legal and Physical Custody" and shall name a fit and willing relative as a proposed permanent legal and physical custodian.

(2) A request for long-term foster care shall be entitled "Juvenile Protection Petition for Long-term Foster Care."

(3) A request for foster care for a specified period of time for a child adjudicated to be in need of protection or services solely on the basis of the child's behavior shall be entitled "Juvenile Protection Petition for Foster Care for a Specific Period of Time."

(b) **Petitions Seeking Alternative Permanent Placement Relief.** Any permanent placement petition filed by the county attorney or agent of the Commissioner of Human Services may seek alternative permanent placement relief, including termination of parental rights, transfer of permanent legal and physical custody to a relative, or placement of the child in long-term foster care. Any permanent placement petition filed by a party who is not the county attorney or agent of the Commissioner of Human Services may seek only transfer of permanent legal and physical custody to a relative as the alternative to termination of parental rights. A petition seeking alternative permanent placement relief shall identify which permanent placement option the petitioner believes is in the best interests of the child. A petition may seek separate permanent placement relief for each child named as a subject of the petition as long as the petition identifies which option(s) is sought for each child and why that option is in the best interests of the child. At the admit/deny hearing on a petition that seeks alternative relief, each party shall identify on the record the permanent placement option that is in the best interests of the child. If another party files a permanent placement petition in response to the county's petition, it must be filed and served at least fifteen (15) days prior to the date of trial.

Subd. 5. Out of State Party. If a party resides out of state, or if there is likelihood of interstate litigation, the petition or an attached affidavit shall include a statement regarding the whereabouts of the party and any other information required by the Uniform Child Custody Jurisdiction and Enforcement Act, Minnesota Statutes, sections 518D.101 to 518D.317.

Subd. 6. 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 name or address may be provided to the court in a separate informational statement and shall not be accessible to the public or to the parties. Upon notice and motion, the court may disclose the name or address as it deems appropriate.

(Amended effective January 1, 2004; amended effective January 1, 2007.)

Rule 33.04. Amendment

Subdivision 1. Prior to Trial. The petition may be amended at any time prior to the commencement of the trial, including, in a child in need of protection or services matter, adding a child as the subject matter of the petition. The petitioner shall provide 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. Upon receipt of approval from the court, the petitioner shall provide written or on-the-record notice of the proposed amendment to all parties and participants.

(Amended effective January 1, 2007.)

[For text of 33.05, see M.S. 2006, Volume 15]

RULE 34. ADMIT/DENY HEARING

[For text of 34.01, see M.S. 2006, Volume 15]

Rule 34.02. Timing**Subdivision 1. Child in Placement.**

(a) **Generally.** When the child is placed out of the child's home by court order, an admit/deny hearing shall be held within ten (10) days of the date of the emergency protective care hearing. Upon agreement of the parties, an admit/deny hearing may be combined with an emergency protective care hearing held pursuant to Rule 30.

(b) **Termination of Parental Rights Matters.** In a termination of parental rights matter the admit/deny hearing shall be held not less than ten (10) days after service of the summons and petition is complete upon the party.

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

Subd. 2. Child Not in Placement.

(a) **Generally.** When the child is not placed outside the child's home by court order, an admit/deny hearing shall be held no sooner than five (5) days and no later than twenty (20) days after the parties have been served with the summons and petition.

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

Subd. 3. Possession of Petition. The parties have the right to have a copy of the petition at least three (3) days before the admit/deny hearing.

(Amended effective January 1, 2004; amended effective January 1, 2007.)

Rule 34.03. Hearing Procedure

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

(a) verify the name, age, race, and current address of the child who is the subject of the matter, unless stating the address would endanger the child or seriously risk disruption of the current placement;

(b) inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe, parent, and Indian custodian have been notified;

(c) determine whether all parties are present and identify those present for the record;

(d) advise any child and the child's parent or legal custodian who appears in court and is not represented by counsel of the right to representation pursuant to Rule 25;

(e) determine whether notice requirements have been met and, if not, whether the affected person waives notice;

(f) if the child who is a party or the child's parent or legal custodian appears without counsel, explain basic trial rights;

(g) determine whether the child and the child's parent or legal custodian understand the statutory grounds and the factual allegations set forth in the petition and, if not, provide an explanation; and

(h) explain the purpose of the hearing and the possible transfer of custody of the child from the parent or legal custodian to another, when such transfer is permitted by law and the permanency requirements of Minnesota Statutes, section 260C.201, subdivision 11.

Subd. 2. Child in Need of Protection or Services Matters.

(a) 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 matter, unless the prima facie determination was made at the emergency protective care hearing pursuant to Rule 30.08. 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 that matter.

(b) In addition to the initial procedures set forth in subdivision 1, in each child in need of protection or services matter the court shall also advise all persons present that if the petition is proven and the child is not returned home:

(1) a permanency progress review hearing shall be held within six (6) months of the date of the child's placement in foster care or in the home of a noncustodial parent if the child was under eight (8) years of age at the time of the filing of the petition; and

(2) a permanent placement determination hearing shall be held within twelve (12) months of the date of the child's placement in foster care or in the home of a noncustodial parent.

Subd. 3. Termination of Parental Rights Matters.

(a) In each termination of parental rights matter, after completing the initial inquiries set forth in subdivision 1, the court shall determine whether the petition states a prima facie case in support of one or more statutory grounds set forth in the petition to terminate parental rights and a prima facie showing that a juvenile protection matter exists and that the child is the subject of the matter. 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) When the petition alleges that reasonable efforts, or active efforts in the case of an Indian child, have been made to reunify the child with the parent or legal custodian, the court shall enter a separate finding regarding whether the factual allegations contained in the petition state a prima facie case that the agency has provided reasonable efforts, or active efforts in the case of an Indian child, to reunify the child and the parent or legal custodian. In the alternative, the court may enter a finding that reasonable efforts, to reunify the child and the parent or legal custodian were not required under Minnesota Statutes, section 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 35. 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 ten (10) days to file an amended petition or supplementary information if the petitioner represents there are additional facts which, if presented to the court, would establish a prima facie case in support of termination of parental rights;

(iii) give the petitioner ten (10) days to file a child in need of protection or services petition; or

(iv) dismiss the petition.

Subd. 4. Permanent Placement Matters.

(a) In each permanent placement matter, after completing the initial inquiries set forth in subdivision 1, the court shall review the facts set forth in the petition, consider such argument as the parties may make, and determine whether the petition states a prima facie case in support of one or more of the permanent placement options.

(b) When the petition seeking permanent placement of the child away from the parent or legal custodian requires a determination by the court that reasonable efforts, or active efforts in the case of an Indian child, have been made to reunify the child with the parent or legal custodian, the court shall enter a separate finding regarding whether the factual allegations in the petition state a prima facie case that the agency has provided reasonable efforts, or active efforts in the case of an Indian child, to reunify the child and the parent or legal custodian. In the alternative, the court may enter a finding that reasonable efforts were not required under Minnesota Statutes, section 260.012.

(c) If the court determines that the petition states a prima facie case, the court shall proceed pursuant to Rule 35. If the court determines that the petition fails to state a prima facie case, the court may:

- (i) return the child to the care of the parent;
- (ii) give the petitioner ten (10) days to file an amended petition or supplementary information if the petitioner represents there are additional facts which, if presented to the court, would establish a prima facie case; or
- (iii) dismiss the petition.

Subd. 5. Motions. The court shall hear any motions, made pursuant to Rule 15, addressed to the sufficiency of the petition or jurisdiction of the court without requiring any person to admit or deny the statutory grounds set forth in the petition prior to making a finding on the motion.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective July 1, 2007.)

RULE 35. ADMISSION OR DENIAL

Rule 35.01. Generally

Subdivision 1. Parent or Legal Custodian.

(a) **Generally.** Unless the child's parent or legal custodian is the petitioner, a parent who is a party or a legal custodian shall admit or deny the statutory grounds set forth in the petition or remain silent. If the parent or legal custodian denies the statutory grounds set forth in the petition or remains silent, or if the court refuses to accept an admission, the court shall enter a denial of the petition on the record.

(b) **Termination of Parental Rights Matters.** In a termination of parental rights matter, only the parents of the child are required to admit or deny the petition. A party who is not required to admit or deny the petition may object to the admission if that party has filed a petition pursuant to Rule 33.

(c) **Permanent Placement Matters.** In a permanent placement matter:

(1) Only the legal custodian of the child who is not the petitioner is required to admit or deny the petition. A party who is not required to admit or deny the petition may object to the entry of the proposed permanent placement order if that party has filed a petition pursuant to Rule 33.

(2) 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:

- (i) the legal consequences of a transfer of permanent legal and physical custody;
- (ii) the nature and amount of financial support and services that will be available to help care for the child;

(iii) how the custody order can be modified; and

(iv) any other permanent placement options available for the subject child.

Subd. 2. Child.

(a) **Generally.** 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.

(Amended effective January 1, 2004; amended effective January 1, 2007.)

[For text of 35.02, see M.S. 2006, Volume 15]

Rule 35.03. Admission

Subdivision 1. Admission Under Oath. Any admission must be made under oath.

Subd. 2. Admission Without Appearance. Upon approval of the court, a written admission of the statutory grounds set forth in the petition, made under oath, may be entered by counsel without personal appearance of the person represented by counsel.

Subd. 3. Questioning of Person Making Admission.

(a) **Generally.** Before accepting an admission the court shall determine on the record or by written document signed by the person admitting and the person's counsel, if represented, whether:

- (1) the person admitting acknowledges an understanding of:
 - (i) the nature of the statutory grounds set forth in the petition;
 - (ii) if unrepresented, the right to representation pursuant to Rule 25;
 - (iii) the right to a trial;
 - (iv) the right to testify; and
 - (v) the right to subpoena witnesses; and

(2) the person admitting acknowledges an understanding that the facts being admitted establish the statutory grounds set forth in the petition.

(b) **Child in Need of Protection or Services Matters; and Habitual Truant, Runaway, and Prostitution Matters.** In addition to the questions set forth in subdivision 3(a), before accepting an admission in a child in need of protection or services matter or a matter alleging a child to be a habitual truant, a runaway, or engaged in prostitution, the court shall also determine on the record or by written document signed by the person admitting and the person's counsel, if represented, 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 (6) months of the date the child is ordered placed in foster care or in the home of a noncustodial parent if the child was under eight (8) years of age at the time of the filing of the petition, and a permanent placement determination hearing will be held within twelve (12) months of the date the child is ordered placed in foster care or in the home of a noncustodial 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 person may admit some, but not all, of the statutory grounds set forth in the petition.

Subd. 5. Withdrawal of Admission. After filing a motion with the court:

(a) an admission may be withdrawn at any time upon a showing that withdrawal is necessary to correct a manifest injustice; or

(b) the court may allow a withdrawal of an admission before a finding on the petition for any fair and just reason.

Subd. 6. Acceptance or Non-Acceptance of Admission. At the time of the admission, the court shall make a finding that:

(a) the admission has been accepted and the statutory grounds admitted have been proved;

(b) the admission has been conditionally accepted pending the court's approval of a settlement agreement pursuant to Rule 19; 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 40 and proceed to disposition. If the court makes a finding that the admission has not been accepted, the court shall schedule further proceedings pursuant to Rule 36 or Rule 39.

(Amended effective January 1, 2004; amended effective January 1, 2007.)

RULE 36. PRETRIAL HEARING

Rule 36.01. Timing

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

(Amended effective January 1, 2007.)

Rule 36.02. Purpose

The purposes of a pretrial hearing shall be to:

(a) determine whether a settlement of any or all of the issues has occurred or is possible;

(b) determine whether all parties have been served and, if not, review the efforts that have taken place to date to serve all parties;

(c) advise any child or the child's parent or legal custodian who appears in court and is unrepresented of the right to representation pursuant to Rule 25. If counsel is appointed at the pretrial hearing, the hearing shall be reconvened at a later date;

(d) determine whether the child shall be present and testify at trial and, if so, under what circumstances;

(e) identify any unresolved discovery matters;

(f) resolve any pending pretrial motions;

(g) identify and narrow issues of law and fact for trial, including identification of:

(1) the factual allegations admitted or denied;

(2) the statutory grounds admitted or denied;

(3) any stipulations to foundation and relevance of documents; and

(4) any other stipulations, admissions, or denials;

(h) exchange witness lists and a brief summary of each witness' testimony;

(i) exchange exhibit lists;

(j) confirm the trial date and estimate the length of trial; and

(k) determine any other relevant issues.

(Amended effective January 1, 2007.)

Rule 36.03. Pretrial Order

The pretrial order shall include the information specified in Rule 36.02 and shall specify all factual allegations and statutory grounds admitted and denied.

(Added effective January 1, 2007.)

Rule 36.04. Continuing Obligation to Update Information

From the date of the pretrial hearing through the date of trial, the parties shall have a continuing obligation to update information provided during the pretrial hearing.

(Added effective January 1, 2007.)

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

Rule 37.01. Case and Out-of-Home Placement Plans and Reports Generally

When the responsible social services agency is the petitioner, the agency shall file with the court and provide to the parties and foster parent a case plan 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 Minnesota Statutes, section 245.4871, subdivision 19 or 21; section 245.492, subdivision 16; section 256B.092; section 260C.212, subdivision 1; or section 626.556, subdivision 10, whichever is applicable.

(Added effective January 1, 2004; amended effective January 1, 2007.)

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

Subdivision 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 out-of-home placement plan required under Minnesota Statutes, section 260C.212, subdivision 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 thirty (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 parent, legal custodian, and child participated in the preparation of the plan. If a parent or legal custodian refuses to participate in the preparation of the plan 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 or legal custodian; the child, if appropriate; the child's tribe, if the child is an Indian child; and foster parents have received a copy of the plan. 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. 4. Procedure for Approving or Ordering Out-of-Home Placement Plan Prior to Disposition.

(a) **Court's Approval of Plan.** 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 if it was developed jointly with the parent and in consultation with others required under this Rule and Minnesota Statutes, section 260C.212, subdivision 1. The court shall send written notice of the approval of the plan to all parties and the county attorney, or may state such approval on the record at a hearing after the plan has been filed with the court and provided to the parties, foster parents, and the child, as appropriate.

(b) **Refusal to Participate in Development of Plan or Disagreement With Services.** 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 Minnesota Statutes, section 260C.201, subdivision 1, and Rule 41. 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 Minnesota Statutes, section 260C.178, subdivision 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.

Subd. 5. Procedure for Ordering Out-of-Home Placement Plan at Disposition. Rule 41 governs the ordering of an Out-of-Home Placement Plan at the time of Disposition. (Added effective January 1, 2004; amended effective January 1, 2007.)

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

Subdivision 1. Child in Voluntary Foster Care Not Due Solely to Child's Disability.

(a) **Timing.** The out-of-home placement plan required under Minnesota Statutes, section 260C.212, subdivision 1, shall be filed and served with the petition asking the court to review a voluntary placement of a child in placement when the placement is not due solely to the child's disability under Minnesota Statutes, section 260C.141, subdivision 2, and Rule 44.

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

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

(a) **Timing.** The out-of-home placement plan required under Minnesota Statutes, section 260C.212, subdivision 1, shall be filed with the report or petition asking the court to review a voluntary placement of a child in placement when the placement is due solely to the child's disability, as defined in Minnesota Statutes, section 260C.007, subdivision 12 or 16, under Minnesota Statutes, section 260C.141, subdivision 2, and Rule 44.

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

Subd. 3. Procedure for Approving Out-of-Home Placement Plan for Child in Voluntary Foster Care. The court shall consider the appropriateness of the out-of-home placement plan in determining whether the voluntary placement is in the best interests of the child as required under Rule 44.

(Added effective January 1, 2004; amended effective January 1, 2007.)

Rule 37.04. Child Not in Foster Care: Child Protective Services Case Plan

A responsible social services agency may file a petition alleging that the child is in need of protection or services seeking to ensure the provision of adequate child protective services as required under Minnesota Statutes, section 626.556, subdivision 10, and Minnesota Rule 9560.0228.

(a) **Timing.** When the child is not in foster care, the child protective services plan required under Minnesota Statutes, section 626.556, subdivision 10, and Minnesota Rule 9560.0228, 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.

(b) **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 30, 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 41. When the court orders a child protection services plan, a copy of the plan shall be attached to the court's order and incorporated into it by reference. (Added effective January 1, 2004; amended effective January 1, 2007.)

Rule 37.05. Child with Disability: Case Plan

Subdivision 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 Minnesota Statutes, section 245.4871, subdivision 19 or 21; section 245.492, subdivision 16; or section 256B.092, the plan shall be filed with the court. Services may be ordered provided to the child according to the provisions of Minnesota Statutes, section 260C.201, subdivision 1(a)(3). When an out-of-home placement plan is required under Rule 37.02 or a child protective services plan is required under Rule 37.04, 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.

(Added effective January 1, 2004; amended effective January 1, 2007.)

[For text of 37.06, see M.S. 2006, Volume 15]

RULE 38. REPORTS TO THE COURT

Rule 38.01. Social Services Court Reports – Generally

Subdivision 1. Periodic Reports Required. After an out-of-home placement plan or case plan is approved or ordered by the court pursuant to Rule 37 or Rule 41, the responsible social services agency shall make periodic certified reports to the court regarding progress made on the plan. When the report relates to plans for siblings who are in foster care, the agency may combine information related to each child's plan into one report as long as the report addresses each child's individual needs and circumstances. The agency may also submit written information from collateral sources regarding assessments or the delivery of services or any other relevant information regarding the child's safety, health, or welfare in sup-

port of the report or as a supplement to the report. Such reports may be supplemented at or before the hearing either orally or in writing.

Subd. 2. Content. Although pursuant to Rule 16 a report is not required to be signed, each report shall include the name of the person submitting the report; a statement certifying the content as true based upon personal observation, first-hand knowledge, or information and belief; and shall include the case caption, the date of the report, and the date of the hearing at which the report is to be considered. Each report shall contain or have attached the certificate of distribution required under Rule 31.07, subdivision 2.

Subd. 3. Timing of Reports. Periodic reports required under this Rule shall be filed with the court and served upon the parties by the responsible social services agency not later than five (5) business days prior to each review hearing required under Rule 41.06, permanent placement determination hearing required under Rule 42.04, and as otherwise directed by the court.

(Added effective January 1, 2004; amended effective January 1, 2007.)

Rule 38.02. Social Services Court Reports – Child Ordered into Foster Care

Subdivision 1. Content. In addition to the requirements of Rule 38.01, subd. 2, each certified report regarding an out-of-home placement plan shall include the name of the person submitting the report and the following:

(a) **Identifying Information.** Identifying and baseline placement information regarding the child shall be included as follows:

- (1) the child's name and date of birth and, in the case of an Indian child, the Tribe in which the child is enrolled or eligible for membership;
- (2) the names of the child's parents or legal custodians;
- (3) the dates of birth of the child's parents who are minors;
- (4) the date the child was first placed in foster care;
- (5) the date the child was ordered placed in foster care;
- (6) the total length of time the child has been in foster care, including all cumulative time the child may have experienced within the previous five (5) years;
- (7) the number of moves the child has experienced while in foster care, including all moves during the previous five (5) years;
- (8) if the child's placement has changed since the out-of-home placement plan was approved or ordered, a description of how the child's placement meets the child's best interests as set out in the modified out-of-home placement plan, or in the case of an Indian child, whether the placement complies with placement preferences established in 25 U.S.C. section 1915; and

(9) when the child has siblings, the names and ages of the child's siblings, the residence or placement status of each sibling and, where appropriate, the efforts the agency has made to place the children together; and

(b) **Review of Out-of-Home Placement Plan.** As applicable, a description of:

- (1) the agency's efforts to implement the out-of-home placement plan requirements;
- (2) the parent's or legal custodian's compliance with the plan requirements;
- (3) services provided to the child;
- (4) the child's adjustment in placement;
- (5) visitation between the parents or legal custodian and the child and between the child and any siblings; and
- (6) the agency's efforts to finalize adoption; and

(c) **Placement with Relatives.** At least once during the first six (6) months the child is in placement or until placement is made with a relative or the court finds the agency's efforts adequate under Minnesota Statutes, section 260C.212, subd. 5, the report shall describe the efforts the agency has made to identify and notify relatives, or in the case of an Indian child the report shall describe how the placement complies with requirements of 25 U.S.C. section 1915; and

(d) **Independent Living Plan.** When the child is age sixteen (16) or older, the report shall include a description of the elements of the child's independent living plan and how the child is progressing on that plan; and

(e) **Child with Emotional Disturbance.** For a child in placement due solely or in part to the child's emotional disturbance, the report shall include diagnostic and assessment information, specific services relating to meeting the mental health care needs of the child, and treatment outcomes; and

(f) **Recommendations.** The report shall include recommendations to the court for modification of the plan or for actions the parents or legal custodian must take to provide protection or services for the child.

Subd. 2. Reports Between Disposition Review Hearings. Once disposition has been ordered pursuant to Rule 41, 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 meets the requirements of Rule 38.01, subd. 2, and states the child's identifying and baseline placement information and the factual basis for the request including, where appropriate, other relevant reports or data. Such reports shall be filed with the court together with proof of service upon all parties by the responsible social services agency. Any party may request a hearing regarding the agency's report. Pending hearing, if any, upon two (2) day's actual notice and based upon the report the court may issue an order that is in the best interests of the child. Upon a finding that an emergency exists, the court may issue a temporary order that is in the best interests of the child.

(Added effective January 1, 2004; amended effective January 1, 2007.)

Rule 38.03. Social Services Court Reports – Child Not in Foster Care

In addition to the requirements of Rule 38.01, subd. 2, each certified report regarding the case plan shall include the name of the person submitting the report and the following:

(a) **Identifying Information.** Identifying information regarding the child shall be included as follows:

(1) the child's name and date of birth and, in the case of an Indian child, the Tribe in which the child is enrolled or eligible for membership;

(2) a statement about whether the child is an Indian child, whether or not the Indian Child Welfare Act applies, and in the case of an Indian child the Tribe in which the child is enrolled or is eligible for membership;

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

(4) the dates of birth of the child's parents who are minors;

(5) the child's residence and, if the child's residence has changed since the case plan was ordered, the date of the change;

(6) the date the case was most recently opened for services in the responsible social services agency;

(7) the date of all other case openings for this child and the child's siblings with the responsible social services agency and, if known, case openings for this child or the child's siblings with any other social services agency responsible for providing child welfare or child protection services to this child; in addition to the date of other case openings, the report should contain a brief description of the nature of the contact with the responsible or other social services agency; and

(b) **Review of Plan.** As applicable, a description of:

(1) the agency's efforts to implement the case plan;

(2) the parents' or legal custodian's and child's compliance with plan requirements; and

(3) the services provided to the child; and

(c) **Recommendations.** The report shall include recommendations to the court for modification of the plan or for actions the parent or legal custodian must take to provide adequate protection or services for the child.

(Added effective January 1, 2004; amended effective January 1, 2007.)

[For text of 38.04, see M.S. 2006, Volume 15]

Rule 38.05. Reports to the Court by Child's Guardian ad Litem

Subdivision 1. Periodic Reports Required. The guardian ad litem for the child shall submit periodic certified written reports to the court which may be supplemented at or before the hearing either orally or in writing.

Subd. 2. Content. Although pursuant to Rule 16 a report is not required to be signed, each report shall include the name of the person submitting the report, a statement certifying the content as true based upon personal observation, first-hand knowledge, or information and belief, and shall include the following:

- (a) the child's name, date of birth, and age at the time the report is filed;
- (b) the names of the child's parents or legal custodians;
- (c) the case caption;
- (d) the date of the report;
- (e) the date of the hearing at which the report is to be considered;
- (f) the date the guardian ad litem was appointed by the court;
- (g) a brief summary of the issues that brought the child and family into the court system;
- (h) a list of the resources or persons contacted who provided information to the guardian ad litem since the date of the last court hearing;
- (i) a list of the dates and types of contacts the guardian ad litem had with the child(ren) since the date of the last court hearing;
- (j) a list of all documents relied upon when generating the court report;
- (k) a summary of information gathered regarding the child and family since the date of the last hearing relevant to the pending hearing;
- (l) a list of any issues of concern to the guardian ad litem about the child's or family's situation; and
- (m) a list of recommendations designed to address the concerns and advocate for the best interests of the child.

Each report shall contain or have attached the certificate of distribution required under Rule 31.07, subd. 2.

Subd. 3. Timing of Reports. Except for an emergency protective care hearing for which no written report is required, reports required under this rule shall be filed with the court and served upon the parties by the guardian ad litem not later than five (5) business days prior to each review hearing required under Rule 41.06, permanent placement determination hearing required under Rule 42, and as otherwise directed by the court.

Subd. 4. Objections to Guardian Ad Litem's Report or Recommendations. Any party objecting to the content or recommendations of the guardian ad litem's may submit a written objection to the report 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 sworn statement of the party's factual basis for the objection and may state other or additional facts on information and belief and argument that the court should consider in making its determinations or orders. An objection may also be supported by reports from collateral service providers or assessors. Objections to the guardian ad litem's report and recommendations may also be stated on the record as long as the court gives the guardian ad litem a reasonable opportunity to respond to the party's objection. (Added effective January 1, 2004; amended effective January 1, 2007.)

RULE 39. TRIAL

[For text of 39.01, see M.S. 2006, Volume 15]

Rule 39.02 Timing

Subdivision 1. Commencement of Trial.

(a) **Child in Need of Protection or Services Matters.** A trial regarding a child in need of protection or services matter shall commence within sixty (60) days from the date of the

emergency protective care hearing or the date of the admit/deny hearing, whichever is earlier.

(b) **Permanent Placement Matters.** A trial regarding a permanent placement matter not involving a termination of parental rights matter shall commence on or before sixty (60) days after the admit/deny hearing or ninety (90) days after the filing of the petition, whichever is earlier. In the case of a child under eight (8) years of age at the time the child in need of protection or services petition is filed, if the responsible social services agency demonstrates at the permanency progress review hearing required under Rule 42 that the parent is not complying with the case plan or out-of-home placement plan or visiting the child and that the permanency plan for the child is transfer of permanent legal and physical custody to a relative or termination of parental rights, a petition supporting the permanency plan shall be filed in juvenile court within thirty (30) days of the hearing under this paragraph. A trial on the petition shall be held within thirty (30) days of the filing of a petition in the case of a transfer of legal custody or within ninety (90) days in the case of a petition for termination of parental rights.

(c) **Termination of Parental Rights Matters.** Unless otherwise provided by these rules, a trial regarding a termination of parental rights matter shall commence within ninety (90) days from the date of the filing of the petition.

(d) **Simultaneous Criminal Proceedings.** If criminal charges have been filed against a parent arising out of conduct alleged to constitute egregious harm, the county attorney shall determine whether the criminal matter or the juvenile court matter should proceed to trial first, consistent with the best interests of the child and subject to the defendant's right to a speedy trial.

(e) **Sufficient Time.** The court shall set aside sufficient time to avoid interruption of the trial.

Subd. 2. Continuance.

(a) **Generally.** The court may, either on its own motion or upon motion of a party or the county attorney, continue a trial to a later date upon written findings or oral findings made on the record that a continuance is necessary for the protection of the child, for accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown, so long as the permanency time requirements set forth in these rules are not delayed.

(b) **Child in Need of Protection or Services Matters and Termination of Parental Right Matters.** In child in need of protection or services matters and termination of parental rights matters, a trial may not be continued or adjourned for more than one (1) week unless the court makes specific findings that the continuance or adjournment is in the best interests of the child. In any event, the trial shall be commenced and completed within ninety (90) days of the denial of the statutory grounds.

Subd. 3. Effect of Mistrial; Order for New Trial. Upon a declaration of a mistrial, or an order of the trial court or a reviewing court granting a new trial, a new trial shall be commenced within thirty (30) days of the order.

(Amended effective January 1, 2004; amended effective January 1, 2007.)

[For text of 39.03 and 39.04, see M.S. 2006, Volume 15]

Rule 39.05. Decision

Subdivision 1. Generally. Within fifteen (15) days of the conclusion of the trial, the court shall make a finding and issue an order regarding whether the statutory grounds set forth in the petition have or have not been proved. The court may extend this period for an additional fifteen (15) days if the court finds that an extension of time is required in the interests of justice and the best interests of the child. The trial is not considered completed until written arguments, if any, are submitted or the time for submission of written arguments has expired. The court shall dismiss the petition if the statutory grounds have not been proved.

Subd. 2. Child in Need of Protection or Services Matters and Habitual Truant, Runaway, and Prostitution Matters. The court shall issue its findings and order concerning adjudication within fifteen (15) days of the date that the trial is completed. If written argu-

ment is to be submitted, such argument must be submitted within fifteen (15) days of the conclusion of testimony. For good cause, the court may extend this period for an additional fifteen (15) days. The trial is not considered completed until written arguments, if any, are submitted or the time for submission of written arguments has expired. If the court makes a finding that the statutory grounds set forth in the petition have been proved, the court shall schedule the matter for further proceedings pursuant to Rule 40. The findings and order shall be filed with the court administrator who shall proceed pursuant to Rule 10.

Subd. 3. Termination of Parental Rights Matters.

(a) **Generally.** Within fifteen (15) days of the conclusion of the trial, the court shall make a finding that the statutory grounds set forth in the petition have or have not been proved. The court may extend this period for an additional fifteen (15) days if the court finds that an extension of time is required in the interests of justice and the best interests of the child. If the court finds that the statutory grounds set forth in the petition are not proved, the court shall dismiss the petition or determine that the child is in need of protection or services and schedule further proceedings pursuant to Rule 40. If the court finds that the statutory grounds set forth in the petition are proved, the court may terminate parental rights. The findings and order shall be filed with the court administrator who shall proceed pursuant to Rule 10.

(b) **Particularized Findings.** The court may not enter an order terminating parental rights unless it finds that the statutory grounds have been proved by the applicable standard of proof and one of the following:

(1) **Reasonable Efforts and Remedial Services.** In any termination of parental rights matter, the court shall make specific findings regarding the nature and extent of efforts made by the responsible social services agency to rehabilitate the parent and reunite the family, including, where applicable, a statement that reasonable efforts to prevent placement and for rehabilitation and reunification are not required as provided under Minnesota Statutes, section 260.012, paragraph (a).

(2) **Active Efforts – Indian Child.** In any termination of parental rights proceeding involving an Indian child, the court shall make specific findings that the petitioner has proven beyond a reasonable doubt that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

Subd. 4. Permanent Placement Matters. The court shall issue its decision regarding permanency consistent with Rule 42.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective July 1, 2007.)

[For text of Rule 40, see M.S. 2006, Volume 15]

RULE 41. DISPOSITION

Rule 41.01. Disposition

After an adjudication that a child is in need of protection or services pursuant to Rule 40.01, the court shall conduct a hearing to determine disposition. Dispositions in regard to review of voluntary foster care matters shall be pursuant to Minnesota Statutes, section 260C.205 and section 127A.47.

(Amended effective January 1, 2004; amended effective January 1, 2007.)

[For text of 41.02, see M.S. 2006, Volume 15]

Rule 41.03. Pre-Disposition Reports

Subdivision 1. Investigations and Evaluations. At any time after the court accepts or conditionally accepts an admission pursuant to Rule 35 or finds that the statutory grounds set forth in the petition have been proved, the court may, upon its own motion or the motion of a party or the county attorney, order a pre-disposition report which may include:

- (a) an investigation of the personal and family history and environment of the child;
- (b) medical, psychological, psychiatric, or chemical dependency evaluations of the child and any parent who is a party; and
- (c) information regarding the factors set forth in Rule 41.05.

Subd. 2. Advisory. The court shall advise the persons present in court that a pre-disposition investigation is being ordered, the nature of the evaluations to be included, the date when the reports resulting from the investigation are to be filed with the court, and the right of each party to present opposing evidence and reports.

Subd. 3. Pre-Disposition Reports.

(a) **Filing and Service.** The person who intends to offer the pre-disposition report shall file the report with the court and serve the report on all parties at least forty-eight (48) hours prior to the time scheduled for the hearing. When the child or the child's parent or legal custodian is not represented by counsel, the court may limit the inspection of reports by the child or the child's parent and legal custodian if the court determines it is in the best interests of the child. Any party or the person making the pre-disposition report may by motion request a protective order limiting the release of confidential or sensitive information contained in the report.

(b) **Consideration of Reports.** Before making a disposition in a case, terminating parental rights, or appointing a legal guardian for a child, the court may consider any report or recommendation made by the responsible social services agency, probation officer, licensed child-placing agency, foster parent, guardian ad litem, tribal representative, the child's health or mental health care provider, or other authorized advocate for the child or child's family, a school district concerning the effect on student transportation of placing a child in a school district in which the child is not a resident, or any other information deemed material by the court.

Subd. 4. Discussion of Contents of Reports. The person making the pre-disposition report may discuss the contents of the report with all parties and the county attorney.

Subd. 5. Discussion of Content of Report – Limitation by Court. The court may upon a showing of good cause limit the extent of the discussion of the contents of the pre-disposition report with the parties if the court finds the limitation to be in the best interests of the child. The limitation may be made:

- (a) on the court's own motion; or
 - (b) upon the written or on-the-record motion of a party, the county attorney, or the person making the pre-disposition report.
- (Amended effective January 1, 2007.)

[For text of 41.04, see M.S. 2006, Volume 15]

Rule 41.05. Disposition Order

Subdivision 1. Findings. The disposition order shall contain written findings of fact to support the disposition ordered and shall also set forth in writing the following information:

- (a) a statement explaining how the disposition serves the best interests and safety of the child;
- (b) a statement of all alternative dispositions or services under the case plan or out-of-home placement plan considered by the court and why such dispositions or services are not appropriate in the instant case;
- (c) if the disposition is transfer of legal custody to a responsible social services agency, a statement about whether the proposed placement meets the child's needs and is in the child's best interests and reviewing the agency's use of the factors set out below in making the child's foster care placement:
 - (1) the child's current functioning and behaviors;
 - (2) the medical, educational, and developmental needs of the child;
 - (3) the child's history and past experience;
 - (4) the child's religious and cultural needs;

- (5) the child's connection with a community, school, and faith community;
- (6) the child's interests and talents;
- (7) the child's relationship to current caretakers, parents, siblings, and relatives;

and

(8) reasonable preference of the child, if the court deems the child to be of sufficient age to express a preference; and

(d) a brief description of the efforts made to prevent or eliminate the need for removal of the child from home and to reunify the family after removal, and why further efforts could not have prevented or eliminated the necessity of removal or that reasonable efforts were not required under Minnesota Statutes, section 260.012, or section 260C.178, subdivision 1.

The court may authorize or continue an award of legal custody to the responsible social services agency despite a finding that the agency's preventive or reunification efforts have not been reasonable if the court finds that further preventive or reunification efforts could not permit the child to safely remain at home.

If the child has been identified by the responsible social services agency as the subject of concurrent permanency planning, the court shall review and make findings regarding the reasonable efforts of the agency to recruit, identify, and make a placement with a foster parent or relative who has committed to providing the legally permanent home for the child in the event reunification efforts are not successful.

Subd. 2. Content.

(a) **Mandatory Provisions.** The court shall enter an order making one or more of the following dispositions for the child:

(1) **Protective Supervision.** Place the child under the protective supervision of the responsible social services agency or child-placing agency in the home of a parent or legal custodian under conditions directed to correction of the child's need for protection or services:

(i) the court may order the child into the home of a parent who does not otherwise have legal custody of the child, however, an order under this section does not confer legal custody on that parent;

(ii) if the court orders the child into the home of a father who has not been adjudicated as such, the order shall require the alleged or presumed father to cooperate with paternity establishment proceedings regarding the child in the appropriate jurisdiction as one of the conditions prescribed by the court for the child to continue in his home; and

(iii) the court may order the child into the home of a noncustodial parent with conditions and may also order both the noncustodial and the custodial parent to comply with the requirements of a case plan under subdivision 2; or

(2) **Transfer Legal and Physical Custody to Agency.** Transfer legal custody to a child-placing agency or the responsible social services agency, which shall have legal responsibility for the child's placement in foster care, including making an individualized determination of how the particular placement is in the child's best interests using the consideration for relatives and the best interest factors in Minnesota Statutes, section 260C.212, subdivision 2, paragraph (b); or

(3) **Trial Home Visit.** Order a trial home visit, as defined in Rule 2.01(x), without modifying the transfer of legal custody to the responsible social services agency under subdivision 2(a)(2) of this Rule; or

(4) **Special Services.** If the child has been adjudicated as a child in need of protection or services because the child is in need of special services or care to treat or ameliorate a physical or mental disability, or emotional disturbance as defined in Minnesota Statutes, section 245.4871, subdivision 15, the court may order the child's parent, guardian or custodian to provide it. The court may order the child's health plan company to provide mental health services to the child. Minnesota Statutes, section 62Q.535, applies to an order for mental health services directed to the child's health plan company. If the health plan, the child's parent or legal custodian fails or is unable to provide the treatment or care, the court may order it provided. Absent specific written findings by the court that the child's disability is the result of abuse or neglect by the child's parent or guardian, the court shall not transfer legal custody

of the child for the purpose of obtaining special treatment or care solely because the parent is unable to provide the treatment or care. If the court's order for mental health treatment is based on a diagnosis made by a treatment professional, the court may order that the diagnosing professional not provide the treatment to the child if it finds that such an order is in the child's best interests; or

(5) **Independent Living.** Allow a child sixteen (16) years old or older to live independently under appropriate supervision, if the court determines that the child has sufficient maturity and judgment, and the responsible social services agency after consultation with the court has specifically authorized this alternative.

(6) **Monitoring.** When a parent has complied with a case plan and the child is in the care of the parent, the court may order the responsible social services agency to monitor the parent's continued ability to maintain the child safely in the home under such terms and conditions as the court determines appropriate under the circumstances.

(b) **Additional Provisions.** As part of the disposition order the court shall also:

(1) approve or modify the plan for supervised or unsupervised visitation for the child's parent or legal custodian, relatives, and siblings of the child, if siblings are not in out-of-home placement together, as set out in the out-of-home placement plan; the court may set reasonable rules for visitation that contribute to the objectives of the court order and the maintenance of the familial relationship; the court may deny visitation when visitation would act to prevent the achievement of the court's disposition order or would endanger the child's physical or emotional well-being;

(2) review the case plan, make modifications supported by the evidence appropriate, and approve the plan;

(3) order all parties to comply with the approved case plan;

(4) incorporate into the order by reference the approved case plan and attach a copy of the plan only if it has been modified;

(5) give notice to the parent on the record and in writing of the requirements of Minnesota Statutes, section 260C.201, subdivisions 11 and 11a; and

(6) set the date and time for the permanency placement determination hearing pursuant to Rule 42.

(c) **Habitual Truant and Runaway Matters.** If the child is adjudicated in need of protection or services because the child is a habitual truant or a runaway, the court may order any of the following dispositions in addition to or as alternatives to the dispositions ordered under subdivisions (a) and (b):

(1) counseling for the child or the child's parent or legal custodian;

(2) place the child under the supervision of a probation officer or other suitable person in the child's own home under conditions prescribed by the court, including reasonable rules for the child's conduct and the conduct of the parent or legal custodian designed for the physical, mental, and moral well-being and behavior of the child;

(3) with the consent of the commissioner of corrections, place the child in a group foster care facility that is under the commissioner's management and supervision;

(4) subject to the court's supervision, transfer legal custody of the child to one of the following:

(i) a reputable person of good moral character; or

(ii) a county probation officer for placement in a group foster home established under the direction of the juvenile court and licensed pursuant to Minnesota Statutes, section 241.021;

(5) require the child to pay a fine of up to \$100, to be paid in a manner that will not impose undue financial hardship upon the child;

(6) require the child to participate in a community service project;

(7) order the child to undergo a chemical dependency evaluation and, if warranted by the evaluation, order participation by the child in a drug awareness program or an inpatient or outpatient chemical dependency treatment program;

(8) order the commissioner of public safety to cancel the child's driver's license or permit or, for a child who does not have a driver's license or permit, order a denial of driving privileges for any period up to the child's 18th birthday; or

(9) order the child's parent or legal custodian to deliver the child to school at the beginning of each school day for a period of time specified by the court.

(Amended effective January 1, 2004; amended effective January 1, 2007.)

2006 Advisory Committee Comment

Minnesota Statutes, section 260C.331, subdivision 1(a)(3), provides that "whenever a child is given physical or mental examinations or treatment under order of the court, and no provision is otherwise made by law for payment for the care, examination, or treatment of the child, those costs are a charge upon the welfare funds of the county in which proceedings are held upon certification of the judge of juvenile court."

(Added effective January 1, 2007.)

Rule 41.06. Hearings to Review Disposition

Subdivision 1. Timing. When disposition is an award of legal custody to the responsible social services agency, the court shall review the disposition in court at least every ninety (90) days. Any party or the county attorney may request a review hearing before ninety (90) days. When the disposition is protective supervision, the court shall review the disposition in court at least every six (6) months from the date of disposition.

Subd. 2. Procedure in Reviewing Disposition.

(a) **Legal Custody to Agency With Foster Care.** When the disposition is transfer of legal custody to the responsible social services agency, the court shall conduct a hearing at least every ninety (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. The review shall include the following:

(1) whether the out-of-home placement plan is relevant to the safety and best interests of the child;

(2) whether the agency is making reasonable or, in the case of an Indian child, active efforts to implement the requirements of the out-of-home placement plan;

(3) the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement;

(4) whether the parents or legal custodian of the child are visiting the child and, if not, what barriers exist to visitation;

(5) whether the agency has made diligent efforts to identify both parents of the child as required under Minnesota Statutes, section 260C.212, subdivision 4, and whether the case plan or out-of-home placement plan addresses the need for services of both parents;

(6) whether the child is receiving appropriate services under the out-of-home placement plan;

(7) when a child has siblings in foster care:

(i) whether the child resides with the siblings;

(ii) when the child and siblings are not placed together, whether further efforts are appropriate to place the siblings together; and

(iii) when the child and siblings are not placed together, whether there is visitation amongst siblings;

(8) when a child is not placed with a relative, whether the agency's efforts under Minnesota Statutes, section 260C.212, subdivision 5, are adequate; in the case of an Indian child, whether the placement preferences of 25 U.S.C. section 1915, are met;

(9) when the agency is utilizing concurrent permanency planning, the agency's efforts to place the child with a relative or a foster parent who has committed to providing the child's legally permanent home in the event reunification efforts are not successful; and

(10) whether the parent or legal custodian understands the requirements of Minnesota Statutes, section 260C.201, subdivision 11, related to the required permanency place-

ment determination hearing, including the projected date by which the child will be returned home or the hearing will be held.

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

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

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

(3) the court shall conduct a hearing to determine whether the trial home visit continues to be necessary.

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

(1) whether the agency has submitted a case plan for the parents or legal custodian and child as required under Rule 37;

(2) after the agency has submitted a plan to the court as required under Rule 37, whether the plan continues to be relevant to the safety and best interests of the child;

(3) whether the agency is making appropriate efforts to implement the plan;

(4) whether the agency, child's attorney, and the guardian ad litem have reasonable access to the child to determine the child's safety, health, and well-being;

(5) whether the parents or legal custodian are able to utilize the services set out in the plan to correct the conditions which led to the court's determination that the child is in need of protection or services, and if not, what other services might seem appropriate; and

(6) whether the child is receiving necessary services identified in the plan and whether those services are meeting the best interests of the child.

Subd. 3. Procedure. Any party or the county attorney may seek modification of a disposition order by motion made pursuant to Rule 15. The motion may be heard at the scheduled review hearing or at an earlier date or may be considered by the court without hearing if no party objects.

Subd. 4. Modification of Disposition; Modification of Case or Out-of-Home Placement Plan.

(a) Agreement. The court, on its own motion or that of any party, may modify the disposition or order the case plan or out-of-home placement plan modified when all parties agree the modification is in the best interests of the child and:

(1) a change of circumstances requires a change in the disposition or modification of the case plan or out-of-home placement plan; or

(2) the original disposition or case plan or out-of-home placement plan is inappropriate.

(b) Objection. If a party objects to a proposed modification, or if the child does not have a guardian ad litem at the time the motion is made, the court shall schedule a hearing for the next available date. A party has a right to request a court review of the reasonableness of the case plan or out-of-home placement plan upon a showing of a substantial change in circumstances. The court may also:

(1) order the agency to make further efforts to identify and place a child with a relative if the court finds the agency has failed to perform duties required under Minnesota Statutes, section 260C.212, subdivisions 2 and 5; or

(2) find that the agency has performed required duties under Minnesota Statutes, section 260C.212, subdivision 5, and no further efforts to locate relatives are required; or

(3) in the case of an Indian child, unless good cause is found under 25 U.S.C. section 1915, order the agency to make additional efforts to comply with the placement preferences of 25 U.S.C. section 1915.

Subd. 5. Notice. Notice of the review hearing shall be given to all parties and participants.

Subd. 6. Procedure. Review hearings shall be conducted pursuant to Rule 41.04.

Subd. 7. Findings and Order. In the event the disposition is modified, the court shall issue a disposition order in accordance with Rule 41.05.

(Amended effective January 1, 2004; amended effective January 1, 2007.)

RULE 42. PERMANENT PLACEMENT MATTERS

Rule 42.01. Timing and Purpose

Subdivision 1. Timing. In the case of a child who has been alleged to be in need of protection or services, the court in its first order shall set the date or deadline for the permanent placement determination hearing, and the permanency progress review hearing required for a child who is under age eight (8), at the time the petition alleging the child to be in need of protection or services is filed. Not later than when the court sets the date or deadline for the permanent placement determination hearing and the permanency progress review hearing, the court shall notify the parties and participants of the following requirements of Minnesota Statutes, section 260C.201, subdivisions 11 and 11a:

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

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

Subd. 2. Purpose.

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

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

(Amended effective January 1, 2004; amended effective January 1, 2007.)

Rule 42.02. Calculating Time Period

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

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

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

(Amended effective January 1, 2004; amended effective January 1, 2007.)

Rule 42.03. Accumulation of Out-of-Home Placement Time

The time period requiring court review of the permanent status of the child shall be calculated as follows:

(a) during the pendency of a petition alleging a child to be in need of protection or services, all time periods during which a child is placed in foster care or in the home of a noncustodial parent are accumulated; and

(b) if a child has been placed in foster care within the previous five years under one or more previous petitions, the lengths of all prior time periods during which the child was placed in foster care within the previous five years are accumulated. If a child under this clause has been in foster care for twelve (12) months or more, the court, if it is in the best interests of the child and for compelling reasons, may extend the total time the child may continue out of the home under the current petition up to an additional six (6) months before making a permanency determination.

(Amended effective January 1, 2004; amended effective January 1, 2007.)

Rule 42.04. Procedures for Permanency Progress Review Hearing and Permanent Placement Determination Hearing

Subdivision 1. Permanency Progress Review Hearing: Child Under Eight (8) Years of Age. The following procedures govern a permanency progress review hearing for a child under the age of eight (8) at the time the petition was filed alleging the child to be in need of protection or services:

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

(b) **Court Determination.**

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

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

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

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

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

(1) if the court has either returned the child home or continued the matter up to a total of six (6) additional months, the agency shall continue to provide services to support the child's return home or to continue to make reasonable efforts to achieve reunification of the child and the parent as ordered by the court under an approved case plan;

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

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

Subd. 2. Child Eight (8) Years of Age or Older or a Child Under Age Eight (8) for Whom Permanency Has Not Been Ordered; Admit/Deny Hearing Required at Month 12.

(a) **Admit/Deny Hearing on Permanency Petition.** The court shall commence and complete an admit/deny hearing on the permanency petition pursuant to Rule 34 not later than twelve (12) months after the child is placed in foster care or in the care of a noncustodial parent.

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

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

(Amended effective January 1, 2004; amended effective January 1, 2007.)

Rule 42.05. Permanent Placement Order

Subdivision 1. Timing. Within fifteen (15) days of the close of the permanent placement determination hearing the court shall issue a permanent placement order. The court may extend this period for an additional fifteen (15) days if the court finds that an extension of time is required in the interests of justice and the best interests of the child. The order shall be filed with the court administrator who shall proceed pursuant to Rule 10.

Subd. 2. Order.

(a) **Return Child Home.** If the court orders the child to be returned to the care of a parent, the court may enter or continue a prior finding that the child is in need of protection or services and may order conditions directed to correction of the child's need for protection or services. The court may order:

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

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

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

(b) **Transfer of Permanent Legal and Physical Custody.** If the court transfers permanent legal and physical custody to a relative, juvenile court jurisdiction is terminated unless specifically retained by the court in its order. The court may maintain jurisdiction over the responsible social services agency, the parents or legal custodian of the child, the child, and the permanent legal and physical custodian for purposes of ensuring that appropriate services are delivered to the child and permanent legal custodian or for the purpose of ensuring that conditions ordered by the court related to the care and custody of the child are met. The court may order further in-court hearings at such intervals as it determines to be in the best

interests of the child. When juvenile court jurisdiction is terminated, the court shall include an order directing the juvenile court administrator to file the order with the family court. Any further proceedings shall be brought in the family court pursuant to Minnesota Statutes, section 518.18. Notice of any family court proceedings shall be provided to the responsible social services agency which shall be a party to the family court proceeding pursuant to Minnesota Statutes, section 260C.201, subdivision 11(j). A parent or legal custodian may voluntarily agree to transfer permanent legal and physical custody of the child to a fit and willing relative by either filing a petition to transfer permanent legal and physical custody pursuant to Rule 33.01 and establishing that such transfer is in the child's best interests under Minnesota Statutes, section 260C.201, subdivision 11, or by entering an admission to such a petition filed by another party and stating, under oath, that the parent or legal custodian believes such a transfer is in the child's best interests and establishes good cause for the transfer on the record before the court. The order transferring permanent legal and physical custody shall address parental and sibling visitation and ongoing services to be delivered to the child while the juvenile court has jurisdiction, and shall state whether the transfer was voluntary or involuntary. The order shall state whether a child support order exists or if the issue is reserved for future determination.

(c) Termination of Parental Rights.

(1) Unless the responsible social services agency has already filed a termination of parental rights petition, the court may order such a petition be filed pursuant to Rule 33.01.

(2) When a child has been in placement fifteen (15) of the last twenty-two (22) months, if the court finds following a trial on a termination of parental rights petition that the petition is not proven or that termination of parental rights is not in the child's best interests, the court must order the child returned to the care of the parent unless the court approves the responsible social services agency's determination of compelling reasons why the child should remain out of the care of the parent. If the court orders the child returned to the care of the parent, the court may order a trial home visit, protective supervision, or monitoring under Rule 41.05, subdivision 2.

(d) Guardianship and Legal Custody to the Commissioner of Human Services.

The court may award guardianship and legal custody to the Commissioner of Human Services under the following procedures and conditions:

(1) there is an identified prospective adoptive home agreed to by the responsible social services agency that has agreed to adopt the child and the court accepts the parent's voluntary consent to adopt under Minnesota Statutes, section 259.24, except that such consent executed by a parent under Minnesota Statutes, section 260C.201, subdivision 11(d)(5), is irrevocable upon acceptance by the court unless fraud is established and an order issues permitting revocation. In a matter governed by the Indian Child Welfare Act, United States Code, title 25, section 1913, a consent to adopt given by the parent of an Indian child is revocable at any time prior to finalization of the adoption;

(2) the matter is reviewed in court at least every ninety (90) days under the requirements of Rule 43.03 as if a termination of parental rights had occurred; and

(3) the court forwards to the Commissioner of Human Services a copy of the consent to adopt, together with a certified copy of the order transferring guardianship and legal custody to the commissioner.

(e) Long-term Foster Care.

(1) The court may order long-term foster care only if it approves the responsible social services agency's compelling reasons that neither an award of permanent legal and physical custody to a relative, nor termination of parental rights, is in the child's best interests and all of the requirements of Minnesota Statutes, section 260C.201, subdivision 11, are met.

(2) If the court orders long-term foster care, the court shall order such further in-court review as it determines appropriate or in the best interests of the child but in any event at least every twelve (12) months from the date of the permanency hearing.

(3) If the long-term foster care placement disrupts, the responsible social services agency shall return the matter to court within ten (10) days of the disruption for review of the permanent status of the child.

(f) Foster Care for a Specified Period of Time.

(1) The court may order foster care for a specified period of time only if it approves the responsible social services agency's compelling reasons that neither an award of permanent legal and physical custody to a relative, nor termination of parental rights, is in the child's best interests and all of the requirements of Minnesota Statutes, section 260C.201, subdivision 11, are met.

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

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

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

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

(b) identify a specific long-term foster home for the child while out of the care of the parent, if one has not already been identified;

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

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

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

(2) If it is necessary for a child who has been ordered into foster care for a specified period of time to be in foster care longer than one year, then not later than twelve (12) months after the time the child was ordered into foster care for a specified period of time the matter must be returned to court for a review of the appropriateness of continuing the child in foster care and of the responsible social services agency's reasonable efforts to finalize a permanent plan for the child. If it is in the child's best interests to continue the order for foster care for a specified period of time past a total of twelve (12) months, the court shall set objectives for the child's continuation in foster care, specify any further amount of time the child may be in foster care, and review the plan for the safe return of the child to the parent.

(h) Modifying an Order for Long-Term Foster Care.

(1) **Modification by Parent.** A parent may seek modification of an order for long-term foster care only upon motion and a showing by the parent of a substantial change in the parent's circumstances such that the parent could provide appropriate care for the child and that removal of the child from the child's permanent placement and the return to the parent's care would be in the best interest of the child.

(2) **Modification by Agency.** The responsible social services agency may ask the court to vacate an order for long-term foster care upon a prima facie showing that there is a factual basis for the court to order another permanent placement under this Rule and that such other permanent placement is in the child's best interests.

(a) If the agency's request is to terminate parental rights, the county attorney shall file a petition under Rule 33 and the court shall proceed under Rule 34.

(b) If the agency's request is transfer of permanent legal and physical custody to a relative, the county attorney may file a motion under Rule 15 to modify the permanency order establishing long-term foster care for the child. If a party entitled to notice of the motion opposes the transfer of permanent legal and physical custody to a fit and willing relative, the responsible social services agency and county attorney shall establish:

- (i) that the relative is fit and willing; and
- (ii) that the transfer is in the best interests of the child.

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

(4) **Further Reasonable Efforts Not Required.** The court shall not require further reasonable efforts to reunify the child with the parent or guardian as a basis for vacating the order for long-term foster care and ordering a different permanent placement in the child's best interests.

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

(Amended effective January 1, 2004; amended effective January 1, 2007.)

Rule 42.06. Motion by Responsible Social Services Agency to Modify Adjudication and Transfer of Custody Order for a Child Who Continues in Placement Due Solely to the Child's Emotional Disturbance or Developmental Disability.

Subdivision 1. Motion to Continue Foster Care on Voluntary Basis When Conditions Leading to Foster Care Placement Have Been Corrected.

(a) **Motion by Responsible Social Services Agency; Need for Continued Foster Care to Access Treatment.** If a child diagnosed with developmental disability or emotional disturbance has been ordered into foster care under Minnesota Statutes, section 260C.178 or 260C.201, and the conditions that led to the court's order have been corrected so that the child could safely return to the care of the parent or guardian except for the child's need for continued placement to access necessary treatment or services, the responsible social services agency may file a motion pursuant to Rule 15 to vacate the finding that the child is in need of protection or services, to vacate the award of custody to the responsible agency, and to proceed under Rule 44.02, subdivision 1(b).

(1) **Affidavit.** The motion shall be supported by an affidavit setting forth:

- (i) the agency's reasonable efforts to finalize a permanent plan for the child including returning the child home;
- (ii) the agency's compelling reasons why a permanent placement need not be ordered under Minnesota Statutes, section 260C.201, subdivision 11; and
- (iii) why the voluntary placement is in the child's best interests.

(2) **Timing of Motion.** The motion must be filed no later than the time a permanency placement determination hearing is required under this Rule.

Subd. 2. Contemporaneous Execution of Voluntary Placement Agreement. At the time scheduled for the court to hear the agency's motion under subdivision 1, the parent or legal custodian and agency may execute a voluntary placement agreement when the court approves the child's continued foster care placement as a voluntary arrangement.

Subd. 3. Required Findings to Proceed under Rule 44.02, subdivision 1. When the parent or legal custodian executes a voluntary placement agreement, the court may proceed under Rule 44.02, subdivision 1, if it grants the responsible social services agency's motion and finds that:

- (a) the conditions which led to the foster care placement of the child have been corrected such that the child could safely return home;
- (b) the child needs to continue in foster care due solely to the child's emotional disturbance or developmental delay;
- (c) there are compelling reasons to approve the continued voluntary arrangement; and
- (d) the agency has made reasonable efforts to finalize a permanent plan for the child.

Subd. 4. Vacate Adjudication and Order for Legal Custody to Responsible Social Services Agency. When the court makes the findings required under subdivision 3, the court

may vacate the finding that the child is in need of protection or services and the order transferring legal custody to the responsible social services agency and proceed under Rule 44.02, subdivision 1. A finding that the court approves the continued voluntary placement means that the responsible social services agency has continued legal responsibility for the child's placement due to the voluntary placement agreement and that the parent may terminate the voluntary agreement as provided in Minnesota Statutes, section 260C.212, subdivision 4(c)(2), or, in the case of an Indian child, as provided in Minnesota Statutes, section 260.765, subdivision 4.

(Added effective January 1, 2007.)

RULE 43. TERMINATION OF PARENTAL RIGHTS MATTERS

[For text of 43.01 and 43.02, see M.S. 2006, Volume 15]

Rule 43.03. Further Proceedings.

Subdivision 1. Review when Plan is Adoption. If the court terminates parental rights, the court shall schedule a review hearing ninety (90) days from the date the termination order is filed with the court, and every ninety (90) days thereafter, for the purpose of reviewing progress of the child towards adoption. Review under this rule is required unless the court has ordered the child into long-term foster care. The court shall notify the responsible social services agency, the child's guardian ad litem, the child's attorney, and the child's foster parent or other relative who has asked for notice of the date and time of the hearing. In lieu of the court report required under Rule 38, the responsible social services agency shall submit a report which addresses the following:

(a) where the child currently resides, the length of time the child has resided in the current placement, the number of other placements the child has experienced, and whether the current foster care provider is willing to adopt the child;

(b) whether the responsible social services agency has made adequate efforts to identify, locate, and place the child with a relative willing to adopt the child; if the child is an Indian child, the agency's plan to meet the adoptive placement preferences of 25 United States Code, section 1915;

(c) if the child has siblings in out-of-home placement or previously placed for adoption, whether the child is placed with the siblings; if the child is not placed with siblings, whether the agency:

(1) must make further efforts to place the child with siblings; or

(2) obtain the consent of the Commissioner of Human Services to separate the child from siblings for adoption under Minnesota Statutes, section 259.24 and Minnesota Rules 9560.0450, subpart 2; and

(3) has developed a visitation plan for the siblings; if no visitation plan exists, the reason why;

(d) the efforts the agency has made to identify non-relative adoptive resources for the child including utilizing the State of Minnesota Adoption Registry and other strategies for identifying potential adoptive homes for the child; and

(e) if an adoptive home has been identified whether:

(1) placement has been made in the home;

(2) a preadoptive placement agreement has been signed;

(3) the child qualifies for adoption assistance payments, and if so, what the status of the adoption assistance agreement is;

(4) an adoption petition has been filed;

(5) a finalization hearing has been scheduled; and

(6) there are barriers to adoption and how those barriers might be removed.

At least every twelve (12) months, the court shall enter a finding regarding whether or not the responsible social services agency has made reasonable efforts to finalize the permanent plan for the child as long as the permanent plan remains adoption.

If the adoptive placement was made more than twelve (12) months prior to the review hearing and no hearing to finalize the adoption has been scheduled, a hearing under Minnesota Statutes, section 259.22, subdivision 4, must be scheduled.

Subd. 2. Long Term Foster Care For State Wards.

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

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

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

Subd. 3. Review when Child is Ordered into Long-term Foster Care. When a child has been entered into long-term foster care after termination of parental rights, the court must review the matter in court at least every twelve (12) months to consider whether long-term foster care continues to be the best permanent plan for the child and to ensure the reasonable efforts of the agency to:

(a) identify a specific long-term foster home for the child, if one has not already been identified;

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

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

(d) plan for the child's independence upon the child's leaving long-term foster care living as required under Minnesota Statutes, section 260C.212, subdivision 1.

(Amended effective January 1, 2004; amended effective January 1, 2007.)

Rule 43.04. Voluntary Termination of Parental Rights Matters

The court shall conduct a hearing when a parent voluntarily consents to the termination of his or her parental rights. At the hearing, petitioner shall make a prima facie showing that there is good cause for termination of parental rights and that it is in the best interests of the child to terminate parental rights.

If the parent is present in court, the court shall advise the parent of the right to trial, the right to representation by counsel, and shall determine whether the parent fully understands the consequences of termination of parental rights and the alternatives to termination.

If the parent is not present in court but has signed a voluntary consent to termination of parental rights, the court shall determine whether there has been compliance with all statutory requirements regarding a written consent to termination of parental rights and whether the parent was thoroughly advised of and understood the right to trial, the right to representation by counsel, the consequences of termination of parental rights, and the alternatives to termination.

If the child is an Indian child, the consent of the parent or Indian custodian shall not be valid unless:

(a) executed in writing;

(b) recorded before the judge; and

(c) accompanied by the presiding judge's certificate that the terms and consequences of the consent were explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that the parent or Indian custodian fully understood the ex-

planation in English or that it was translated into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, the birth of the Indian child shall not be valid.

(Amended effective January 1, 2007.)

RULE 44. REVIEW OF VOLUNTARY PLACEMENT MATTERS

Rule 44.01. Generally

Subdivision 1. Scope of Review. This rule governs review of all placements made pursuant to Minnesota Statutes, section 260C.212, subdivision 8 or 9.

Subd. 2. Jurisdiction. The court assumes jurisdiction to review a voluntary foster care placement of a child pursuant to Minnesota Statutes, section 260C.212, subdivision 8 (child in voluntary placement), upon the filing of a petition pursuant to Minnesota Statutes, section 260C.141, subdivision 2. The court assumes jurisdiction to review voluntary foster care placement of a child pursuant to Minnesota Statutes, section 260C.212, subdivision 9 (child in voluntary placement due solely to developmental disability or emotional disturbance), upon the filing of a report or petition pursuant to the requirements of Minnesota Statutes, section 260C.141, subdivision 2a.

Subd. 3. Court File Required. Upon the filing of a report or petition under this Rule, the court administrator shall open a juvenile protection file which is part of the juvenile protection case record related to the matter. If a Child In Need of Protection or Services file regarding this child already exists, the voluntary placement report or petition shall be filed in that file.

(Amended effective January 1, 2004; amended effective January 1, 2007.)

Rule 44.02. Petition and Hearing

Subdivision 1. Child in Placement Due to Developmental Disability or Emotional Disturbance.

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

(1) **Court Report.** In the case of a child in voluntary foster care placement pursuant to Minnesota Statutes, section 260C.212, subdivision 9, and due solely to the child's disability as defined in Minnesota Statutes, section 260C.007, subdivision 12 or 16, a written report shall be filed with the court within 165 days of the date of the voluntary placement agreement. A written report under this rule is in lieu of a report under Rule 38 and shall contain:

- (i) a statement of facts that necessitate the child's foster care placement;
- (ii) the child's name, date of birth, race, gender, and current address;
- (iii) the names, race, date of birth, residence, and post office addresses of the child's parents or legal custodian;
- (iv) a statement regarding the child's eligibility for membership or enrollment in an Indian tribe and the agency's compliance with applicable provisions of Minnesota Statutes, sections 260.751 to 260.835;
- (v) the names and addresses of the foster parents or chief administrator of the facility in which the child is placed, if the child is not in a family foster home or group home;
- (vi) a copy of the out-of-home placement plan required under Minnesota Statutes, section 260C.212, subdivision 1;
- (vii) a written summary of the proceedings of any administrative review required under Minnesota Statutes, section 260C.212, subdivision 7; and
- (viii) any other information the responsible social services agency, parent or legal custodian, the child or the foster parent or other residential facility wants the court to consider.

In the case of a child in placement due solely to an emotional disturbance, the written report shall include as an attachment the child's individual treatment plan developed by the

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

In the case of a child in placement due solely to a developmental disability, the written report shall include as an attachment the child's individual service plan, as provided in Minnesota Statutes, section 256B.092, subdivision 1b, the child's individual program plan, as provided in Minnesota Rules, part 9525.0004, subpart 11, the child's waiver care plan, or the child's individual interagency intervention plan, as provided in Minnesota Statutes, section 125A.023, subdivision 3, paragraph (c).

(2) Additional Requirements for Court Report. In addition to filing the report with the court, the responsible social services agency must provide to the child, parent or legal custodian, and foster parent or representative of the residential facility a statement regarding the agency's advice or notice of the following:

(i) that they have been advised of the requirements of this rule and that they have a right to submit information to the court;

(ii) that they have a right to submit information to the court or to be heard in person by the court;

(iii) that they have received the date the court report will be filed with the court and the identifying information necessary for the court administrator to accept information from the child, parent or legal custodian, the foster parent, or representative of the residential facility in the event they wish to submit any information to the court; and

(iv) that no hearing will be held unless the child, parent or legal custodian, or foster parent or representative of the residential facility requests a hearing.

(3) Required Hearing if Requested by Parent or Child. If the parent or legal custodian, foster parent or representative of the residential facility, or the child states that they wish to be heard in person by the court, the county attorney must notify the court administrator of the request. The court administrator shall set a hearing before the court and send notice to the parent or legal custodian, the child, the responsible social services agency, and the foster parent or representative of the residential facility.

(4) Judicial Determinations after Report or Hearing without Petition.

(i) After receiving the required report or after conducting a hearing under paragraph (a)(3) of this Rule, the court has jurisdiction to make the following determinations and must do so within ten days of receiving the forwarded report:

(A) whether the placement of the child in foster care is in the child's best interests; and

(B) whether the parent and agency are appropriately planning for the child. Unless requested by a parent or legal custodian, foster parent or representative of the residential facility, or child, an in-court hearing need not be held in order for the court to make findings and issue an order under this paragraph.

(ii) If the court finds the placement of the child in foster care is in the child's best interests and that the agency and parent are appropriately planning for the child, the court shall issue an order containing explicit, individualized findings to support its determination. The court shall send a copy of the order to the county attorney, the responsible social services agency, the parent or legal custodian, the child, and the foster parents. The court shall also send the parent or legal custodian, the child, and the foster parent notice of the hearing required under subdivision 1(b).

(iii) If the court finds continuing the placement of the child in foster care not to be in the child's best interests or that the agency or the parent or legal custodian is not appropriately planning for the child, the court shall notify the county attorney, the responsible social services agency, the parent or legal custodian, the foster parent, the child, and the county attorney of the court's determinations and the basis for the court's determinations.

(b) Permanency Hearing.

(1) Required Permanency Hearing when Child in Placement 13 Months. In the case of a voluntary foster care placement agreement pursuant to Minnesota Statutes, section 260C.212, subdivision 9, where the child is in foster care due solely to the child's disabili-

ity as defined in Minnesota Statutes, section 260C.007, subdivision 12 or 16, the provisions of Minnesota Statutes, section 260C.201, subdivision 11, and Rule 42 do not apply. When a child is in foster care due solely to the child's developmental disability or emotional disturbance and the child continues in foster care for thirteen (13) consecutive months from the date of the voluntary placement, a petition alleging the child to be in need of protection or services, for termination of parental rights, or for permanent placement of the child away from the parent under Minnesota Statutes, section 260C.201 shall be filed. The court shall conduct a permanency hearing on the petition no later than fourteen (14) months after the date of the voluntary placement in foster care.

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

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

(ii) whether there are compelling reasons that continued voluntary placement is in the child's best interests; and

(iii) whether the responsible social services agency has made reasonable efforts to finalize a permanent plan for the child.

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

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

(2) **Hearing.** If a petition alleging the child to be in need of protection or services is filed under this paragraph, based on the contents of the sworn petition and the agreement of all parties, including the child, where appropriate, and without requiring any party to admit or deny the petition or respond to the motion by the responsible social services agency, the court may:

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

(ii) approve continued voluntary placement in foster care;

(iii) find that the responsible social services agency has made reasonable efforts to finalize a permanent plan for the child; and

(iv) continue the matter under the court's jurisdiction for the purpose of reviewing the child's placement in foster care as a continued voluntary arrangement every 12 months as long as the child remains in foster care;

(3) **Disagreements with Voluntary Placement.** If any party, including the child, disagrees with the voluntary arrangement, the court shall proceed under Rule 30 or 34, whichever is applicable, and Minnesota Statutes, section 260C.163.

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

(d) **Continued Review Required.** The matter must be returned to the court for further review every twelve (12) months from the date of the permanency hearing as long as the child

remains in foster care. The court shall give notice to the parent or legal custodian of this continued review requirement by registered mail or on the record at the time of the permanency hearing. At the time of the continued reviews, the court shall determine whether the continued voluntary arrangement is in the best interests of the child and the reasonable efforts of the agency to:

- (1) identify a specific long-term foster home or residential facility for the child, if one has not already been identified;
- (2) support continued placement of the child in the identified home or residential facility, if one has been identified;
- (3) ensure appropriate services are being provided to the child;
- (4) upon the child becoming age sixteen (16), plan for the child's transition to an appropriate living arrangement and for appropriate services once the child reaches age eighteen (18).

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

Subd. 2. Other Voluntary Placements.

(a) Petition. In the case of a child in voluntary foster care placement pursuant to Minnesota Statutes, section 260C.212, subdivision 8, a petition shall be filed within ninety (90) days of the date of the voluntary placement agreement and shall state the reasons why the child is in placement, the progress on the case plan required pursuant to Minnesota Statutes, section 260C.212, subdivision 1, and the statutory basis for the petition pursuant to Minnesota Statutes, section 260C.007, subdivision 6; section 260C.201, subdivision 11; or section 260C.301.

(b) Hearing. The matter shall be set for hearing within twenty (20) days of service.

(c) Findings. If all parties agree and the court finds that it is in the best interests of the child, the court may find the petition states a prima facie case that:

- (1) the child's needs are being met;
- (2) the placement of the child in foster care is in the best interests of the child;
- (3) reasonable efforts to reunify the child and the parent or legal custodian are being made; and
- (4) the child will be returned home in the next ninety (90) days.

(d) Approval of Placement. If the court makes the findings required pursuant to subdivision 2(c), the court shall approve the voluntary placement arrangement without requiring any party to admit or deny the petition and continue the matter for ninety (90) days to assure the child returns to the parent's home.

(e) Further Proceedings.

(1) The responsible social services agency shall report to the court when the child returns home and the progress made by the parent on the case plan required pursuant to Minnesota Statutes, section 260C.212, subdivision 1. If the child does not return home within the ninety (90) days approved by the court, the matter shall be returned to court for further proceedings pursuant to Rule 34.

(2) If the court or any party, including the child, disagrees with the voluntary placement or the sufficiency of the services offered by the responsible social services agency, or if the court finds that the placement or case plan is not in the best interests of the child, the court shall direct the parties to admit or deny the petition and set the matter for further proceedings pursuant to Rule 36 or 39. If the court makes required findings pursuant to Rule 30, the court may order the child in protective care.

(f) Calculating Time Period. When a child is placed in foster care pursuant to a voluntary placement agreement pursuant to Minnesota Statutes, section 260C.212, subdivision 8, the time period the child is considered to be in foster care for purposes of determining wheth-

er to proceed pursuant to Minnesota Statutes, section 260C.201, subdivision 11, is sixty (60) days after the voluntary placement agreement is signed, or the date the court orders the child in protective care, whichever is earlier.

Subd. 3. Child Determined to be in Need of Protection or Services.

(a) **Further Proceedings After Adjudication.** Pursuant to subdivision 1(c)(2) or 2(e), after the parties admit the petition or the petition is proven at trial, the court may determine that the child is in need of protection or services or withhold adjudication pursuant to Rule 40.

(b) When the court determines the child is in need of protection or services, the court may make orders pursuant to Minnesota Statutes, section 260C.201 or 260C.205.

(c) When the court determines the child is in need of protection or services or withholds such a determination, further proceedings shall be pursuant to Rule 41.

(Amended effective January 1, 2004; amended effective January 1, 2007.)

RULE 45. POST-TRIAL MOTIONS

Rule 45.01. Procedure and Timing

Subdivision 1. Timing. All post-trial motions shall be filed within fifteen (15) days of the service of notice by the court administrator of the filing of the court's order finding that the statutory grounds set forth in the petition are or are not proved.

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

Subd. 3. Time for Serving Affidavits. When a post-trial motion is based upon affidavits, such affidavits shall be served with the notice of motion. The parties and the county attorney shall have ten (10) days after such service in which to serve opposing affidavits pursuant to Rule 15. The period may be extended by the court upon an order extending the time for hearing under this rule. The court may permit reply affidavits.

(Amended effective January 1, 2007.)

[For text of 45.02, see M.S. 2006, Volume 15]

Rule 45.03. 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 such findings or has made a motion to amend the order.

(Added effective January 1, 2007.)

Rule 45.04. 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.

(Renumbered effective January 1, 2007.)

Rule 45.05. Decision

The court shall rule on all post-trial motions within fifteen (15) days of submission. For good cause shown, the court may extend this period for not more than an additional fifteen (15) days. All findings shall be stated orally on the record or in writing.

(Renumbered effective January 1, 2007.)

Rule 45.06. 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; or

(d) make new findings and conclusions as required.

(Renumbered effective January 1, 2007.)

RULE 46. RELIEF FROM ORDER

[For text of 46.01, see M.S. 2006, Volume 15]

Rule 46.02. Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud

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

(a) mistake, inadvertence, surprise, or excusable neglect;

(b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial;

(c) fraud (whether denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(d) the judgment is void; or

(e) any other reason justifying relief from the operation of the order.

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

(Amended effective January 1, 2004; amended effective January 1, 2007.)

[For text of 46.03, see M.S. 2006, Volume 15]

RULE 47. APPEAL

[For text of 47.01, see M.S. 2006, Volume 15]

Rule 47.02. Procedure

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

including but not limited to an order adjudging a child to be in need of protection or services, neglected and in foster care.

Subd. 2. Timing. Any appeal shall be taken within thirty (30) days of the service of notice by the court administrator of the filing of the court's order. In the event of the filing and service of a timely and proper post-trial motion under Rule 45, or for relief under Rule 46 if the motion is filed within the time specified in Rule 45.01, subdivision 1, the provisions of Minnesota Rules of Civil Appellate Procedure Rule 104.01, subdivisions 2 and 3, apply, except that the time for appeal runs for all parties from the service of notice by the court administrator of the filing of the order disposing of the last post-trial motion.

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.

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

Subd. 6. Notice to Legal Custodian. The court administrator shall notify the child's legal custodian of the appeal. Failure to notify the legal custodian does not affect the jurisdiction of the court of appeals.

(Amended effective January 1, 2004; amended effective January 1, 2007.)

2003 Advisory Committee Comment – 2006 Amendment

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

(Comment added effective January 1, 2004; amended effective January 1, 2007.)

Rule 47.03. Application for Stay of Trial Court Order

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

(Amended effective July 1, 2007.)

[For text of 47.04 to 47.06, see M.S. 2006, Volume 15]

Minnesota Rules of Adoption Procedure

Rules effective January 1, 2005

With amendments received through August 1, 2007

TABLE OF HEADNOTES

Rule 2. Definitions

- 2.01 Definitions

Rule 4. Time; Timelines

- 4.01 Computation of Time

Rule 5. Continuances

- 5.01 Findings

Rule 6. Referees and Judges

- 6.04 Transmittal of Referee's Findings and Recommended Order
 - 1. Transmittal
 - 2. Effective Date
- 6.07 Removal of Judge
 - 1. Disability of Judge
 - 2. Interest or Bias
 - 3. Notice to Remove

Rule 8. Presence at Hearings

- 8.01 Attendance at Hearings

Rule 10. Orders

- 10.03 Delivery; Mailing
 - 1. Court Orders
 - 2. Adoption Decree
 - 3. Replacement Birth Record

Rule 13. Subpoenas

- 13.02 Form; Purpose; Notice
 - 1. Form
 - 2. Purpose
 - 3. Notice

Rule 15. Motions

- 15.02 Service and Notice of Motion
 - 1. Upon Whom
 - 2. How Made
 - 3. Time

Rule 18. Default

- 18.01 Procedure

Rule 19. Settlement

- 19.02 Partial Settlement

Rule 20. Parties

- 20.01 Party Status
- 20.02 Rights of Parties

Rule 23. Right to Representation; Appointment of Counsel

- 23.04 Biological Parent Counsel in Direct Placement Adoption
 - 1. Right to Counsel

- 2. Waiver of Right to Counsel
- 3. Expiration of Right to Counsel
- 4. Dual Representation Prohibited
- 23.07 Appointment of Counsel in Adoption Involving an Indian Child
 - 1. Parent or Indian Custodian
 - 2. Indian Child

Rule 24. Guardian Ad Litem

- 24.01 Appointment
 - 1. Generally
 - 2. Guardian Ad Litem Not Also Attorney for Child

Rule 25. Methods of Filing and Service

- 25.01 Types of Filing
 - 1. Generally
 - 2. Filing by Facsimile Transmission
 - 3. Fees; Original Document
 - 4. Noncompliance
- 25.02 Types of Service
 - 1. Personal Service
 - 2. U.S. Mail
 - 3. Publication
 - 4. Facsimile Service

Rule 26. Commencement of Adoption Matter

- 26.01 Commencement of an Adoption Matter
- 26.02 Post-Permanency Review Hearings Continue

Rule 27. Stepparent Adoption**Rule 28. Agency Adoption****Rule 29. Direct Placement Adoption**

- 29.01 Notice of Motion and Motion for a Preadoptive Custody Order
- 29.02 Timing
- 29.03 Content
 - 1. Nonemergency Direct Placement
 - 2. Emergency Direct Placement
- 29.04 Decision and Order
 - 1. Nonemergency Direct Placement
 - 2. Emergency Direct Placement

Rule 30. Intercountry Adoptions

- 30.01 Adoption of a Child by a Resident of Minnesota Under the Laws of a Foreign Country
 - 1. Validity of a Foreign Adoption
 - 2. New Birth Record
 - 3. Action Upon Issuance of Adoption Decree
- 30.02 Adoption Under the Laws of Minnesota of a Child Born in Another Country
 - 1. Agency Adoption
 - 2. Direct Placement Adoption
- 30.03 Post-Adoption Report

Rule 31. Notice of Final Hearing or Trial

- 31.01 Notice
 - 1. Definition
 - 2. Upon Whom
- 31.02 Notice Not Required
- 31.03 Content of Notice of Hearing

- 31.04 Service of Notice of Hearing
 - 1. Timing
 - 2. Method of Service – Parent
 - 3. U.S. Mail
 - 4. Registered Mail

Rule 32. Minnesota Fathers' Adoption Registry

- 32.01 Requirement to Search Minnesota Fathers' Adoption Registry Before Adoption Petition Granted; Proof of Search
 - 1. Requirement to Search Registry
 - 2. Proof of Search
- 32.02 Fees for Minnesota Fathers' Adoption Registry

Rule 33. Consent to Adoption

- 33.01 Persons and Agencies Required to Consent
- 33.02 Notice of Intent to Consent to Adoption
 - 1. Consent of Biological Parents
 - 2. Consent of Minors
- 33.03 Execution of Consent to Adoption
 - 1. Requirements of Consent
 - 2. Consents Taken Outside of Minnesota
 - 3. Exceptions to Consent Requirements
- 33.04 Timing of Consent
- 33.05 Failure to Execute Consent
- 33.06 Agreement Conferring Authority to Place for Adoption
 - 1. Parties to Agreement
 - 2. Format of Agreement
 - 3. Content of Agreement
 - 4. Execution of Agreement
- 33.07 Consent to a Direct Placement Adoption Under Minnesota Statutes, Section 259.47
 - 1. Presence of Legal Counsel for Biological Parent
 - 2. Execution of Consent Before Judicial Officer – When Required
 - 3. Execution of Consent Before Judicial Officer – When Optional
 - 4. Consent Hearing
 - 5. Consent Format
- 33.08 Revocation of Consent to Adoption of a Non-Indian Child Under Minnesota Statutes, Section 259.24
- 33.09 Consent to Adoption of an Indian Child
 - 1. Requirements of Consent
 - 2. Revocation of Consent to Adoption of an Indian Child
 - 3. Vacation of an Adoption Decree of an Indian Child

Rule 34. Communication or Contact Agreement

- 34.01 Persons Who May Enter Into a Communication or Contact Agreement
 - 1. Parties
 - 2. Approval
- 34.02 Filing of Agreement
- 34.03 Written Order Required
- 34.04 Timing
- 34.05 Requirements for Entry of Order
- 34.06 Service of Order
- 34.07 Enforcement – Family Court
 - 1. Filing Requirement
 - 2. Attorneys Fees

- 34.08 Failure to Comply with Order
- 34.09 Modification

Rule 35. Petition

- 35.01 Residency of Petitioner
 - 1. Residency Requirement
 - 2. Exception to Residency Requirement
- 35.02 Residency of Child to be Adopted
- 35.03 Timing
 - 1. Generally
 - 2. Exceptions – Stepparent and Relative Adoptions
- 35.04 Conditions for Filing Petition for Adoption of a Child; Exceptions
 - 1. Generally
 - 2. Exceptions
- 35.05 Content
 - 1. Case Caption
 - 2. Allegations
 - 3. Exception to Content
 - 4. Attachments
 - 5. Other Documents to be Filed
 - 6. Missing Information
 - 7. Acceptance Despite Missing Information
- 35.06 Verification
- 35.07 Amendment
 - 1. Uncontested Petitions
 - 2. Contested Petitions
- 35.08 Statement of Expenses

Rule 36. Actions Upon Filing of Petition**Rule 37. Adoption Study**

- 37.01 Adoption Study Required; Exception
- 37.02 Adoption Study Report
- 37.03 Direct Placement Adoption; Background Check Incomplete
- 37.04 Background Check; Timing
 - 1. Timing of Background Check
 - 2. Direct Placement Adoption
 - 3. Agency Unable to Complete Background Check
- 37.05 Updates to Adoption Study Report; Period of Validity
- 37.06 Filing of Adoption Study Report
 - 1. Agency Placement
 - 2. Direct Placement Adoption
- 37.07 Foster Parent Assessment May be Used for Adoption Study

Rule 38. Post-Placement Assessment Report

- 38.01 Timing
 - 1. Generally
 - 2. Failure to Comply
- 38.02 Content
- 38.03 Background Check
- 38.04 Waiver by Court

Rule 39. Answer When Contested Adoption Matter

- 39.01 Answer When Contested
- 39.02 Notice of Contested Adoption
 - 1. Content
 - 2. Service
- 39.03 Pretrial Conference

Rule 40. Voluntary Withdrawal; Involuntary Dismissal; Summary Judgment

- 40.01 Voluntary Withdrawal of Petition
- 40.02 Involuntary Dismissal of Petition
- 40.03 Summary Judgment

Rule 41. Final Hearing in Uncontested Matters

- 41.01 Generally
- 41.02 Commencement
- 41.03 Hearing Procedure
- 41.04 Standard of Proof
- 41.05 Timing of Decision

Rule 42. Consolidation; Bifurcation

- 42.01 Consolidation Generally
- 42.02 Consolidation with Other Proceedings; Competing Petitions
 - 1. Consolidation with Other Proceedings
 - 2. Competing Petition
 - 3. Cross-County Matters
 - 4. Factors to Consider
- 42.03 Bifurcation
 - 1. Permissive Bifurcation
 - 2. Mandatory Bifurcation

Rule 43. Pretrial Conference in Contested Matters

- 43.01 Timing
- 43.02 Purpose
- 43.03 Pretrial Order

Rule 44. Trial in Contested Matters

- 44.01 Generally
- 44.02 Commencement
- 44.03 Trial Procedure
 - 1. Initial Procedure
 - 2. Order of Evidence
- 44.04 Standard of Proof
- 44.05 Motion for Judgment at Conclusion of Trial
- 44.06 Timing of Decision

Rule 45. Findings of Fact, Conclusions of Law, Order for Judgment, and Adoption Decree

- 45.01 Denial of Adoption Petition
- 45.02 Granting Adoption Petition
- 45.03 Findings of Fact, Conclusions of Law, Order for Judgment, and Adoption Decree
 - 1. Separate Orders for Each Child
 - 2. Findings of Fact in a Contested Adoption Matter
 - 3. Findings of Fact in an Uncontested Adoption Matter
 - 4. Conclusions of Law
 - 5. Order for Judgment
 - 6. Adoption Decree
- 45.04 Filing and Service

Rule 46. Post-Trial Motions

- 46.01 Motion for Amended Findings
- 46.02 Motion for New Trial
 - 1. Grounds
 - 2. Basis of Motion
 - 3. Time for Serving and Filing Motion
 - 4. Time for Serving and Filing Affidavits
 - 5. Order for New Trial on Court's Initiative
- 46.03 Timing of Decision

Rule 47. Relief From Order

- 47.01 Clerical Mistakes
- 47.02 Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud
- 47.03 Invalidation of District Court Action – Indian Child Cases
 - 1. Petition
 - 2. Evidentiary Hearing
 - 3. Findings and Order
- 47.04 Vacation of Adoption Decree – Indian Child Cases
 - 1. Petition to Vacate
 - 2. Evidentiary Hearing
 - 3. Findings and Order

Rule 48. Appeal

- 48.01 Applicability of Rules of Civil Appellate Procedure
- 48.02 Procedure
 - 1. Appealable Order
 - 2. Timing
 - 3. Service and Filing of Notice of Appeal
 - 4. Notice to Court Administrator
 - 5. Failure to File Proof of Service
 - 6. Notice to Legal Custodian
- 48.03 Application for Stay of Trial Court Order
- 48.04 Right to Additional Review
- 48.05 Transcript of Proceedings
- 48.06 Time for Rendering Decisions

Rule 49. Venue

- 49.01 Venue
 - 1. Generally
 - 2. Child Under Guardianship of Commissioner
- 49.02 Request to Transfer Venue
- 49.03 Transfer of Venue Procedures

Rule 50. Adoptive Placements – Indian Child

- 50.01 Placement Preferences
 - 1. Generally
 - 2. Preadoptive Placements
- 50.02 Tribal Resolution for Different Order of Preference; Personal Preference Considered; Anonymity in Application of Preferences
- 50.03 Social and Cultural Standards Applicable
- 50.04 Record of Placement

TEXT OF RULES

[For text of Rule 1, see M.S. 2006, Volume 15]

RULE 2. DEFINITIONS**Rule 2.01. Definitions**

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

(a) “**Adjudicated father**” means an individual determined by a court, or pursuant to a Recognition of Parentage under Minnesota Statutes, section 257.75, subdivision 3, to be the biological father of the child.

(b) “**Adoption case records**” means all records of the court regarding a particular adoption matter, including all records filed with the court, all records maintained by the court, and all reporter’s notes and tapes, electronic recordings, and transcripts of hearings and trials relating to the adoption matter.

(c) **“Adoption matter”** means any proceeding for adoption of a child or an adult in the juvenile courts of Minnesota, including a step-parent adoption, relative adoption, intercountry adoption, adoption resulting from a juvenile protection matter, and any other type of adoption proceeding.

(d) **“Agency,”** as defined in Minnesota Statutes, section 259.21, subdivision 6, and as referenced in Minnesota Statutes, sections 245A.02 to 245A.16 and 252.28, subdivision 2, means an organization or department of government designated or authorized by law to place children for adoption or any person, group of persons, organization, association, or society licensed or certified by the Commissioner of Human Services to place children for adoption, including a Minnesota federally recognized tribe.

(e) **“Birth relative,”** for purposes of entering into a communication or contact agreement pursuant to Rule 34, means a parent, stepparent, grandparent, brother, sister, uncle, or aunt of a child. This relationship may be by blood, adoption, or marriage. **“Birth relative”** of an Indian child includes members of the extended family as defined by the law or custom of the Indian child’s tribe or, in the absence of laws or custom, also includes any person age eighteen (18) or older who is the Indian child’s niece, nephew, first or second cousin, brother-in-law, or sister-in-law as provided in the Indian Child Welfare Act, 25 U.S.C., section 1903(2).

(f) **“Child”** means a person under the age of 18 years.

(g) **“Child placing agency”** means a private agency making or supervising an adoptive placement.

(h) **“Commissioner”** means the Commissioner of Human Services of the State of Minnesota.

(i) **“Contested adoption”** means an adoption matter where:

(1) there are two or more adoption petitions regarding the same child;

(2) a party has filed a written challenge to the adoption; or

(3) the Commissioner of Human Services or a legal custodian or legal guardian who is not a parent has withheld consent.

(j) **“Direct placement adoption”** means the placement of a child by a biological parent or legal guardian, other than an agency, under the procedure for adoption authorized by Minnesota Statutes, section 259.47.

(k) **“Father.”** See “adjudicated father” and “putative father” as defined in this rule.

(l) **“Indian child,”** as defined in the Indian Child Welfare Act, 25 U.S.C., section 1903(1)(4), and modified by Minnesota Statutes, section 260.755, subdivision 8, means any unmarried person who is under age eighteen (18) and is (1) a member of an Indian tribe or (2) eligible for membership in an Indian tribe.

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

(n) **“Indian tribe,”** as defined in the Indian Child Welfare Act, 25 U.S.C., section 1903(1)(8), and Minnesota Statutes, section 260.755, subdivision 12, means an Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any band under the Alaska Native Claims Settlement Act, 43 U.S.C., section 1602(c).

(o) **“Individual related to child,”** as defined under Minnesota Statutes, section 245A.02, subdivision 13, means a spouse, a parent, a biological or adopted child or stepchild, a stepparent, a stepbrother, a stepsister, a niece, a nephew, an adoptive parent, a grandparent, a sibling, an aunt, an uncle, or a legal guardian. Distinguish “relative” under Rule 2.01(x).

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

(q) **“Legal guardian”** means a person who is the court–appointed legal guardian of the child pursuant to Minnesota Statutes, section 260C.325, subdivisions 1 and 3, or Minnesota Statutes, Chapter 525 or an equivalent law in another jurisdiction.

(r) **“Local social services agency”** means the agency in the county of the petitioner’s residence.

(s) **“Parent”** means the biological or adoptive parent of a child, including an adjudicated father. Pursuant to Minnesota Statutes, section 260.755, subdivision 14, “parent” also means the biological parent of an Indian child, or any Indian person who has lawfully adopted an Indian child, including a person who has adopted a child by tribal law or custom. “Parent” does not mean an unmarried father whose paternity has not been acknowledged or established.

(t) **“Petitioner”** means a person, with a spouse, if any, petitioning for the adoption of any person pursuant to Minnesota Statutes, sections 259.21 to 259.63.

(u) **“Placement”** means the transfer of physical custody of a child from a biological parent, legal guardian, or agency with placement authority to a prospective adoptive home.

(v) **“Placement activities”** means any of the following:

- (1) placement of a child;
- (2) arranging or providing short–term foster care pending an adoptive placement;
- (3) facilitating placement by maintaining a list in any form of biological parents or prospective adoptive parents;
- (4) collecting health and social histories of a birth family;
- (5) conducting an adoption study;
- (6) witnessing consents to an adoption; or
- (7) engaging in any activity listed in clauses (1) to (6) for purposes of fulfilling any requirements of the Interstate Compact on the Placement of Children, Minnesota Statutes, sections 260.851 to 260.91.

(w) **“Putative father”** means a man, including a male who is less than 18 years of age, who may be a child’s father, but who:

- (1) is not married to the child’s mother on or before the date that the child was or is to be born; and
- (2) has not established paternity of the child according to Minnesota Statutes, section 257.57, in a court proceeding before the filing of an adoption petition regarding the child; or
- (3) has not signed a recognition of parentage under Minnesota Statutes, section 257.75, which has not been revoked or vacated.

(x) **“Relative”** means a person related to the child by blood, marriage, or adoption, or an individual who is an important friend with whom the child has resided or had significant contact. For an Indian child, relative includes members of the extended family as defined by the law or custom of the Indian child’s tribe or, in the absence of laws or custom, any person age 18 or older who is the Indian child’s grandparent, aunt, uncle, brother, sister, niece, nephew, first or second cousin, brother–in–law, sister–in–law, or step–parent as provided in the Indian Child Welfare Act of 1978, 25 U.S.C., section 1903(2). Distinguish “Individual Related to Child” under Rule 2.01(o).

(y) **“Responsible social services agency”** means the county agency acting on behalf of the Commissioner of Human Services as legal guardian or legal custodian of the child.

(z) **“Working day”** refers solely to revocation of consents and means Monday through Friday, excluding any holiday as defined under Minnesota Statutes, section 645.44, subdivision 5.

(aa) **“Intercountry adoption”** means adoption of a child by a Minnesota resident under the laws of a foreign country or the adoption under the laws of Minnesota of a child born in another country.

(Amended effective January 1, 2007.)

[For text of Rule 3, see M.S. 2006, Volume 15]

RULE 4. TIME; TIMELINES

Rule 4.01. Computation of Time

Unless otherwise provided by statute or these rules, the day of the act or event from which the designated period of time begins shall not be included in the computation of time. The last day of the period shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday. When a period prescribed or allowed is three (3) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in these rules, "legal holiday" includes New Year's Day, Martin Luther King's Birthday, Washington's Birthday (Presidents' Day), Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Day, and any other day designated as a holiday by the President, Congress of the United States, or by the State. For purposes of calculating time for the revocation of consent under Rule 33, the definition of "working day" under Rule 2.01(z) applies.

(Amended effective January 1, 2007.)

[For text of 4.02, see M.S. 2006, Volume 15]

RULE 5. CONTINUANCES

Rule 5.01. Findings

Upon its own motion or motion of a party, the court may continue a scheduled hearing or trial to a later date. To grant a continuance, the court shall make written findings or oral findings on the record that the continuance is necessary for the accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown. A final hearing pursuant to Rule 41 and a trial pursuant to Rule 44 shall be commenced and completed not sooner than ninety (90) days after the child is placed, unless there is a waiver of the residency requirement pursuant to Rule 35, but not later than ninety (90) days after the petition is filed.

(Amended effective January 1, 2007.)

[For text of 5.02 and 5.03, see M.S. 2006, Volume 15]

RULE 6. REFEREES AND JUDGES

[For text of 6.01 to 6.03, see M.S. 2006, Volume 15]

Rule 6.04. Transmittal of Referee's Findings and Recommended Order

Subdivision 1. Transmittal. Upon the conclusion of a hearing, the referee shall provide to a judge the written findings and recommended order, including the findings of fact, conclusions of law, order for judgment, and adoption decree required pursuant to Rule 45. 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, 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.

(Amended effective January 1, 2007.)

[For text of 6.05 and 6.06, see M.S. 2006, Volume 15]

Rule 6.07. Removal of Judge

Subdivision 1. Disability of Judge. If by reason of death, sickness, or other disability a judge before whom a proceeding in the matter has been tried is unable to perform judicial

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

Subd. 2. Interest or Bias. No judge shall preside over any adoption matter if that judge is interested in its determination or if that judge might be excluded for bias from acting as a juror in the matter. If there is no other judge of the district who is qualified, the chief judge shall immediately notify the Chief Justice of the Minnesota Supreme Court.

Subd. 3. Notice to Remove.

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

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

(c) **Showing of Prejudice.** After a party or the county attorney has once disqualified a presiding judge as a matter of right, that party may disqualify the substitute judge, but only by making an affirmative showing of prejudice. A showing that the judge might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice.

(d) **Assignment of Another Judge.** Upon the filing of a motion to remove, or if a party or the county attorney makes an affirmative showing of prejudice against a substitute judge, the chief judge of the judicial district shall assign any other judge of any court within the district to hear the matter. If there is no other judge of the district who is qualified, the chief judge shall immediately notify the Chief Justice of the Minnesota Supreme Court.

(Amended effective January 1, 2007.)

[For text of Rule 7, see M.S. 2006, Volume 15]

RULE 8. PRESENCE AT HEARINGS

Rule 8.01. Attendance at Hearings

Only the parties, their legal counsel, their witnesses, persons entitled to notice pursuant to Rule 31, and any other persons authorized by the court may attend hearings relating to adoption matters.

(Amended effective January 1, 2007.)

[For text of 8.02 to Rule 9, see M.S. 2006, Volume 15]

RULE 10. ORDERS

[For text of 10.01 and 10.02, see M.S. 2006, Volume 15]

Rule 10.03. Delivery; Mailing

Subdivision 1. Court Orders. Court orders shall be delivered at the hearing or mailed by the court administrator to each party and such other persons as the court may direct. If a party is represented by counsel, delivery or service shall be upon such counsel. Filing and mailing of an order by the court administrator shall be accomplished within ten (10) days of the date the judicial officer delivers the order to the court administrator.

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

- (a) each party;
- (b) the Commissioner of Human Services;
- (c) the Secretary of the Interior and the child's tribal social services agency, if the child is an Indian child; and
- (d) such other persons as the court may direct.

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

Subd. 3. Replacement Birth Record. Upon the court administrator's receipt of the fee for the replacement birth record made payable to the Department of Health or equivalent agency in another state, the court administrator shall complete the certificate of adoption and send it to the Commissioner of Health in Minnesota or to the equivalent agency in any other state so that a replacement birth record may be generated. Any fee required by the Department of Health or equivalent agency in another state for a replacement birth record shall be paid by the petitioner. Any such fee shall be submitted by the petitioner to the court administrator at the time the request for a replacement birth record is made and shall be forwarded by the court administrator to the Department of Health.

(Amended effective January 1, 2007.)

[For text of 10.04 to Rule 12, see M.S. 2006, Volume 15]

RULE 13. SUBPOENAS

[For text of 13.01, see M.S. 2006, Volume 15]

Rule 13.02. Form; Purpose; Notice

Subdivision 1. Form. Every subpoena shall be issued by the court administrator under seal of the court and shall state the name of the court and the title of the action. The court administrator shall issue a subpoena signed and sealed but otherwise in blank to a party requesting it, who shall fill it in before service.

Subd. 2. Purpose. A subpoena shall command each person to whom it is directed to, at a specified time and place:

- (a) attend and give testimony at a final hearing pursuant to Rule 41, a deposition pursuant to Rule 17, or trial pursuant to Rule 44;
- (b) bring the child to court; or
- (c) produce books, papers, documents, or other tangible things designated in the subpoena.

Subd. 3. Notice. Every subpoena shall contain a notice to the person to whom it is directed advising the person of the right to reimbursement for certain expenses pursuant to Rule 13.07.

(Amended effective January 1, 2007.)

[For text of 13.03 to Rule 14, see M.S. 2006, Volume 15]

RULE 15. MOTIONS

[For text of 15.01, see M.S. 2006, Volume 15]

Rule 15.02. Service and Notice of Motion

Subdivision 1. Upon Whom. The moving party shall serve the notice of motion and motion, along with any supporting affidavit or other supporting documentation or a memorandum of law, on all parties and any other persons designated by the court.

Subd. 2. How Made. Service of a motion may be made by personal service, by mail, or by transmitting a copy by facsimile transmission.

Subd. 3. Time.

(a) *Motion.* Except for motions pursuant to Rule 29, no motion shall be heard until the moving party serves a copy of the following documents on the other parties and files the original with the court administrator at least fourteen (14) days prior to the hearing:

- (1) notice of motion and motion;
- (2) proposed order;
- (3) any affidavits and exhibits to be submitted in conjunction with the motion; and
- (4) any memorandum of law the party intends to submit.

(b) *Response.* Any party responding to the motion shall serve a copy of the following documents on the moving party and other interested parties and shall file the original with the court administrator at least seven (7) days prior to the hearing:

- (1) any memorandum of law the party intends to submit; and
- (2) any relevant affidavits and exhibits.

(c) *Reply Memorandum.* The moving party may submit a reply memorandum, limited to new legal or factual matters raised by an opposing party's response to a motion, by serving a copy of such memorandum upon the party or parties and filing the original with the court administrator at least three (3) days before the hearing.

(Amended effective January 1, 2007.)

[For text of 15.03 to Rule 17, see M.S. 2006, Volume 15]

RULE 18. DEFAULT

Rule 18.01. Procedure

If a party fails to appear, as that term is defined in Rule 5.01 of the Minnesota Rules of Civil Procedure, after being properly served with a notice pursuant to Rule 31, the court may take testimony in support of the petition. If the court determines that the petition is proven in accordance with the applicable standard of proof and the adoption is in the best interests of the child, the court shall enter an order granting the relief sought. The court shall not grant a default if a party was not served with notice within the time period set forth in Rule 31. The court shall not grant a default regarding the issue of consent to adopt.

(Amended effective January 1, 2007.)

RULE 19. SETTLEMENT

[For text of 19.01, see M.S. 2006, Volume 15]

Rule 19.02. Partial Settlement

The parties may enter into a settlement of one or more issues and shall proceed to final hearing pursuant to Rule 41. Any remaining contested issues shall proceed to trial pursuant to Rule 44.

(Amended effective January 1, 2007.)

[For text of 19.03 and 19.04, see M.S. 2006, Volume 15]

RULE 20. PARTIES

Rule 20.01. Party Status

Parties to an adoption matter shall include:

- (a) the child's guardian ad litem;

- (b) the adoptee, if age ten (10) or older;
 - (c) the child's legal custodian;
 - (d) the child's legal guardian;
 - (e) the petitioner;
 - (f) the child's biological parent, if the consent of the biological parent is required and has not been executed pursuant to Rule 33;
 - (g) the child's Indian tribe, if the child is an Indian child and the tribe is or was a party in an underlying juvenile protection matter as defined in Rule 2.01(k) of the Minnesota Rules of Juvenile Protection Procedure;
 - (h) the responsible social services agency, if the child is under the guardianship of the Commissioner of Human Services;
 - (i) the child placing agency, if the child has been placed;
 - (j) any person who intervenes as a party pursuant to Rule 21; and
 - (k) any person who is joined as a party pursuant to Rule 22.
- (Amended effective January 1, 2007.)

Rule 20.02. Rights of Parties

- A party shall have the right to:
- (a) notice pursuant to Rule 31;
 - (b) legal representation pursuant to Rule 23;
 - (c) be present at all hearings unless excluded pursuant to Rule 8;
 - (d) conduct discovery pursuant to Rule 17;
 - (e) bring motions before the court pursuant to Rule 15;
 - (f) participate in settlement agreements pursuant to Rule 19;
 - (g) subpoena witnesses pursuant to Rule 13;
 - (h) make argument in support of or against the petition;
 - (i) present evidence;
 - (j) cross-examine witnesses;
 - (k) ask the court to order that witnesses be sequestered;
 - (l) request review of the referee's findings and recommended order pursuant to Rule 6, if a referee presides over the matter;
 - (m) bring post-trial motions pursuant to Rules 46 and 47;
 - (n) appeal from orders of the court pursuant to Rule 48; and
 - (o) any other rights as set forth in statute or these rules.
- (Amended effective January 1, 2007.)

[For text of 20.03 to Rule 22, see M.S. 2006, Volume 15]

RULE 23. RIGHT TO REPRESENTATION; APPOINTMENT OF COUNSEL

[For text of 23.01 to 23.03, see M.S. 2006, Volume 15]

Rule 23.04. Biological Parent Counsel in Direct Placement Adoption

Subdivision 1. Right to Counsel. Pursuant to Minnesota Statutes, section 259.47, subdivision 5, in a direct placement adoption, upon the request of a biological parent, separate legal counsel shall be made available to the biological parent at the expense of the prospective adoptive parents for legal services provided in a direct placement adoption. The prospective adoptive parent shall be required to provide legal counsel for only one parent unless the biological parents elect joint legal representation.

Subd. 2. Waiver of Right to Counsel. A biological parent may waive the right to counsel only by written waiver signed and filed with the court at the time the biological parent's

consent to the adoption is executed pursuant to Minnesota Statutes, section 259.47, subdivision 7.

Subd. 3. Expiration of Right to Counsel. The right to legal counsel shall continue until consents become irrevocable, but not longer than seventy (70) days after placement. If the parent's consent to adoption has not been executed within sixty (60) days of placement, the right to counsel under Rule 23 and Minnesota Statutes, section 259.47, subdivision 5, shall end at that time.

Subd. 4. Dual Representation Prohibited. Representation of a biological parent and a prospective adoptive parent by the same attorney is prohibited.
(Amended effective January 1, 2007.)

[For text of 23.05 and 23.06, see M.S. 2006, Volume 15]

Rule 23.07. Appointment of Counsel in Adoption Involving an Indian Child

Subd. 1. Parent or Indian Custodian. In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court appointed counsel in any removal, placement, or termination proceeding.

Subd. 2. Indian Child. The court may, in its discretion, appoint counsel for an Indian child upon a finding that such appointment is in the best interests of the child.
(Added effective January 1, 2007.)

RULE 24. GUARDIAN AD LITEM

Rule 24.01. Appointment

Subdivision 1. Generally. A guardian ad litem appointed to serve in a juvenile protection matter, as defined in Rule 2.01(k) of the Minnesota Rules of Juvenile Protection Procedure, shall continue to serve in the adoption matter following a termination of parental rights or transfer of guardianship to the Commissioner of Human Services. In any other adoption matter, the court may appoint a guardian ad litem. The guardian ad litem shall advocate for the best interests of the child and shall continue to serve until the adoption decree is entered pursuant to Rule 45.

Subd. 2. Guardian Ad Litem Not Also Attorney for Child. Counsel for the child shall not also serve as the child's guardian ad litem or as legal counsel for the guardian ad litem.
(Amended effective January 1, 2007.)

[For text of 24.02 and 24.03, see M.S. 2006, Volume 15]

RULE 25. METHODS OF FILING AND SERVICE

Rule 25.01. Types of Filing

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

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

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

(a) 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;

- (b) any bulky exhibits or attachments; and
- (c) the applicable filing fee or fees, if any.

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

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

(Amended effective January 1, 2007.)

Rule 25.02. Types of Service

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

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

Subd. 3. Publication. Service by publication means the publication in full of the summons, notice of hearing, or other papers in the regular issue of a qualified newspaper, once each week for the number of weeks specified pursuant to Rule 31.04, subdivision 2. Service by publication substitutes for personal service where authorized by the court. The court shall authorize service by publication only if the petitioner has filed a written statement or affidavit describing unsuccessful efforts to locate the party to be served. Service by publication shall be completed by the petitioner in a location approved by the court. If the summons is required to be published, the case caption shall identify the child by the child's initials rather than by full name. In cases involving an Indian child, if the identity or location of the parent or Indian custodian and the child's Indian tribe cannot be determined, the summons and petition shall be served upon the Secretary of the Interior pursuant to United States Code, title 25, section 1912.

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

(Amended effective January 1, 2004; amended effective January 1, 2007.)

[For text of 25.03 to 25.07, see M.S. 2006, Volume 15]

RULE 26. COMMENCEMENT OF ADOPTION MATTER

Rule 26.01. Commencement of an Adoption Matter

An adoption matter is commenced by filing:

- (a) a motion for a direct placement preadoptive custody order pursuant to Rule 29;
- (b) an adoption petition; or
- (c) a motion for waiver of agency placement pursuant to Minnesota Statutes, section 259.22, subdivision 2(d).

The filing of an adoption petition does not terminate the in-court review hearings required at least every ninety (90) days under Rule 41.06 of the Minnesota Rules of Juvenile Protection Procedure.

(Amended effective January 1, 2007.)

Rule 26.02 Post-Permanency Review Hearings Continue

The filing of an adoption petition does not terminate the in-court review hearings required at least every ninety (90) days under Rule 41.06 of the Minnesota Rules of Juvenile Protection Procedure.

(Added effective January 1, 2007.)

RULE 27. STEPPARENT ADOPTION

A stepparent adoption shall be commenced by the filing of a petition pursuant to Rule 35. All other Rules apply to stepparent adoptions, except for Rule 28 dealing with agency adoptions, Rule 29 dealing with direct placement adoptions, and Rule 30 dealing with intercountry adoptions.

(Added effective January 1, 2007.)

RULE 28. AGENCY ADOPTION

An agency adoption shall be commenced by the filing of a petition pursuant to Rule 35. All other Rules apply to agency adoptions, except for Rule 27 dealing with stepparent adoptions, Rule 29 dealing with direct placement adoptions, and Rule 30 dealing with intercountry adoptions.

(Added effective January 1, 2007.)

RULE 29. DIRECT PLACEMENT ADOPTION

Rule 29.01. Notice of Motion and Motion for a Preadoptive Custody Order

In a direct placement adoption, whether involving an emergency or nonemergency situation, the petitioner shall file with the court and serve a notice of motion and motion for a preadoptive custody order upon:

- (a) the biological mother;
- (b) the biological father if his consent is required;
- (c) any parent whose consent is required; and
- (d) the Indian tribe, if the child is an Indian child.

(Amended effective January 1, 2007.)

Rule 29.02. Timing

A notice of motion and motion for a preadoptive custody order may be filed up to sixty (60) days before the adoptive placement is to be made and may be filed prior to the birth of the baby.

(Amended effective January 1, 2007.)

Rule 29.03. Content

Subdivision 1. Nonemergency Direct Placement. In a nonemergency situation, a notice of motion and motion for a preadoptive custody order in a direct placement adoption shall be in writing and shall contain or have attached:

- (a) a statement that the biological parents have:

- (1) provided the social and medical history to the prospective adoptive parent using the form prescribed by the Commissioner of Human Services;

- (2) received a written statement of their legal rights and responsibilities prepared by the Department of Human Services; and

- (3) been notified of their right to receive counseling;

- (b) the name of the agency chosen by the adoptive parent to supervise the adoptive placement and complete the post-placement assessment;

- (c) affidavits from the biological parents stating their support of the motion or, if there is no affidavit from the biological father, an affidavit from the biological mother that describes her good faith efforts, or efforts made on her behalf, to identify and locate the biological father for purposes of securing his consent. In the following circumstances the biological mother may instead submit an affidavit stating on which of the following grounds she is exempt from making efforts to identify and locate the father:

- (1) the child was conceived as the result of incest or rape;
- (2) efforts to locate the biological father by the affiant or anyone acting on the affiant's behalf could reasonably result in physical harm to the biological mother or the child; or
- (3) efforts to locate the biological father by the affiant or anyone acting on the affiant's behalf could reasonably result in severe emotional distress of the biological mother or child;
- (d) a statement that the prospective adoptive parent meets the residence requirements;
- (e) an affidavit of intent to remain a resident of the state for at least three (3) months after the child is placed in the prospective adoptive home;
- (f) a notice of intent to file an adoption petition;
- (g) the adoption study report required pursuant to Rule 37;
- (h) an itemized statement of expenses that have been paid and an estimate of expenses that will be paid by the prospective adoptive parents to the biological parents, any agency, attorney, or other party in connection with the prospective adoption; and
- (i) the name of counsel for each party, if any.

Subd. 2. Emergency Direct Placement. In an emergency situation, a notice of motion and motion for a preadoptive custody order in a direct placement adoption shall be in writing and shall contain or have attached:

(a) affidavits from the prospective adoptive parents and biological parents stating that an emergency order is needed because of the unexpected premature birth of the child or other extraordinary circumstances which prevented the completion of the requirements under subdivision 1;

(b) affidavits from the biological parents stating their support of the motion or, if there is no affidavit from the biological father, an affidavit from the biological mother that describes her good faith efforts, or efforts made on her behalf, to identify and locate the biological father for purposes of securing his consent. In the following circumstances the biological mother may instead submit an affidavit stating on which of the following grounds she is exempt from making efforts to identify and locate the father:

- (1) the child was conceived as the result of incest or rape;
- (2) efforts to locate the father by the affiant or anyone acting on the affiant's behalf could reasonably result in physical harm to the biological mother or child; or
- (3) efforts to locate the father by the affiant or anyone acting on the affiant's behalf could reasonably result in severe emotional distress of the biological mother or child;
- (c) a statement that the biological parents:
 - (1) have received the written statement of their legal rights and responsibilities prepared by the Department of Human Services; and
 - (2) have been notified of their right to receive counseling; and
- (d) either:
 - (1) the adoption study report pursuant to Rule 37; or
 - (2) sworn affidavits stating whether the prospective adoptive parents or any person residing in the household have been convicted of a crime.

(Amended effective January 1, 2007.)

Rule 29.04. Decision and Order

Subdivision 1. Nonemergency Direct Placement. In a nonemergency situation, the court shall decide a motion for a preadoptive custody order within thirty (30) days of the filing of the motion or by the anticipated placement date stated in the motion, whichever is earlier.

Subd. 2. Emergency Direct Placement.

(a) **Expedited Emergency Order.** An order granting or denying a motion for an emergency preadoptive custody order shall be issued within twenty-four (24) hours of the time it is filed. Any district court judge may decide a motion for emergency preadoptive custody. An

order granting the motion shall direct that an adoption study be commenced immediately, if that has not already occurred, and that the agency conducting the study shall supervise the emergency placement.

(b) **Expiration of Emergency Order.** A court may issue an emergency order granting preadoptive custody of a child to a prospective adoptive parent for up to fourteen (14) days. An emergency order under this rule expires fourteen (14) days after it is issued. If the requirements for nonemergency direct placement under this Rule are completed and a preadoptive custody motion is filed on or before the expiration of the emergency order, placement may continue until the court decides the motion. The court shall decide the preadoptive custody motion within seven (7) days of filing.

(Amended effective January 1, 2007.)

RULE 30. INTERCOUNTRY ADOPTIONS

Rule 30.01. Adoption of a Child by a Resident of Minnesota Under the Laws of a Foreign Country

Subdivision 1. Validity of a Foreign Adoption. The adoption of a child by a resident of Minnesota under the laws of a foreign country is valid and binding under the laws of Minnesota if the validity of the foreign adoption has been verified by the granting of an IR-3 visa for the child by the United States Citizenship and Immigration Services.

Subd. 2. New Birth Record.

(a) **Petition.** The adoption of a child under the laws of a foreign country is valid in Minnesota pursuant to Rule 30.01 and the petitioner may petition the court in petitioner's county of residence for a decree:

(1) confirming and recognizing the adoption;

(2) changing the child's legal name, if requested; and

(3) authorizing the Commissioner of Health to create a new birth record for the child pursuant to Minnesota Statutes, section 144.218, subdivision 2.

(b) **Documents to be Submitted.** The court shall issue the decree described in subdivision 2(a) upon receipt of the following documents:

(1) a signed, sworn, and notarized petition by the adoptive parent:

(i) stating that the adoptive parent completed the adoption of the child under the laws of a foreign country;

(ii) stating that the adoption is valid in this state under Rule 30.01; and

(iii) requesting that the court issue a decree confirming and recognizing the adoption and authorizing the Commissioner of Health to issue a new birth record for the child;

(2) a copy of the child's original birth record, if available;

(3) a copy of the final adoption certificate or equivalent as issued by the foreign jurisdiction;

(4) a copy of the child's passport, including the United States visa indicating IR-3 immigration status; and

(5) a certified English translation of any of the documents listed in (2) through (4) above.

Subd. 3. Action Upon Issuance of Adoption Decree. Upon issuing an adoption decree under this Rule, the court shall forward a copy of the adoption decree to the Commissioner of Human Services. The court shall also complete and forward to the Commissioner of Health the certificate of adoption, unless another form has been specified by the Commissioner of Health.

(Amended effective January 1, 2007.)

Rule 30.02 Adoption Under the Laws of Minnesota of a Child Born in Another Country

Subdivision 1. Agency Adoption. An adoption of a child placed by an agency shall be commenced by the filing of a petition or other document pursuant to Rule 35 and thereafter shall proceed pursuant to Rule 28 dealing with agency adoptions.

Subd. 2. Direct Placement Adoption. A direct placement adoption of a child born in another country shall be commenced by the filing of a petition or other document pursuant to Rule 35 and thereafter shall proceed pursuant to Rule 29 dealing with direct placement adoptions.

(Added effective January 1, 2007.)

Rule 30.03. Post-Adoption Report

If a child is adopted by a resident of Minnesota under the laws of a foreign country or if a resident of Minnesota brings a child into the state under an IR-3 or IR-4 visa issued for the child by the United States Citizenship and Immigration Services, the post-adoption reporting requirements of the country in which the child was adopted, applicable at the time of the child's adoption, shall be given full faith and credit by the courts of Minnesota and apply to the adoptive placement of the child.

(Amended effective January 1, 2007.)

RULE 31. NOTICE OF FINAL HEARING OR TRIAL

Rule 31.01. Notice

Subdivision 1. Definition. A notice of hearing is a document providing notice of the specific date, time and place of a hearing or trial upon an adoption petition.

Subd. 2. Upon Whom. A notice of hearing shall be served by the petitioner upon:

(a) all parties under Rule 20;

(b) the parent of a child if:

(1) the person's name appears on the child's birth record as a parent;

(2) the person has substantially supported the child;

(3) the person either was married to the person designated on the birth record as the biological mother within the 325 days before the child's birth or married that person within the ten (10) days after the child's birth;

(4) the person is openly living with the child or the person designated on the birth record as the biological mother of the child, or both;

(5) the person has been adjudicated the child's parent;

(6) the person has filed a paternity action within thirty (30) days after the child's birth and the action is still pending; or

(7) the person and the mother of the child signed a declaration of parentage before August 1, 1995, which has not been revoked or a recognition of parentage which has not been revoked or vacated;

(c) a person who has timely registered pursuant to Minnesota Statutes, section 259.52;

(d) the responsible social services agency;

(e) any parent who has abandoned the child or who has lost custody of the child through a divorce decree or dissolution of marriage; and

(f) the child's Indian tribe, if the child is an Indian child.

(Amended effective January 1, 2007.)

Rule 31.02. Notice Not Required

Without express order of the court, a notice of the hearing shall not be served upon:

(a) persons whose parental rights have been terminated;

(b) persons who have not timely registered pursuant to Minnesota Statutes, section 259.52;

(c) persons who have waived notice of hearing pursuant to Minnesota Statutes, section 259.49, subdivision 1;

(d) a putative father who has timely registered with the Minnesota Fathers' Adoption Registry pursuant to Minnesota Statutes, section 259.52, but who fails to timely file an intent to claim parental rights form with the court; and

(e) a putative father who has registered with the Minnesota Fathers' Adoption Registry pursuant to Minnesota Statutes, section 259.52, and who has filed a completed denial of paternity form and a consent to adoption form.
(Amended effective January 1, 2007.)

Rule 31.03. Content of Notice of Hearing

A notice of hearing shall contain or have attached:

- (a) an adoption petition;
 - (b) a statement setting forth the time and place of the hearing;
 - (c) a statement describing the purpose of the hearing as either:
 - (1) a final hearing pursuant to Rule 41 if it is an uncontested adoption matter; or
 - (2) a pretrial conference pursuant to Rule 43 if it is a contested adoption matter;
 - (d) a statement explaining the right to representation pursuant to Rule 23;
 - (e) a statement explaining intervention pursuant to Rule 21;
 - (f) a statement explaining that if the person fails to appear at the hearing, the court may still conduct the hearing and grant the adoption pursuant to Rule 18; and
 - (g) a statement explaining that it is the responsibility of the individual to notify the court administrator of any change of address.
- (Amended effective January 1, 2007.)

Rule 31.04. Service of Notice of Hearing

Subdivision 1. Timing. A notice of hearing shall be served, within or without the state, at least ten (10) days before the date of a final hearing in an uncontested matter and at least thirty (30) days before the date of the commencement of the trial in a contested matter.

Subd. 2. Method of Service – Parent.

(a) **Personal Service.** The petitioner shall serve the notice of hearing upon the child's parents by personal service.

(b) **Service by Publication.** If personal service cannot be made upon the parent, the petitioner or petitioner's attorney shall file an affidavit setting forth the effort that was made to locate the parent, and the names and addresses of the known kin of the child. If satisfied that the parent cannot be served personally, the court shall order three (3) weeks of published notice to be given, the last publication to be at least ten (10) days before the date set for the hearing. Service by publication shall be completed by the petitioner in a location approved by the court. Where service is made by publication, the court may cause such further notice to be given as it deems just. If, in the course of the proceedings, the court determines that the interests of justice will be promoted, it may continue the proceeding and require that such notice as it deems proper shall be served on any person. In the course of the proceedings the court may enter reasonable orders for the protection of the child if the court determines that the best interests of the child require such an order.

Subd. 3. U.S. Mail. The petitioner shall serve the notice of hearing by U.S. Mail upon the child's guardian ad litem; the child, if age ten (10) or older; the child's Indian custodian, if the child is an Indian child; the child's legal custodian or legal guardian, if other than the Commissioner of Human Services; any person who has intervened as a party; any person who has been joined as a party; the responsible social services agency; and any person who has timely complied with the requirements of Minnesota Statutes, section 259.52.

Subd. 4. Registered Mail. The petitioner shall serve the notice of hearing by registered mail with return receipt requested upon the Indian tribe if the child is an Indian child.
(Amended effective January 1, 2007.)

RULE 32. MINNESOTA FATHERS' ADOPTION REGISTRY

Rule 32.01. Requirement to Search Minnesota Fathers' Adoption Registry Before Adoption Petition Granted; Proof of Search

Subdivision 1. Requirement to Search Registry. Except for intercountry adoptions, an adoption petition for a child born on or after January 1, 1998, shall not be granted unless

the Minnesota Fathers' Adoption Registry has been searched to determine whether a putative father is registered in relation to the child who is the subject of the adoption petition. The search shall be conducted no sooner than thirty-one (31) days following the birth of the child.

Subd. 2. Proof of Search. A search of the registry may be proven by the production of a certified copy of the registration form or by a certified statement of the Commissioner of Health that after a search no registration of a putative father in relation to a child who is or may be the subject of an adoption petition could be located. Certification that the Minnesota Fathers' Adoption Registry has been searched shall be filed with the court prior to entry of any final adoption decree. The filing of a certified copy of the order from a juvenile protection matter containing a finding that certification of the requisite search of the Minnesota Fathers' Adoption Registry was filed with the court in that matter shall constitute proof of search.

2004 Advisory Committee Comment

For children born before January 1, 1998, the Advisory Committee recommends that the best practice is for the petitioner to include with the petition a confirmation from the Department of Health that no one has filed a notice of intent to retain parental rights.

Rule 32.02. Fees for Minnesota Fathers' Adoption Registry

Pursuant to Minnesota Statutes, section 259.52, subdivision 14, in addition to any other filing fees, the court administrator shall assess an adoption filing fee surcharge on each adoption petition filed in the district court for the purpose of implementing and maintaining the Minnesota Fathers' Adoption Registry. The court administrator shall forward fees collected under this rule to the Commissioner of Finance for deposit into the state government special revenue fund to be appropriated to the Commissioner of Health to administer the Minnesota Fathers' Adoption Registry. The fee shall not be assessed in adoptions or re-adoptions of children adopted in intercountry adoptions.

RULE 33. CONSENT TO ADOPTION

Rule 33.01. Persons and Agencies Required to Consent

Written consent to an adoption is required by the following:

- (a) the child to be adopted, if the child is fourteen (14) years of age or older;
- (b) the adult to be adopted, whose consent shall be the only consent required;
- (c) a registered putative father, if pursuant to Rule 32 he has:
 - (1) been notified under the Minnesota Fathers' Adoption Registry;
 - (2) timely filed an intent to claim parental rights form; and
 - (3) timely filed a paternity action;
- (d) the child's parents or legal guardian, except:
 - (1) a parent not entitled to notice of the proceedings;
 - (2) a parent who has abandoned the child or a parent who has lost custody of the child through a divorce decree or a decree of dissolution and upon whom notice has been served as required under Rule 31; and
 - (3) a parent whose parental rights to the child have been terminated by a juvenile court order or through a decree in a prior adoption matter;
- (e) if there is no parent or legal guardian qualified to consent to the adoption, the consent shall be given by the Commissioner of Human Services;
- (f) the agency having authority to place the child for adoption, which shall have the exclusive right to consent to the adoption of such child; and
- (g) the Commissioner of Human Services when the Commissioner is the legal guardian or legal custodian of the child, who shall have the exclusive right to consent to the adoption of such child.

(Amended effective January 1, 2007.)

2004 Advisory Committee Comment

The Advisory Committee recommends that, with respect to a parent who has abandoned the child or a parent who has lost custody of the child through a divorce decree or a decree of dissolution, it is best practice to either obtain a parent's consent as provided under Rule 31 or to commence a termination of parental rights proceeding pursuant to the Minnesota Rules of Juvenile Protection Procedure.

Rule 33.02. Notice of Intent to Consent to Adoption

Subdivision 1. Consent of Biological Parents. Unless all biological parents from whom consent is required under Rule 33.01 are involved in making the adoptive placement and intend to consent to the adoption, a biological parent who intends to execute a consent to an adoption shall give notice to the child's other biological parent of the intent to consent to the adoption prior to or within seventy-two (72) hours following the placement of the child if the other biological parent's consent to the adoption is required under Rule 33.01. Notice of intent to consent to adoption shall be provided to the other biological parent according to the Minnesota Rules of Civil Procedure for service of a summons and complaint. The biological parent who receives notice shall have sixty (60) days after the placement of the child to serve upon the other biological parent either a consent pursuant to Rule 33.01 or a written objection to the adoption. If the biological parent who receives notice fails to consent or to respond with a written objection to the adoption within sixty (60) days after the adoptive placement, that parent shall be deemed to have irrevocably consented to the child's adoption.

Subd. 2. Consent of Minors. If an unmarried parent who consents to the adoption of a child is under eighteen (18) years of age, the consent of the minor parent's parents or legal custodian or legal guardian, if any, also shall be required. If either or both parents are not required to consent pursuant to Rule 33.01(d), the consent of such parent shall be waived and the consent of the legal custodian or legal guardian only shall be sufficient. If there be neither parent nor legal custodian or legal guardian qualified to give such consent, the consent may be given by the Commissioner of Human Services. The responsible social services agency overseeing the adoption matter shall ensure that the minor parent is offered the opportunity to consult with an attorney, a member of the clergy, or a physician before consenting to adoption of the child. The advice or opinion of the attorney, clergy member, or physician shall not be binding on the minor parent. If the minor parent cannot afford the cost of consulting with an attorney, a member of the clergy, or a physician, the county shall bear that cost. A parent or legal custodian or legal guardian of a minor or incapacitated person may not delegate the power to consent to adoption of a minor ward under Minnesota Statutes, sections 524.5–101 to 524.5–502.

(Amended effective January 1, 2007.)

Rule 33.03. Execution of Consent to Adoption

Subdivision 1. Requirements of Consent. Except as provided in subdivision 3, all consents to an adoption shall:

- (a) be in writing;
- (b) be executed before two competent witnesses;
- (c) be acknowledged by the consenting party;
- (d) be executed before a representative of the Commissioner of Human Services, the Commissioner's agent, or a licensed child-placing agency;
- (e) include a notice to the parent of the substance of Minnesota Statutes, section 259.24, subdivision 6a, providing for the right to withdraw consent; and
- (f) include the following written notice in all capital letters at least one-eighth inch high: "This agency will submit your consent to adoption to the court. The consent itself does not terminate your parental rights. Parental rights to a child may be terminated only by an adoption decree or by a court order terminating parental rights. Unless the child is adopted or your parental rights are terminated, you may be asked to support the child."

Subd. 2. Consents Taken Outside of Minnesota. A consent executed and acknowledged outside of Minnesota, either in accordance with the law of this state or in accordance with the law of the place where executed, is valid.

Subd 3. Exceptions to Consent Requirements. The requirements of subdivision 1 do not apply to:

(a) consents to adoption by:

(1) the Commissioner of Human Services or the Commissioner's agent;

(2) a licensed child-placing agency;

(3) an adult adoptee;

(4) the child's parent in a petition for adoption by a stepparent; or

(5) a parent or legal guardian when executed, together with a waiver of notice of hearing, before a judicial officer;

(b) a Minnesota Fathers' Adoption Registry consent to adoption; or

(c) consent to the adoption of an Indian child.

Rule 33.04. Timing of Consent

A consent to adoption form shall not be signed sooner than seventy-two (72) hours after the birth of a child. The seventy-two (72) hours is computed excluding the date of the birth and including Saturdays, Sundays, and legal holidays. A consent to adoption shall be executed by any person whose consent is required under Rule 33 within sixty (60) days after the child's placement in a prospective adoptive home.

(Amended effective January 1, 2007.)

Rule 33.05. Failure to Execute Consent

With the exception of cases where a person receives notice under Minnesota Statutes, section 259.24, subdivision 2a, if a biological parent whose consent is required under Rule 33 does not execute a consent by the end of the period specified in Rule 33.04, the child-placing agency shall notify the court and the court shall issue an order regarding continued placement of the child. The court shall order the local social services agency to determine whether to commence proceedings for termination of parental rights on grounds of abandonment as defined in Minnesota Statutes, section 260C.301, subdivision 2. The court may disregard the six-month and twelve-month requirements of Minnesota Statutes, section 260C.201, subdivision 11, in finding abandonment if the biological parent has failed to execute a consent within the time required under Rule 33.04 and has made no effort to obtain custody of the child.

(Amended effective January 1, 2007.)

Rule 33.06. Agreement Conferring Authority to Place for Adoption

Subdivision 1. Parties to Agreement. The parents and legal custodian or legal guardian, if there be one, of a child may enter into a written agreement with the Commissioner of Human Services or an agency giving the Commissioner or such agency authority to place the child for adoption. If an unmarried parent is under eighteen (18) years of age, the written consent of the parents and legal custodian or legal guardian, if any, of the minor parent also shall be required. If either or both of the parents are disqualified from giving such consent for any of the reasons enumerated in Minnesota Statutes, section 259.24, subdivision 1, the written consent of the legal custodian or legal guardian shall be required.

Subd. 2. Format of Agreement. The agreement and consent shall be in the form prescribed by the Commissioner of Human Services and shall contain notice to the parent of the substance of Minnesota Statutes, section 259.59, subdivision 2a, providing for the right to revoke the agreement.

Subd. 3. Content of Agreement. The agreement and consent shall contain the following written notice in all capital letters at least one-eighth inch high: "This agency will submit your consent to adoption to the court. The consent itself does not terminate your parental rights. Parental rights to a child may be terminated only by an adoption decree or by a court order terminating parental rights. Unless the child is adopted or your parental rights are terminated, you may be asked to support the child."

Subd. 4. Execution of Agreement. The agreement shall be executed by the Commissioner of Human Services or agency, or one of their authorized agents, and all other necessary

parties, and shall be filed, together with the consent, in the proceedings for the adoption of the child. If, after the execution of an agreement and consent under this rule, the child is diagnosed with a medical or psychological condition that may present a substantial barrier to adoption, the child-placing agency shall make reasonable efforts to give notice of this fact to a party to the agreement and consent. If a child is not adopted within two (2) years after an agreement and consent are executed under this rule, the agency that executed the agreement shall so notify a parent who was a party to the agreement and request the parent to take custody of the child or to file a petition for termination of parental rights. This notice shall be provided to the parent in a personal and confidential manner. A parent who has executed an agreement under this rule shall, upon request to the agency, be informed of whether the child has been adopted.

Rule 33.07. Consent to a Direct Placement Adoption Under Minnesota Statutes, Section 259.47

Subdivision 1. Presence of Legal Counsel for Biological Parent. If a biological parent has chosen to have legal counsel pursuant to Rule 23.04, the attorney shall be present at the execution of any consent. If a biological parent waives counsel, the parent's written waiver shall be filed with the consent to the adoption.

Subd. 2. Execution of Consent Before Judicial Officer – When Required. A biological parent whose consent to a direct placement adoption is required under Minnesota Statutes, section 259.24, and who has chosen not to receive counseling through a licensed agency or a licensed social services professional trained in adoption issues, shall appear before a judicial officer at a consent hearing as described in subdivision 4 to execute consent to the adoption.

Subd. 3. Execution of Consent Before Judicial Officer – When Optional. A biological parent whose consent to a direct placement adoption is required under Minnesota Statutes, section 259.24, and who has received counseling through a licensed agency or a licensed social services professional trained in adoption issues, or any other parent or legal guardian whose consent to a direct placement adoption is required under Minnesota Statutes, section 259.24, subdivision 2, may choose to execute consent to the adoption under the procedures set forth in Minnesota Statutes, section 259.24, subdivision 5, and Rule 33.03, subdivision 1, or at a consent hearing as described in subdivision 4.

Subd. 4. Consent Hearing. Notwithstanding where the prospective adoptive parent resides, a consent hearing may be held in any county in this state where the biological parent is found. If the consent hearing is held in a county other than where the prospective adoptive parent resides, the court shall forward the executed consent to the district court in the county where the prospective adoptive parent resides.

Subd. 5. Consent Format. The written consent form to be used in a direct placement adoption under this rule shall be on a form prepared by the Commissioner of Human Services and made available to agencies and court administrators for public distribution. The form shall state:

(a) the biological parent has had the opportunity to consult with independent legal counsel at the expense of the prospective adoptive parent, unless the biological parent knowingly waived the opportunity;

(b) the biological parent has been notified of the right to receive counseling at the expense of the prospective adoptive parent and has chosen to exercise or waive that right; and

(c) the biological parent has been informed that if the biological parent withdraws consent, the prospective adoptive parent cannot require the biological parent to reimburse any costs the prospective adoptive parent has incurred in connection with the adoption, including payments made to or on behalf of the biological parent.

(Amended effective January 1, 2007.)

Rule 33.08. Revocation of Consent to Adoption of a Non-Indian Child Under Minnesota Statutes, Section 259.24

A parent's consent to adoption may be withdrawn for any reason within ten (10) working days after the consent is executed and acknowledged or pursuant to the law of the state

where the consent is executed. Written notification of withdrawal of consent shall be received by the agency to which the child was surrendered no later than the tenth working day after the consent is executed and acknowledged. On the day following the tenth working day after execution and acknowledgment, the consent shall become irrevocable, except upon order of a court of competent jurisdiction after written findings that the consent was obtained by fraud. In proceedings to determine the existence of fraud, the adoptive parents and the child shall be made parties. The proceedings shall be conducted to preserve the confidentiality of the adoption process. There shall be no presumption in the proceedings favoring the biological parents over the adoptive parents. Failure to comply with the terms of a communication or contact agreement order entered by the court under Rule 34 is not grounds for revocation of a written consent to an adoption after that consent has become irrevocable. (Amended effective January 1, 2007.)

Rule 33.09. Consent to Adoption of an Indian Child

Subdivision 1. Requirements of Consent. If the child to be adopted is an Indian child, the consent of the parent or Indian custodian shall not be valid unless:

- (a) executed in writing;
- (b) recorded before the judge; and
- (c) accompanied by the presiding judge's certificate that the terms and consequences of the consent were explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that the parent or Indian custodian fully understood the explanation in English or that it was translated into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten (10) days after, the birth of the Indian child shall not be valid.

Subd. 2. Revocation of Consent to Adoption of an Indian Child. In any voluntary proceeding for adoptive placement of an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of an adoption decree and the child shall be returned to the parent.

Subd. 3. Vacation of an Adoption Decree of an Indian Child. After the entry of an adoption decree of an Indian child in any State court, the parent may withdraw consent there-to upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption of an Indian child which has been effective for at least two (2) years may be invalidated under the Indian Child Welfare Act, 25 U.S.C., section 1913, unless otherwise permitted under state law.

(Amended effective January 1, 2007.)

2004 Advisory Committee Comment

Rule 33.09 mirrors the provisions of the Indian Child Welfare Act, 25 U.S.C., section 1913. The Guidelines of the Bureau of Indian Affairs provide additional guidance as follows:

"A consent to termination of parental rights or adoption may be withdrawn by the parent at any time prior to entry of a final decree of voluntary termination or adoption by filing an instrument executed under oath by the parent stipulating his or her intention to withdraw such consent. The clerk of court where the withdrawal of consent is filed shall promptly notify the party or agency by or through whom the adoptive placement has been arranged of such filing and that party or agency shall insure the return of the child to the parent as soon as practicable." The Commentary to the guideline further provides that "This provision recommends that the clerk of court be responsible for notifying the family with whom the child has been placed that consent has been withdrawn. The court's involvement frequently may be necessary [because] the biological parents are often not told who the adoptive parents are." Bureau of Indian Affairs Guidelines for State Courts – Indian Child Custody Proceedings, Section E.4 and Commentary (emphasis included in original).

(Amended effective January 1, 2007.)

RULE 34. COMMUNICATION OR CONTACT AGREEMENT

Rule 34.01. Persons Who May Enter Into a Communication or Contact Agreement

Subdivision 1. Parties. A communication or contact agreement shall be in writing and may be entered into between the following persons:

- (a) the adopting parent and a biological parent;
- (b) the adopting parent and any other birth relative, including a sibling, or foster parent with whom the child resided before being adopted; or
- (c) the adopting parent and any other birth relative, including a sibling, if the child is adopted by a birth relative upon the death of both biological parents.

Subd. 2. Approval. A communication or contact agreement shall be approved as follows:

- (a) The responsible social services agency shall approve, in writing, any agreement involving a child in the legal custody or guardianship of the Commissioner of Human Services.
- (b) A child-placing agency shall approve, in writing, any agreement involving a child under its legal custody or guardianship.
- (c) A biological parent shall approve in writing an agreement between an adopting parent and any other birth relative or foster parent, unless an action has been filed against the biological parent by a county under Minnesota Statutes, chapter 260C.

2004 Advisory Committee Comment

For siblings who grow up in foster care under the guardianship of the Commissioner of Human Services, a communication or contact agreement may be one way to ensure the children are able to maintain their sibling relationship.

Rule 34.02. Filing of Agreement

The signed communication or contact agreement shall be filed with the court after the petition has been filed and prior to finalization of the adoption.

Rule 34.03. Written Order Required

A communication or contact agreement is not legally enforceable unless the terms of the agreement are contained in a written court order entered pursuant to these rules, which shall be separate from the findings of fact, conclusions of law, order for judgment, and adoption decree issued pursuant to Rule 45.

(Amended effective January 1, 2007.)

Rule 34.04. Timing

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

Rule 34.05. Requirements for Entry of Order

A communication or contact agreement order under this rule need not disclose the identity of the parties. The court shall not enter an order unless the court finds that the communication or contact between the child, the adoptive parent, and a birth relative as agreed upon and contained in the proposed order is in the child's best interests.

Rule 34.06. Service of Order

The court administrator shall mail a certified copy of the communication or contact agreement order to the parties to the agreement or their legal representatives at the addresses provided by the petitioners.

Rule 34.07. Enforcement – Family Court

Subdivision 1. Filing Requirement. A communication or contact agreement order entered under this rule may be enforced by filing with the family court:

- (a) a petition or motion;
- (b) a certified copy of the communication or contact agreement order; and
- (c) an affidavit that the parties have mediated or attempted to mediate any dispute under the agreement or that the parties agree to a proposed modification.

Subd. 2. Attorneys Fees. The prevailing party upon a motion to enforce a communication or contact agreement order may be awarded reasonable attorney's fees and costs.

Rule 34.08. Failure to Comply with Order

Failure to comply with the terms of a communication or contact agreement order is not grounds for:

- (a) setting aside an adoption decree; or
- (b) revocation of a written consent to an adoption after that consent has become irrevocable.

Rule 34.09. Modification

The court shall not modify a communication or contact agreement order unless it finds that the modification is necessary to serve the best interests of the child, and:

- (a) the modification is agreed to by the parties to the agreement; or
- (b) exceptional circumstances have arisen since the agreed order was entered that justify modification of the order.

RULE 35. PETITION

Rule 35.01. Residency of Petitioner

Subdivision 1. Residency Requirement. Any person who has resided in the state for one (1) year or more may petition to adopt.

Subd. 2. Exception to Residency Requirement. The one (1) year residency requirement may be reduced to thirty (30) days by the court in the best interests of the child. The court may waive any residency requirement of this rule if the petitioner is an individual related to the child, as defined in Rule 2.01(o), or as a member of a child's extended family or important friend with whom the child has resided or had significant contact or, upon a showing of good cause, the court is satisfied that the proposed adoptive home and the child are suited to each other.

Rule 35.02. Residency of Child to be Adopted

Unless waived by the court, no petition shall be granted until the child has lived three (3) months in the proposed home, subject to a right of visitation by the Commissioner of Human Services or an agency or their authorized representatives. If the three-month residency requirement is waived by the court, at least ten (10) days' notice of the hearing shall be provided by certified mail to the local social services agency.

(Amended effective January 1, 2007.)

Rule 35.03. Timing

Subdivision 1. Generally. An adoption petition shall be filed not later than twelve (12) months after a child is placed in a prospective adoptive home. If a petition is not filed by that time, the agency that placed the child or, in a direct placement adoption, the agency that is supervising the placement, shall file with the court in the county where the prospective adoptive parent resides, or in the county where the court is reviewing progress towards adoption

of a child under the guardianship or legal custody of the Commissioner of Human Services, a motion for an order and a report recommending one of the following:

(a) that the time for filing a petition be extended because of the child's special needs as specified under Minnesota Statutes, section 259.22, subdivision 4;

(b) that, based on a written plan for completing filing of the petition, including a specific timeline, to which the prospective adoptive parents have agreed, the time for filing a petition be extended long enough to complete the plan because such an extension is in the best interests of the child and additional time is needed for the child to adjust to the adoptive home; or

(c) that the child be removed from the prospective adoptive home.

Subd. 2. Exceptions – Stepparent and Relative Adoptions. The timing specified in subdivision 1 does not apply to stepparent adoptions or adoptions by an individual related to the child not involving a placement as defined in Rule 2.01(o).

(Amended effective January 1, 2007.)

Rule 35.04. Conditions for Filing Petition for Adoption of a Child; Exceptions

Subdivision 1. Generally. No petition for adoption of a child may be filed unless the adoptive placement of the child was made by:

(a) the Commissioner of Human Services;

(b) an agent of the Commissioner of Human Services; or

(c) a child-placing agency as defined in Rule 2.01(g).

Subd. 2. Exceptions. The requirements of subdivision 1 shall not apply if:

(a) the child is over fourteen (14) years of age;

(b) the petitioner is an individual who is related to the child as defined in Rule 2.01(o);

(c) the child has been lawfully placed under the laws of another state while the child and the petitioner resided in that state;

(d) the court waives the requirement of subdivision 1 in the best interests of the child and the placement is not made by transfer of physical custody of the child from a biological parent or legal guardian to the prospective adoptive home; or

(e) the child has been lawfully placed pursuant to an order for direct placement pursuant to Rule 29.

(Amended effective January 1, 2007.)

Rule 35.05. Content

Subdivision 1. Case Caption. In all adoption proceedings, except as otherwise stated in this subdivision, the case caption shall be "In Re the Petition of ____ and ____ (petitioners) to adopt ____ (child's birth name)." In proceedings commenced before the birth of the child being adopted, the case caption shall be "In Re the Petition of ____ and ____ (petitioners) to adopt ____ (unborn child of ____)."

Subd. 2. Allegations. An adoption petition may be filed regarding one or more children, shall be verified by the petitioner upon information and belief, and shall allege:

(a) the full name, age, and place of residence of the petitioner, except as provided in Rule 7;

(b) if married, the date and place of marriage, and the name of any parent who will retain legal rights;

(c) the date the petitioner acquired physical custody of the child and from what person or agency or, in the case of a stepparent adoption or adoption by an individual related to the child as defined in Rule 2.01(o), the date the petitioner began residing with the child;

(d) the date of birth of the child, if known, and the county, state, and country where born;

(e) the name of the child's parents, if known, and the legal custodian or legal guardian if there be one;

(f) the actual name of the child, if known, and any known aliases;

(g) the name to be given the child, if a change of name is desired;

- (h) the description and value of any real or personal property owned by the child;
- (i) the relationship of the petitioner to the child, if any;
- (j) whether the Indian Child Welfare Act does or does not apply;
- (k) the name and address of the parties identified in Rule 20;
- (l) whether the child has been placed with petitioner for adoption by an agency and, if so, the date of the adoptive placement; and
- (m) that the petitioner desires that the relationship of parent and child be established between petitioner and the child, and that it is in the best interests of the child to be adopted by the petitioner.

Subd. 3. Exception to Content. In agency placements, the information required in subdivision 2(e) and (f) shall not be required to be alleged in the petition but shall be provided to the court by the Commissioner of Human Services. In the case of an adoption by a stepparent, the parent who is the stepparent's spouse shall not be required to join the petition.

Subd. 4. Attachments. The following shall be filed with the petition:

- (a) the adoption study report required under Rule 37;
- (b) any biological parent history required under Minnesota Statutes, section 259.43, except if the petitioner is the child's stepparent;
- (c) the request, if any, under Rule 38.04 to waive the post-placement assessment report and background check; and
- (d) proof of service.

Subd. 5. Other Documents to be Filed. The following shall be filed with the court prior to finalization of the adoption:

- (a) a certified copy of the child's birth record;
- (b) a certified copy of the findings and order for termination of parental rights, if any;
- (c) a copy of the communication or contact agreement, if any;
- (d) certification that the Minnesota Fathers' Adoption Registry has been searched as required under Rule 32;
- (e) the original of each consent to adoption required under Rule 33; and
- (f) the post-placement assessment report required under Rule 38.

Subd. 6. Missing Information. If any information required by subdivision 2 or 3 is unknown at the time of the filing of the petition, as soon as such information becomes known to the petitioner it shall be provided to the court and parties either orally on the record, by sworn affidavit, or by amended petition. If presented orally on the record, the court shall annotate the petition to reflect the updated information.

Subd. 7. Acceptance Despite Missing Information. The court administrator shall accept a petition for filing even if, on its face, the petition appears to be incomplete or does not include all information specified in subdivisions 2 and 3. The presiding judge shall determine whether the petition complies with the requirements of these rules.
(Amended effective January 1, 2007; amended effective July 1, 2007.)

Rule 35.06. Verification

The petition shall be signed and dated by the petitioner and verified upon information and belief.

Rule 35.07. Amendment

Subdivision 1. Uncontested Petitions. An adoption petition may be amended at any time prior to the conclusion of the final hearing pursuant to Rule 41.

Subd. 2. Contested Petitions.

(a) **Prior to Trial.** An adoption petition may be amended at any time prior to the commencement of a trial pursuant to Rule 44. The petitioner shall provide notice of the amendment to all parties at least seven (7) days prior to the commencement of the trial. When the petition is amended, the court shall grant all other parties sufficient time to respond to the amendment.

(b) **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.

(Amended effective January 1, 2007.)

Rule 35.08. Statement of Expenses

Upon the filing of an adoption petition, the agency shall file with the court a statement of expenses that have been paid or are to be paid by the prospective adoptive parent in connection with the adoption. In a direct placement adoption, the statement of expenses shall be filed by the prospective adoptive parent.

(Amended effective January 1, 2007.)

RULE 36. ACTIONS UPON FILING OF PETITION

Upon the filing of an adoption petition, the court administrator shall immediately provide a copy of the petition to:

- (a) the Commissioner of Human Services; and
- (b) if the petition relates to a child, the agency identified below:

(1) in an agency or a direct placement adoption, the court shall provide the petition to the agency supervising the placement; and

(2) in all other instances not described in clause (1), the court shall provide the petition to the local social services agency of the county in which the prospective adoptive parent lives if the child is to be adopted by an individual who is related to the child as defined in Rule 2.01(o).

(Amended effective January 1, 2007.)

RULE 37. ADOPTION STUDY

Rule 37.01. Adoption Study Required; Exception

A written adoption study report shall be completed by an agency and filed with the court in all adoptions as provided in Minnesota Statutes, section 259.41.

(Amended effective January 1, 2007.)

Rule 37.02. Adoption Study Report

An adoption study report shall include the following information about each prospective adoptive parent:

(a) a copy of the background check pursuant to Minnesota Statutes, section 259.41, subdivision 3;

(b) an evaluation of the effect of any criminal conviction on the ability to care for a child;

(c) an evaluation of the effect of any finding of substantiated maltreatment on the ability to care for a child;

(d) an evaluation of medical and social history;

(e) an assessment of current health;

(f) an assessment of potential parenting skills and an assessment of ability to provide adequate financial support for a child; and

(g) an assessment of the level of knowledge and awareness of adoption issues, including, where appropriate, matters relating to interracial, cross-cultural, and special needs adoptions.

Rule 37.03. Direct Placement Adoption; Background Check Incomplete

Unless otherwise ordered by the court, in a direct placement adoption the child may be placed in the preadoptive home prior to completion of the background check if each prospec-

tive adopting parent has completed and filed with the court a sworn affidavit stating whether the affiant or any person residing in the household has been convicted of a crime. The affidavit shall also:

(a) state whether the adoptive parent or any other person residing in the household is the subject of an open investigation of, or has been the subject of a substantiated allegation of, child or vulnerable adult maltreatment within the past ten (10) years;

(b) include a complete description of the crime, open investigation, or substantiated allegation of child abuse or vulnerable adult maltreatment, and a complete description of any sentence, treatment, or disposition; and

(c) include the following statement: "Petitioner acknowledges that if, at any time before the adoption is final, a court receives evidence leading to a conclusion that a prospective adoptive parent knowingly gave false information in the affidavit, it shall be determined that the adoption of the child by the prospective adoptive parent is not in the best interests of the child."

(Amended effective January 1, 2007.)

Rule 37.04. Background Check; Timing

Subdivision 1. Timing of Background Check. The background check required in Rule 37.03 shall be completed before an adoption petition is filed.

Subd. 2. Direct Placement Adoption. In a direct placement adoption, if an adoption study report has been submitted to the court before the background check is complete, an updated adoption study report which includes the results of the background check shall be filed with the adoption petition.

Subd. 3. Agency Unable to Complete Background Check. In the event that an agency is unable to complete any of the background records checks, the agency shall submit with the adoption petition an affidavit documenting the agency's efforts to complete the background checks.

(Amended effective January 1, 2007.)

Rule 37.05. Updates to Adoption Study Report; Period of Validity

An adoption study report is valid if the report has been completed or updated within twelve (12) months of the adoptive placement.

Rule 37.06. Filing of Adoption Study Report

Subdivision 1. Agency Placement. The adoption study report shall be filed with the court at the time the adoption petition is filed.

Subd. 2. Direct Placement Adoption. The adoption study report shall be filed with the court pursuant to Rule 29 in support of a motion for a non-emergency preadoptive custody order or, if the study and report are complete, in support of an emergency preadoptive custody order.

(Amended effective January 1, 2007.)

Rule 37.07. Foster Parent Assessment May be Used for Adoption Study

A licensed foster parent seeking to adopt a child in the foster parent's care may submit any portion of the foster care licensing assessment that duplicates requirements of the adoption study report in satisfaction of the adoption study report requirements.

RULE 38. POST-PLACEMENT ASSESSMENT REPORT

Rule 38.01. Timing

Subdivision 1. Generally. Unless waived by the court pursuant to Rule 38.04 and Minnesota Statutes, section 259.53, the supervising agency, or if there is no such agency the local

social services agency, shall conduct a post–placement assessment and file a report with the court within ninety (90) days of receipt of a copy of the adoption petition. A post–placement assessment report is valid for twelve (12) months following its date of completion.

Subd. 2. Failure to Comply. If, through no fault of the petitioner, the agency fails to complete the assessment and file the report within ninety (90) days of the date it received a copy of the adoption petition, the court may hear the petition upon giving the agency five (5) days notice by mail of the time and place of the hearing.

(Amended effective January 1, 2007.)

Rule 38.02. Content

The post–placement assessment report shall provide an individualized determination of the needs of the child and how the adoptive placement will serve the needs of the child. The report shall include a recommendation to the court as to whether the adoption petition should or should not be granted. In making evaluations and recommendations, the post–placement assessment report shall, at a minimum, address the following:

- (1) the level of adaptation by the prospective adoptive parents to parenting the child;
- (2) the health and well–being of the child in the prospective adoptive parent’s home;
- (3) the level of incorporation by the child into the prospective adoptive parent’s home, extended family, and community; and
- (4) the level of inclusion of the child’s previous history into the prospective adoptive home, such as cultural or ethnic practices, or contact with former foster parents or biological relatives.

Rule 38.03. Background Check

If an adoption study is not required because the petitioner is an individual who is related to the child as defined in Rule 2.01(o), unless waived by the court the agency, as part of its post–placement assessment report, shall conduct a background check meeting the requirements of Minnesota Statutes, section 259.41, subdivision 3(b).

Rule 38.04. Waiver by Court

The post–placement assessment report may be waived by the court pursuant to Minnesota Statutes, section 259.53. A request to waive a post–placement assessment report shall be in writing and shall be filed and served with the petition pursuant to Rule 35.05. A request to waive a post–placement assessment report shall be decided by the court within ten (10) days of filing, unless a written objection to the waiver is filed in which case a hearing must be conducted as soon as practicable.

(Amended effective January 1, 2007.)

RULE 39. ANSWER WHEN CONTESTED ADOPTION MATTER

Rule 39.01. Answer When Contested

Within twenty (20) days after service of the adoption petition, or as soon thereafter as the party or agency becomes aware that the matter is contested, a Notice of Contested Adoption and, if appropriate, a competing adoption petition, shall be filed by:

- (a) any party or agency opposing the adoption;
- (b) any party or agency with knowledge of two or more adoption petitions regarding the same child; or
- (c) the Commissioner of Human Services or responsible social services agency if consent to adopt is being withheld from the petitioner.

(Amended effective January 1, 2007.)

Rule 39.02. Notice of Contested Adoption

Subdivision 1. Content. A Notice of Contested Adoption shall:

- (a) set forth the allegations upon which the adoption is being contested; and

(b) be signed by the party or by an agent of the agency opposing the adoption.

Subd. 2. Service. The Notice of Contested Adoption shall be served upon all parties in the same fashion as other motions are served under these Rules.

(Amended effective January 1, 2007.)

Rule 39.03. Pretrial Conference

The court shall schedule a pretrial conference within fifteen (15) days of the filing of a Notice of Contested Adoption and provide notice of hearing to the parties.

RULE 40. VOLUNTARY WITHDRAWAL; INVOLUNTARY DISMISSAL; SUMMARY JUDGMENT

Rule 40.01. Voluntary Withdrawal of Petition

A petition may be withdrawn or dismissed by a petitioner without order of the court by filing:

- (a) at any time a notice of withdrawal along with proof of service upon all parties; or
- (b) a stipulation of dismissal signed by all parties who have appeared in the matter.

(Amended effective January 1, 2007.)

Rule 40.02. Involuntary Dismissal of Petition

Pursuant to the timing, notice, and format requirements of Rule 7 of the Minnesota Rules of Civil Procedure, the court, upon its own initiative or upon motion of a party, may dismiss a petition or grant judgment on the pleadings. Grounds for such dismissal or judgment on the pleadings shall include, but not be limited to:

- (a) failure to comply with these rules;
- (b) failure to move forward on the petition;
- (c) failure to state a claim upon which relief may be granted;
- (d) lack of jurisdiction over the subject matter;
- (e) lack of jurisdiction over the person;
- (f) insufficiency of service of process; and
- (g) failure to join a necessary party.

Furthermore, after a petitioner has completed the presentation of evidence, any other party to the proceeding, without waiving the right to offer evidence in the event the motion is not granted, may move for dismissal on the ground that based upon the facts and the law, the petitioner has shown no right to relief.

(Amended effective January 1, 2007.)

Rule 40.03. Summary Judgment

Pursuant to the timing, notice, and format requirements of Rule 7 of the Minnesota Rules of Civil Procedure, a party may move with or without supporting affidavits for summary judgment. Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that a moving party is entitled to judgment as a matter of law.

RULE 41. FINAL HEARING IN UNCONTESTED MATTERS

Rule 41.01. Generally

A final hearing is a hearing to determine whether an uncontested adoption petition should be granted.

Rule 41.02. Commencement

A final hearing relating to an uncontested adoption petition shall be held not sooner than ninety (90) days after the child is placed, unless there is a waiver of the residency requirement pursuant to Rule 35, but not later than ninety (90) days after the adoption petition is filed. If the petitioner has not requested a hearing date within sixty (60) days of the filing of the petition, the court administrator may schedule a hearing and serve notice of such hearing pursuant to Rule 31.04.

(Amended effective January 1, 2007.)

Rule 41.03. Hearing Procedure

At the beginning of the final hearing, the court shall on the record:

(a) verify the name, age, and current address of the child who is the subject of the proceeding, except as provided in Rule 20.03;

(b) determine whether the Indian child's tribe has been notified, if the child has been determined to be an Indian child;

(c) determine whether all parties are present and identify those present for the record;

(d) determine whether any necessary biological parent, guardian, or other person from whom consent to the adoption is required or whose parental rights will need to be terminated is present;

(e) determine whether notice requirements have been met, and, if not, whether the affected person waives notice; and

(f) determine whether the Interstate Compact on the Placement of Children, Minnesota Statutes, sections 260.851 to 260.91, applies.

(Amended effective January 1, 2007.)

Rule 41.04. Standard of Proof

The petitioner shall prove by a preponderance of evidence the facts alleged in the adoption petition and that the adoption is in the best interests of the child.

2004 Advisory Committee Comment

The Indian Child Welfare Act, 25 U.S.C. section 1901, et. seq., does not state a standard of proof for adoption matters as it does for foster care and termination of parental rights matters.

Rule 41.05. Timing of Decision

Within fifteen (15) days of the conclusion of the final hearing in an uncontested adoption, the court shall issue findings of fact, conclusions of law, order for judgment, and adoption decree pursuant to Rule 45. For good cause, the court may extend this period for an additional fifteen (15) days.

(Amended effective January 1, 2007.)

RULE 42. CONSOLIDATION; BIFURCATION**Rule 42.01. Consolidation Generally**

When matters involving the adoption of the same child or children are pending before the court, the court may:

(a) order a joint hearing or trial of any or all the adoption matters;

(b) order consolidation of all such adoption matters;

(c) order that the matters be heard sequentially; and

(d) make any orders appropriate to avoid unnecessary delay or costs.

Rule 42.02. Consolidation with Other Proceedings; Competing Petitions

Subdivision 1. Consolidation with Other Proceedings. Upon notice of motion and motion and for good cause shown, the court may order the consolidation of the adoption matter with any related proceeding, including a custody proceeding, paternity proceeding, termination of parental rights proceeding, or other proceeding regarding the same child.

Subd. 2. Competing Petition. When multiple adoption petitions have been filed with respect to the same child who is under the guardianship of the Commissioner of Human Services, the court shall consolidate the matters for trial. In all other cases, when two or more parties have petitioned for the adoption of the same child, the court may, after consideration of the factors specified in subdivision 4, order the petitions to be tried together.

Subd. 3. Cross-County Matters. Upon motion for a change of venue and for good cause shown, the court may order the consolidation of the adoption matter with any related proceeding in another county regarding the same child.

Subd. 4. Factors to Consider. In making the determinations required under subdivisions 1 to 3, the court shall consider the best interests of the child, any potential breaches of confidentiality of the adoption matter, the additional complexity or judicial economies of a joint proceeding, and any other relevant factors.

2004 Advisory Committee Comment

In determining whether to consolidate an adoption matter and termination of parental rights proceeding, the court shall consider the impact of the consolidation on the eligibility of the child for financial adoption assistance or other financial benefits available under Minnesota Statutes, section 259.67.

Rule 42.03. Bifurcation

Subdivision 1. Permissive Bifurcation. The court may order a trial pursuant to Rule 44 to be bifurcated as to one or more claims or issues.

Subd. 2. Mandatory Bifurcation. In cases where the child is under the guardianship of the Commissioner of Human Services, the court shall bifurcate the trial on the contested adoption petitions as follows:

(a) A trial shall first be held to determine whether the consent to the adoption by the Commissioner of Human Services was unreasonably withheld from the petitioner. The responsible social services agency shall proceed first with evidence about the reason for the withholding of consent. The petitioner who has not obtained consent shall then have the burden of showing by a preponderance of the evidence that the consent was unreasonably withheld.

(b) If the court determines that the consent of the Commissioner of Human Services was not unreasonably withheld, the court shall dismiss the adoption petition of the petitioner who did not obtain consent, and proceed to trial on the remaining adoption petitions, if any.

(c) If the court determines that the consent of the Commissioner of Human Services was unreasonably withheld from any petitioner, the court shall not dismiss that petition for lack of consent. The court shall proceed to trial on all the contested adoption petitions, and shall determine whether adoption is in the best interests of the child, and, if so, adoption by whom. (Amended effective January 1, 2007.)

RULE 43. PRETRIAL CONFERENCE IN CONTESTED MATTERS

Rule 43.01. Timing

The court may convene a pretrial conference sua sponte or upon the motion of any party. Any pretrial conference shall take place at least ten (10) days prior to trial.

Rule 43.02. Purpose

The purposes of a pretrial conference shall be to:

(a) determine whether a settlement of any or all of the issues has occurred or is possible;

(b) determine whether all parties have been served and, if not, review the efforts that have taken place to date to serve all parties;

(c) determine whether all parties who seek legal representation have obtained legal representation and determine that attorneys of record have filed certificates of representation with the court;

(d) identify any unresolved discovery matters;

(e) resolve any pending pretrial motions;

(f) determine the order in which evidence will be presented pursuant to Rule 45;

(g) identify and narrow issues of law and fact for trial, including identification of:

(1) the factual allegations admitted or denied;

(2) any stipulations to foundation and relevance of documents; and

(3) any other stipulations, admissions, or denials;

(h) exchange witness lists and a brief summary of each witness' testimony;

(i) set a deadline for the exchange of exhibits prior to trial and determine how exhibits shall be marked prior to the start of trial;

(j) confirm the trial date and estimate the length of trial; and

(k) determine any other relevant issues.

(Amended effective January 1, 2007.)

Rule 43.03. Pretrial Order

Following the pretrial conference, the court shall issue a pretrial order which shall specify all determinations required by this rule. From the date of the pretrial conference to the commencement of the trial, the parties shall have a continuing obligation to update information provided during the pretrial conference.

RULE 44. TRIAL IN CONTESTED MATTERS

Rule 44.01. Generally

A trial is a hearing to determine whether an adoption petition should be granted.

Rule 44.02. Commencement

A trial on a contested adoption petition shall commence within ninety (90) days of the filing of the petition or notice of a contested hearing, whichever is later. The trial shall be completed within thirty (30) days of commencement. Either or both deadlines may be extended for up to an additional thirty (30) days upon a showing of good cause and a finding by the court that the extension is in the best interests of the child.

(Amended effective January 1, 2007.)

Rule 44.03. Trial Procedure

Subdivision 1. Initial Procedure. At the beginning of the trial, the court shall on the record:

(a) verify the name, age, and current address of the child who is the subject of the proceeding, except as provided in Rule 20.03;

(b) determine whether the Indian child's tribe has been notified, if the child has been determined to be an Indian child;

(c) determine whether all parties are present and identify those present for the record;

(d) determine whether any necessary biological parent, guardian, or other person from whom consent to the adoption or whose parental rights will need to be terminated is present; and

(e) determine whether notice requirements have been met, and, if not, whether the affected person waives notice.

Subd. 2. Order of Evidence. That trial shall proceed as follows:

(a) The parties, in the order determined by the court at the pretrial conference, may make an opening statement or may make a statement immediately before offering evidence on their own petition and the statement shall be confined to the facts expected to be proved.

(b) The parties, in the order determined by the court at the pretrial conference, may offer evidence.

(c) The parties, in the order determined by the court at the pretrial conference, may offer evidence in rebuttal.

(d) When evidence is presented, the parties may, in the order determined by the court at the pretrial conference, cross-examine the witnesses.

(e) At the conclusion of the evidence, the parties may make closing statements in the reverse order in which they presented their evidence.

(f) If a written argument is to be submitted, it shall be submitted within fifteen (15) days of the conclusion of testimony, and the trial is not considered completed until the time for written arguments to be submitted has expired.

Rule 44.04. Standard of Proof

The petitioner shall prove by a preponderance of evidence the facts alleged in the adoption petition and that the adoption is in the best interests of the child.

2004 Advisory Committee Comment

The Indian Child Welfare Act, 25 U.S.C., section 1901, et. seq., does not state a standard of proof for adoption matters as it does for foster care and termination of parental rights matters.

Rule 44.05. Motion for Judgment at Conclusion of Trial

A motion for a judgment may be made at the close of the evidence offered by an opponent or at the close of all evidence. A party who moves for judgment at the close of the evidence offered by an opponent shall, after denial of the motion, have the right to offer evidence as if the motion had not been made. A motion for a judgment shall state the specific grounds therefore.

Rule 44.06. Timing of Decision

Within fifteen (15) days of the conclusion of the trial in a contested matter, the court shall issue findings of fact, conclusions of law, an order for judgment, and an adoption decree pursuant to Rule 45. For good cause, the court may extend this period for an additional thirty (30) days.

(Amended effective January 1, 2007.)

RULE 45. FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER FOR JUDGMENT, AND ADOPTION DECREE

Rule 45.01. Denial of Adoption Petition

If the court finds that the consent of the adult person to be adopted is not valid, the court shall deny the petition. The court may dismiss an adoption petition if appropriate legal grounds have not been proved. If the court is not satisfied that the proposed adoption is in the best interests of the child, the court shall deny the petition and:

(a) order that the child be returned to the custody of the person or agency legally vested with permanent custody; or

(b) order the case transferred for appropriate action and disposition by the court having jurisdiction to determine the custody and guardianship of the child.

Rule 45.02. Granting Adoption Petition

If the court finds that it is in the best interests of the child that the petition be granted, the court shall issue findings of fact, conclusions of law, an order for judgment, and an adoption decree that the person shall be the child of the petitioner. If the person being adopted is an adult, the court shall grant an adoption decree if the court finds that the person's consent is valid. Once the court issues an adoption decree, the court shall also direct the court administrator to complete the appropriate forms so that a new birth record may be issued and notify the prevailing petitioner and his or her attorney of the determination, and provide them with an opportunity to obtain a certified copy of the adoption decree and new birth record prior to the closing of the file.

Rule 45.03. Findings of Fact, Conclusions of Law, Order for Judgment, and Adoption Decree

Subdivision 1. Separate Orders For Each Child. Although multiple children may be listed in an adoption petition, for each such child the court shall issue a separate findings of fact, conclusions of law, order for judgment, and adoption decree.

Subd. 2. Findings of Fact in a Contested Adoption Matter. In its decision in a contested adoption matter, the court shall make findings about:

- (a) the petitioner's full name and date of birth;
- (b) the petitioner's marital status;
- (c) whether petitioner has resided in Minnesota for at least one (1) year prior to filing the adoption petition or whether the residency requirement has been waived pursuant to Rule 35.01;
- (d) the date petitioner acquired physical custody of the child and from whom;
- (e) the type of placement, including whether it is an agency placement, a direct preadoption placement, a relative placement, or some other type of placement;
- (f) whether three (3) months have passed since the date petitioner acquired physical custody of the child or whether the residency requirement has been waived pursuant to Rule 35.02;
- (g) the child's date of birth and the child's city, county, state, and country of birth;
- (h) whether a certified copy of the birth record of the child or of the adult to be adopted has been filed with the court;
- (i) whether the post-placement assessment report required under Rule 38 and the adoption study report required under Rule 37 have been filed with the court;
- (j) whether the child owns property and, if so, a list of such property;
- (k) whether all consents required under Rule 33 have been properly executed and filed with the court or whether orders for termination of parental rights have been entered;
- (l) whether all notices required under Rule 31 have been properly served and proof of service has been filed with the court;
- (m) whether, if applicable, a communication or contact agreement pursuant to Rule 34 has been properly executed and filed with the court and whether the court finds that the communication or contact agreement is in the best interests of the child;
- (n) whether a statement of expenses paid by the petitioner has been filed with the court pursuant to Rule 35.08 and whether the expenses are approved;
- (o) whether a search of the Minnesota Fathers' Adoption Registry has been conducted and the results have been filed with the court pursuant to Rule 32; and
- (p) whether the social and medical history form has been completed by the biological mother and biological father and has been filed with the court.

Subd. 3. Findings of Fact in an Uncontested Adoption Matter. In its decision in an uncontested adoption matter, the court:

- (a) shall include findings about the issues identified in subdivision 1(a), (b), (c), (d), (g), (j), and (m); and
- (b) may include findings about the issues identified in subdivision 1(e), (f), (h), (i), (k), (l), (n), (o), and (p).

Subd. 4. Conclusions of Law. In its decision, the court shall make conclusions of law about whether all of the allegations contained in the adoption petition have been proved in accordance with the applicable standard of proof and whether the adoption is in the child's best interests.

Subd. 5. Order for Judgment. If the court decides to grant the adoption petition, in its decision the court shall include an order stating:

- (a) the child's new name;
- (b) that the child is the child of the petitioner; and
- (c) that an adoption decree shall be issued.

Subd. 6. Adoption Decree. If the court decides to grant the adoption petition, in its decision the court shall order that the child is the child of the petitioner and of any parent retaining parental rights.

(Amended effective January 1, 2007.)

Rule 45.04. Filing and Service

The findings of fact, conclusions of law, order for judgment, and adoption decree shall be filed and served pursuant to Rule 10.03, subdivision 2. If the adoptee is an Indian child, the court administrator shall provide the Secretary of the Interior with a copy of the adoption decree, along with such other information as may be necessary to show the following:

- (a) the child's name and tribal affiliation;
- (b) the names and addresses of the child's biological parents;
- (c) the names and addresses of the child's adoptive parents; and
- (d) the identity of any agency having files or information relating to such adoptive placement.

RULE 46. POST-TRIAL MOTIONS

Rule 46.01. Motion for Amended Findings

Upon motion of a party served and heard not later than the time allowed for a motion for a new trial pursuant to Rule 46.02, the court may amend its findings or make additional findings, and may amend the judgment accordingly if judgment has been entered. 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 the sufficiency of the evidence to support the findings may be raised on appeal regardless of whether the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

(Amended effective January 1, 2007.)

Rule 46.02. Motion for New Trial

Subdivision 1. Grounds. A motion for a new trial may be granted to any or all of the parties on all or part of the issues for any of the following causes:

- (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 the prevailing party;
- (c) accident or surprise which could not have been prevented by ordinary prudence;
- (d) material evidence newly discovered, which with reasonable diligence could not have been found and produced at the trial;
- (e) errors of law occurring at the trial, and objected to at the time, or, if no objection need have been made pursuant to these rules, plainly assigned in the notice of motion;
- (f) the decision is not justified by the evidence or is contrary to law; but, unless it be so expressly stated in the order granting a new trial, it shall not be presumed on appeal to have been made on the ground that the decision was not justified by the evidence; or

(g) in the interest of justice.

Upon a motion for a new trial, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions, and direct entry of a new judgment.

Subd. 2. Basis Of Motion. A motion for a new trial shall be made pursuant to Rule 15 and shall be made based upon on the files, exhibits, and minutes of the court. Pertinent facts that would not be a part of the minutes by be shown by affidavit. A full or partial transcript of the court reporter's notes may be used on the hearing of the motion.

Subd. 3. Time For Serving and Filing Motion. A notice of motion and motion for a new trial shall be served and filed within fifteen (15) days after service of notice by the court administrator of the filing of the decision or order pursuant to Rule 10. The motion shall be heard within thirty (30) days after such notice of filing.

Subd. 4. Time For Serving and Filing Affidavits. When a motion for a new trial is based upon affidavits, they shall be served and filed with the notice of motion. The opposing party shall have ten (10) days after such service in which to serve and file opposing affidavits, which period may be extended by the court for good cause. The court may permit reply affidavits.

Subd. 5. Order For New Trial On Court's Initiative. Not later then fifteen (15) days after a general verdict or the filing of the decision or order, the court upon its own initiative may order a new trial for any reason for which it might have granted a new trial on a motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. The court shall specify in the order the grounds therefore.

Rule 46.03. Timing of Decision

Within fifteen (15) days of the conclusion of the hearing on the motion the court shall issue its decision and order. For good cause shown, the court may extend this period for an additional fifteen (15) days.

RULE 47. RELIEF FROM ORDER

Rule 47.01. 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 47.02. Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud

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

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

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

Rule 47.03. Invalidation of District Court Action – Indian Child Cases

Subdivision 1. Petition. Any Indian child who is the subject of an adoption proceeding under State law, parent or Indian custodian from whose custody such child was removed, and

the Indian child's tribe may file with any court of competent jurisdiction a petition to invalidate such action upon a showing that such action violates any provisions of the Indian Child Welfare Act, 25 U.S.C., section 1911, 1912, or 1913.

Subd. 2. Evidentiary Hearing. Upon the filing of a petition to invalidate, the court shall schedule an evidentiary hearing. The form and content of the petition to invalidate shall be governed by Rule 15.

Subd. 3. Findings and Order. At the conclusion of the evidentiary hearing the court shall issue a written order which shall include findings of fact and conclusions of law. (Amended effective January 1, 2007.)

Rule 47.04. Vacation of Adoption Decree – Indian Child Cases

Subdivision 1. Petition to Vacate. After the entry of an adoption decree of an Indian child in any State court, the parent may withdraw consent upon the grounds that the consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two (2) years may be invalidated under the provisions of this rule unless otherwise permitted under State law.

Subd. 2. Evidentiary Hearing. Upon the filing of a petition to vacate, the court shall schedule an evidentiary hearing. The form and content of the petition to vacate shall be governed by Rule 15.

Subd. 3. Findings and Order. At the conclusion of the evidentiary hearing the court shall issue a written order which shall include findings of fact and conclusions of law.

RULE 48. APPEAL

Rule 48.01. Applicability of Rules of Civil Appellate Procedure

Except as provided in this rule, appeals of adoption matters shall be in accordance with the Minnesota Rules of Civil Appellate Procedure.

Rule 48.02. Procedure

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

Subd. 2. Timing. Any appeal shall be taken within thirty (30) days of the service of notice by the court administrator of the filing of the court's order. In the event of the filing and service of a timely and proper post-trial motion under Rule 46, or for relief under Rule 47 if the motion is filed within the time specified in Rule 46.02, subdivision 3, the provisions of Minnesota Rules of Civil Appellate Procedure Rule 104.01, subs. 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.

Subd. 3. Service and Filing of Notice of Appeal. Within the time allowed for an appeal from an appealable order, the person appealing shall:

(a) serve a notice of appeal upon all parties or their counsel if represented, including notice of the correct case caption pursuant to Rule 8.08 of the Minnesota Rules of Juvenile Protection Procedure; 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 as required under Rule 8.08 of the Minnesota Rules of Juvenile Protection Procedure.

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

Subd. 6. Notice to Legal Custodian. The court administrator shall notify the child's legal custodian of the appeal. Failure to notify the legal custodian does not affect the jurisdiction of the court of appeals.

(Amended effective January 1, 2007.)

2004 Advisory Committee Comment – 2006 Amendment

Minnesota Statutes, section 259.63, provides that adoption appeals are taken “as in other civil cases” under the Rules of Civil Appellate Procedure. The Committee recognizes that the timing provision of Rule 48.02, subdivision 2, is a departure from the Minnesota Rules of Civil Appellate Procedure in that under these Rules the appeal period now starts to run for all parties from the service of the Notice of Filing of Order by the court administrator rather than from the service of notice of filing by a party. In addition, the time for appeal is decreased to 30 days, consistent with the child's need for timely permanency. This departure is intended to expedite the appeal process, which the Committee deems to be in the best interests of the child. The appeal time and procedures are governed by these rules, specifically established for adoption proceedings, and not by the more general provisions of the appellate rules. See In Re Welfare of J.R., Jr., 655 N.W.2d 1 (Minn. 2003).

(Amended effective January 1, 2007.)

Rule 48.03. Application for Stay of Trial Court Order

The service and filing of a notice of appeal does not stay the order of the trial court. The order of the juvenile court shall stand pending the determination of the appeal, but the reviewing court may in its discretion and upon application stay the order.

Rule 48.04. Right to Additional Review

Upon an appeal, any party or the county attorney may obtain review of an order entered in the same case which may adversely affect that person by filing a notice of review with the clerk of appellate courts. The notice of review shall specify the order to be reviewed, shall be served and filed within fifteen (15) days after service of the notice of appeal, and shall contain proof of service.

Rule 48.05. Transcript of Proceedings

The requirements regarding preparation of a transcript shall be governed by Rule 110.02 of the Minnesota Rules of Civil Appellate Procedure, except that the estimated completion date contained in the certificate of transcript shall not exceed thirty (30) days.

Rule 48.06. Time for Rendering Decisions

All decisions regarding adoption matters shall be issued by the appellate court within sixty (60) days of the date the case is deemed submitted pursuant to the Minnesota Rules of Civil Appellate Procedure.

RULE 49. VENUE

Rule 49.01. Venue

Subdivision 1. Generally. Except as provided in subdivision 2, venue for an adoption proceeding shall be the county of the petitioner's residence.

Subd. 2. Child Under Guardianship of Commissioner. Venue for the adoption of a child committed to the guardianship of the Commissioner of Human Services shall be the county with jurisdiction in the matter according to Minnesota Statutes, section 260C.317, subdivision 3.

(Added effective January 1, 2007.)

Rule 49.02. Request to Transfer Venue

Upon the petitioner's motion served and filed pursuant to Rule 15, the court having jurisdiction over the matter under Minnesota Statutes, section 260C.317, subdivision 3, may

transfer venue of an adoption proceeding involving a child under the guardianship of the Commissioner of Human Services to the county of the petitioner's residence upon determining that:

(a) the Commissioner of Human Services has given consent to the petitioner's adoption of the child or that consent is unreasonably withheld;

(b) there is no other adoption petition for the child that has been filed or is reasonably anticipated by the Commissioner of Human Services or the Commissioner's delegate to be filed; and

(c) transfer of venue is in the best interests of the child.

(Added effective January 1, 2007.)

Rule 49.03. Transfer of Venue Procedures

If the court grants a motion to transfer venue, the court shall do so by ordering a continuance and by forwarding to the court administrator of the appropriate court a certified copy of all papers filed, together with an order of transfer. The transferring court also shall provide copies of the order of transfer to the Commissioner of Human Services and any agency participating in the proceedings. The judge of the receiving court shall accept the order of the transfer and any other documents transmitted and hear the case.

(Added effective January 1, 2007.)

RULE 50. ADOPTIVE PLACEMENTS – INDIAN CHILD

Rule 50.01. Placement Preferences

Subdivision 1. Generally. In any adoptive placement of an Indian child, a preference shall be given, in the absence of good cause to the contrary, to a placement with:

- (a) a member of the Indian child's extended family;
- (b) other members of the Indian child's tribe; or
- (c) other Indian families.

Subd. 2. Preadoptive Placements.

An Indian child accepted for preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which the child's special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with:

- (a) a member of the Indian child's extended family;
- (b) a foster home licensed, approved, or specified by the Indian child's tribe;
- (c) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(d) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(Added effective January 1, 2007.)

Rule 50.02. Tribal Resolution for Different Order of Preference; Personal Preference Considered; Anonymity in Application of Preferences

In the case of a placement under Rule 50.01, if the Indian child's tribe establishes a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in Rule 50.01, subdivision 2. Where appropriate, the preference of the Indian child or parent shall be considered, provided that where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(Added effective January 1, 2007.)

Rule 50.03. Social and Cultural Standards Applicable

The standards to be applied in meeting the preference requirements of Rule 50 shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(Added effective January 1, 2007.)

Rule 50.04. Record of Placement

A record of each placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary of the Interior or the Indian child's tribe.

(Added effective January 1, 2007.)