

JUVENILE COURT

Minnesota Rules of Juvenile Delinquency Procedure

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Rules effective May 1, 1983
With amendments received through August 1, 2008

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TEXT OF RULES**Delinquency, Juvenile Petty Offenses, and Juvenile Traffic Offenses**

Effective August 1, 1996

Rule 1. Scope, Application and General Purpose**1.01 Scope and Application**

Rules 1 through 31 govern the procedure in the juvenile courts of Minnesota for all delinquency matters as defined by Minnesota Statutes, section 260B.007, subdivision 6, juvenile petty matters as defined by Minnesota Statutes, section 260B.007, subdivision 16

and juvenile traffic matters as defined by Minnesota Statutes, section 260B.225. Procedures for juvenile traffic and petty matters are governed by Rule 17.

Where these rules require giving notice to a child, notice shall also be given to the child's counsel if the child is represented. Reference in these rules to "child's counsel" includes the child who is proceeding pro se. Reference in these rules to "counsel for the parent(s), legal guardian, or legal custodian" includes the parent, legal guardian, or legal custodian who is proceeding pro se.

Where any rule obligates the court to inform a child or other person of certain information, the information shall be provided in commonly understood, everyday language.

In cases involving an Indian child, which may be governed by the Indian Child Welfare Act, 25 U.S.C.A. Chapter 21, sections 1901-1963, these rules shall be construed to be consistent with that Act. Where the Minnesota Indian Family Preservation Act, Minnesota Statutes, sections 260.751 to 260.835 applies, these rules shall be construed to be consistent with that Act.

(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 July 1, 2004; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005.)

1.02 General Purpose

The purpose of the juvenile rules is to establish uniform practice and procedures for the juvenile courts of the State of Minnesota, and to assure that the constitutional rights of the child are protected. The purpose of the laws relating to children alleged or adjudicated to be delinquent 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. This purpose 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. These rules shall be construed to achieve these purposes.

Comment--Rule 1

Minn. R. Juv. Del. P. 1.02 is based upon Minnesota Statutes 2002, section 260B.001, subdivision 2.

The Indian Child Welfare Act does not apply to placements of Indian children that are based upon an act that, if committed by an adult, would be deemed a crime. 25 U.S.C. section 1903(1) (1988). However, Minnesota Statutes 2002, section 260.761, subdivision 2, of the Minnesota Indian Family Preservation Act requires that the Indian child's tribal social service agency receive notice when the court transfers legal custody of the child under Minnesota Statutes 2002, section 260B.198, subdivision 1, paragraph (c), clauses (1), (2) and (3), following an adjudication for a misdemeanor-level delinquent act.

Rule 2. Attendance at Hearings and Privacy

2.01 Right to Attend Hearing

Juvenile court proceedings are closed to the public except as provided by law. Only the following may attend hearings:

- (A) the child, guardian ad litem appointed in the delinquency proceeding and counsel for the child;
- (B) the parent(s), legal guardian, or legal custodian of the child and their counsel;
- (C) the spouse of the child;
- (D) the prosecuting attorney;

(E) other persons requested by the parties listed in (A) through (D) and approved by the court;

(F) persons authorized by the court, including a guardian ad litem appointed for the child in another matter, under such conditions as the court may approve;

(G) persons authorized by statute, under such conditions as the court may approve; and

(H) any person who is entitled to receive a summons or notice under these rules.

(Amended effective for guardians ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

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.)

2.03 Presence Required

Subdivision 1. Child. The child shall have the right to be present at all hearings. The child is deemed to waive the right to be present if the child voluntarily and without justification is absent after the hearing has commenced or if the child disrupts the proceedings. Disruption of the proceedings occurs if the child, after warning by the court, engages in conduct which interrupts the orderly procedure and decorum of the court. The court may use all methods of restraint necessary to conduct the proceedings in an orderly manner. If the child is restrained or removed from the courtroom, the court shall state the reasons for the restraint or removal on the record. Except at trials and dispositional hearings, the child's appearance may be waived if the child is hospitalized in a psychiatric ward and the treating physician states in writing the reasons why not appearing would serve the child's best interests.

Subd. 2. Counsel.

(A) Counsel for the child shall be present at all hearings.

(B) The prosecuting attorney shall be present or available for all hearings unless excused by the court in its discretion.

Subd. 3. Parent, Legal Guardian or Legal Custodian. The parent, legal guardian or legal custodian of a child who is the subject of a delinquency or extended jurisdiction juvenile proceeding shall accompany the child to all hearings unless excused by the court for good cause shown. If such person fails to attend a hearing with the child without excuse, the court may issue an arrest warrant and/or hold the person in contempt. The court may proceed if it is in the best interests of the child to do so even if the parent, legal guardian, or legal custodian fails to appear.

2.04 Right to Participate

Subdivision 1. Child and Prosecuting Attorney. The child and prosecuting attorney have the right to participate in all hearings.

Subd. 2. Guardian Ad Litem. The guardian ad litem appointed in the delinquency proceeding has a right to participate and advocate for the best interests of the child at all hearings.

Subd. 3. Parent(s), Legal Guardian, or Legal Custodian. Except in their role as guardian ad litem for the child, the parent(s), legal guardian, or legal custodian may not participate separately at hearings until the dispositional stage of the proceedings and the

court shall advise them of this right. A parent, legal guardian, or legal custodian for the child is not subject to the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court. A parent, legal guardian, or legal custodian shall not participate as counsel for the child unless licensed to practice law.

Subd. 4. Generally. Persons represented by counsel, who have a right to participate, shall participate through their counsel. Unrepresented persons may participate on their own behalf.

(Amended effective for guardians ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

2.05 Ex Parte Communications

The court shall not receive or consider any ex parte communication from anyone concerning a proceeding, including conditions of release, detention, evidence, adjudication, disposition, or any other matter. The court shall fully disclose to all counsel on the record any attempted ex parte communication.

Comment--Rule 2

Minn. R. Juv. Del. P. 2.01 allows persons authorized by statute to attend juvenile court proceedings. They include the public, in cases where a juvenile over age 16 is alleged to have committed a felony, and victims. The public is also entitled to be present during a juvenile certification hearing where a juvenile over age 16 is alleged to have committed a felony, except that the court may exclude the public from portions of a certification hearing to discuss psychological material or other evidence that would not be accessible to the public in an adult proceeding. Minnesota Statutes 2002, section 260B.163, subdivision 1, paragraph (c). The statute does not currently permit exclusion when similar material is being presented in an extended jurisdiction juvenile proceeding. This may simply be an oversight. See also Minnesota Statutes 1994, section 609.115, subdivision 6.

Minn. R. Juv. Del. P. 2.02 permits exclusion of persons from hearings, even when they have a right to participate, to serve the child's best interests. For example, sometimes expert opinions are offered to the court regarding a child's psychological profile or amenability to probation supervision. Counsel are usually aware of such opinions and if it serves no useful purpose or may even be detrimental to a child's best interests to hear these opinions, it may be appropriate to temporarily exclude the child from the hearing. Obviously, this should be brought to the court's attention either before the hearing or at a bench conference. Because a child charged with a juvenile petty or juvenile traffic offense does not have a right to appointment of counsel at public expense, that child cannot be excluded unless the child is represented by counsel.

Minn. R. Juv. Del. P. 2.03 subd 2 provides that the prosecuting attorney shall be present or available for all hearings unless excused by the court in its discretion. On occasion, because of time constraints and distance, it may be impossible for the prosecuting attorney to be present in person at a particular hearing. So long as the prosecuting attorney is available by telephone conference, the hearing could proceed without the prosecutor actually being present.

Minn. R. Juv. Del. P. 2.05 requires full disclosure by the court to all counsel on the record of any attempted ex parte communication. Juvenile court has historically been less formal and more casual than other court proceedings. As a result, lawyers, probation and court services personnel, law enforcement, victims, and relatives of the child have sometimes attempted and succeeded in having ex parte contact with the juvenile court judge. As the sanctions for delinquency become more severe, due process safeguards become more imperative.

Rule 3. Right to Counsel**3.01 Generally**

The child has the right to be represented by an attorney. This right attaches no later than when the child first appears in court. The attorney shall initially consult with the child privately, outside of the presence of the child's parent(s), legal guardian or legal custodian. The attorney shall act solely as the counsel for the child.

3.02 Appointment of Counsel

Subdivision 1. Felonies and Gross Misdemeanors. In any proceeding in which the child is charged with a felony or gross misdemeanor, the court shall appoint counsel at public expense to represent the child, if the child cannot afford counsel and private counsel has not been retained to represent the child. If the child waives the right to counsel, the court shall appoint standby counsel to be available to assist and consult with the child at all stages of the proceedings.

Subd. 2. Misdemeanors. In any proceeding in which the child is charged with a misdemeanor, the court shall appoint counsel at public expense to represent the child if the child cannot afford counsel and private counsel has not been retained to represent the child, and the child has not waived the right to counsel. If the child waives the right to counsel, the court may appoint standby counsel to be available to assist and consult with the child at all stages of the proceedings.

Subd. 3. Out-of-Home Placement. In any proceeding in which out-of-home placement is proposed, the court shall appoint counsel at public expense to represent the child, if the child cannot afford counsel and private counsel has not been retained to represent the child. If the child waives the right to counsel, the court shall appoint standby counsel to be available to assist and consult with the child. No out-of-home placement may be made in disposition proceedings, in violation proceedings, or in subsequent contempt proceedings, if the child was not initially represented by counsel or standby counsel, except as provided herein. If out-of-home placement is based on a plea or adjudication obtained without assistance of counsel, the child has an absolute right to withdraw that plea or obtain a new trial.

Subd. 4. Probation Violation and Modification of Disposition for Delinquent Child. In any proceeding in which a delinquent child is alleged to have violated the terms of probation, or where a modification of disposition is proposed, the child has the right to appointment of counsel at public expense. If the child waives the right to counsel, the court shall appoint standby counsel.

Subd. 5. Juvenile Petty Offense or Juvenile Traffic Offense.

(A) In any proceeding in which the child is charged as a juvenile petty offender or juvenile traffic offender, the child or the child's parent may retain private counsel, but the child does not have a right to appointment of a public defender or other counsel at public expense, except:

(1) when the child may be subject to out-of-home placement as provided in Minnesota Statutes, section 260B.235, subdivision 6; or

(2) as otherwise provided pursuant to Rule 3.02, subdivisions 3, 6 and 7.

(B) Except in the discretion of the Office of the State Public Defender, a child is not entitled to appointment of an attorney at public expense in an appeal from adjudication and disposition in a juvenile petty offender or juvenile traffic offender matter.

Subd. 6. Detention. Every child has the right to be represented by an attorney at a detention hearing. An attorney shall be appointed for any child appearing at a detention hearing who cannot afford to hire an attorney. If the child waives representation, standby counsel shall be appointed.

Subd. 7. Child Incompetent to Proceed. Every child shall be represented by an attorney in any proceeding to determine whether the child is competent to proceed. An attorney shall be appointed for any child in such proceeding who cannot afford to hire an attorney.

Subd. 8. Appearance before a Grand Jury. A child appearing before a grand jury as a witness in a matter which is under the jurisdiction of the Juvenile Court shall be represented by an attorney at public expense if the child cannot afford to retain private counsel. If the child has effectively waived immunity from self-incrimination or has been granted use immunity, the attorney for the child shall be present while the witness is testifying. The attorney shall not be permitted to participate in the grand jury proceedings except to advise and consult with the child witness while the child is testifying.

(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.)

3.03 Dual Representation

A child is entitled to the effective representation of counsel. When two or more children are jointly charged or will be tried jointly pursuant to Rule 13.07, and two or more of them are represented by the same counsel, the following procedure shall be followed:

(A) The court shall address each child individually on the record. The court shall advise the child of the potential danger of dual representation and give the child the opportunity to ask the court questions about the nature and consequences of dual representation. The child shall be given the opportunity to consult with outside counsel.

(B) On the record, the court shall ask each child whether the child

- (1) understands the right to be effectively represented by a lawyer;
- (2) understands the details of the lawyer's possible conflict of interest;
- (3) understands the possible dangers in being represented by a lawyer with these possible conflicts;
- (4) discussed the issue of dual representation with a separate lawyer; and
- (5) wants a separate lawyer or waives their Sixth Amendment protections.

(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.)

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.)

3.05 Renewal of Advisory

After a child waives the right to counsel, the child shall be advised of the right to counsel by the court on the record at the beginning of each hearing at which the child is not represented by counsel.

(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.)

3.06 Eligibility for Court Appointed Counsel at Public Expense

Subdivision 1. When Parent or Child Cannot Afford to Retain Counsel. A child and his parent(s) are financially unable to obtain counsel if the child is unable to obtain adequate representation without substantial hardship for the child or the child's family. The court shall inquire to determine the financial eligibility of a child for the appointment of counsel. The ability to pay part of the cost of adequate representation shall not preclude the appointment of counsel for the child.

Subd. 2. When Parent Can Afford to Retain Counsel. If the parent(s) of a child can afford to retain counsel in whole or in part and have not retained counsel for the child, and the child cannot afford to retain counsel, the child is entitled to representation by counsel appointed by the court at public expense. After giving the parent(s) a reasonable opportunity to be heard, the court may order that service of counsel shall be at the parent(s)'s expense in whole or in part depending upon their ability to pay.

3.07 Right of Parent(s), Legal Guardian(s), Legal Custodian(s) and Guardian Ad Litem to Counsel

Subdivision 1. Right of Parent(s), Legal Guardian(s) or Legal Custodian(s). The parent(s), legal guardian(s) or legal custodian(s) of a child who is the subject of a delinquency proceeding have the right to assistance of counsel after the court has found that the allegations of the charging document have been proved. The court has discretion to appoint an attorney to represent the parent(s), legal guardian(s) or legal custodian(s) at public expense if they are financially unable to obtain counsel in any other case in which the court finds such appointment is desirable.

Subd. 2. Right of Guardian Ad Litem to Counsel. In the event of a conflict between the child and the guardian ad litem, the court may appoint separate counsel to represent the guardian ad litem appointed in the delinquency proceeding.

(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 guardians 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.)

3.08 Certificates of Representation

A lawyer representing a client in juvenile court, other than a public defender, shall file with the court administrator on the first appearance a certificate of representation.

Once a lawyer has filed a certificate of representation, that lawyer cannot withdraw from the case until all proceedings have been completed, except upon written order of the court pursuant to a written motion, or upon written substitution of counsel approved by the court *ex parte*.

A lawyer who wishes to withdraw from a case must file a written motion and serve it by mail or personal service upon the client and upon the prosecuting attorney; and the lawyer shall have the matter heard by the court. No motion of withdrawal will be heard within 10 days of a date certain for hearing or trial.

If the court approves the withdrawal, it shall be effective when the order has been served on the client and the prosecuting attorney by mail or personal service and due proof of such service has been filed with the court administrator.

(Added December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998.)

Comment--Rule 3

Minn. R. Juv. Del. P. 3 prescribes the general requirements for appointment of counsel for a juvenile. In re Gault, 387 U.S. 1 (1967); Minnesota Statutes 2002, section 260B.163, subdivision 4. The right to counsel at public expense does not necessarily include the right to representation by a public defender. The right to representation by a public defender is governed by Minnesota Statutes, chapter 611.

Minn. R. Juv. Del. P. 3.01 provides that the right to counsel attaches no later than the child's first appearance in juvenile court. See Minnesota Statutes 2002, section 611.262. Whether counsel is appointed by the court or retained by the child or the child's parents, the attorney must act solely as counsel for the child. American Bar Association, Juvenile Justice Standards Relating to Counsel for Private Parties (1980). While it is certainly appropriate for an attorney representing a child to consult with the parents whose custodial interest in the child potentially may be affected by court intervention, it is essential that counsel conduct an initial interview with the child privately and outside of the presence of the parents. Following the initial private consultation, if the child affirmatively wants his or her parent(s) to be present, they may be present. The attorney may then consult with such other persons as the attorney deems necessary or appropriate. However, the child retains a right to consult privately with the attorney at any time, and either the child or the attorney may excuse the parents in order to speak privately and confidentially.

Minn. R. Juv. Del. P. 3.02 provides for the appointment of counsel for juveniles in delinquency proceedings. A parent may not represent a child unless he or she is an attorney. In Gideon v. Wainwright, 372 U.S. 335 (1963), the U.S. Supreme Court held that the Sixth Amendment's guarantee of counsel applied to state felony criminal proceedings. In In re Gault, the Supreme Court extended to juveniles the constitutional right to counsel in state delinquency proceedings. Minnesota Statutes 2002, section 260B.163, subdivision 4, expands the right to counsel and requires that an attorney shall be appointed in any proceeding in which a child is charged with a felony or gross misdemeanor.

*If a child in a felony or gross misdemeanor case exercises the right to proceed without counsel, Faretta v. California, 422 U.S. 806 (1975), State v. Richards, 456 N.W.2d 260 (Minn. 1990), then Minn. R. Juv. Del. P. 3.02 subd 1 requires the court to appoint standby counsel to assist and consult with the child at all stages of the proceedings. See, e.g., McKaskle v. Wiggins, 465 U.S. 168 (1984); State v. Jones, 266 N.W.2d 706 (Minn. 1978); Burt v. State, 256 N.W.2d 633 (Minn. 1977); State v. Graff, 510 N.W.2d 212 (Minn. Ct. App. 1993) *pet. for rev. denied* (Minn. Feb. 24, 1994); State v. Savior, 480 N.W.2d 693 (Minn. Ct. App. 1992); State v. Parson, 457 N.W.2d 261 (Minn. Ct. App. 1990) *pet. for rev. denied* (Minn. July 31, 1990); State v. Lande, 376 N.W.2d 483 (Minn. Ct. App. 1985) *pet. for rev. denied* (Minn. Jan. 17, 1986).*

In McKaskle v. Wiggins, the Supreme Court concluded that appointment of standby counsel was consistent with a defendant's Faretta right to proceed pro se, so long as standby

counsel did not stifle the defendant's ability to preserve actual control over the case and to maintain the appearance of *pro se* representation. The child must have an opportunity to consult with standby counsel during every stage of the proceedings. *State v. Richards*, 495 N.W.2d 187 (Minn. 1992). In order to vindicate this right, counsel must be physically present. "[I]t would be virtually impossible for a standby counsel to provide assistance, much less effective assistance, to a criminal client when that counsel has not been physically present during the taking of the testimony and all of the court proceedings that preceded the request ... [O]nce the trial court ... appoint[s] standby counsel, that standby counsel must be physically present in the courtroom from the time of appointment through all proceedings until the proceedings conclude." *Parson*, 457 N.W.2d at 263. Where the child proceeds *pro se*, it is the preferred practice for counsel to remain at the back of the courtroom and be available for consultation. *Savior*, 480 N.W.2d at 694-95; *Parson*, 457 N.W.2d at 263; *Lande*, 376 N.W.2d at 485. Moreover, standby counsel must be present at all bench and chambers conferences, even where the child is excluded. *State v. Richards*, 495 N.W.2d 187, 196 (Minn. 1992).

Minn. R. Juv. Del. P. 3.02 subd 2 requires a court to appoint counsel for a child charged with a misdemeanor unless that child affirmatively waives counsel as provided in Minn. R. Juv. Del. P. 3.04. Minn. R. Juv. Del. P. 3.02 subd 3 requires the appointment of counsel or standby counsel in any proceeding in which out-of-home placement is proposed, and further limits those cases in which a child may waive the assistance of counsel without the appointment of standby counsel. In *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972), the Court held that "absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor or felony unless he was represented by counsel." In *Scott v. Illinois*, 440 U.S. 367 (1979), the Court clarified any ambiguity when it held that in misdemeanor proceedings, the sentence the trial judge actually imposed, i.e. whether incarceration was ordered, rather than the one authorized by the statute, determined whether counsel must be appointed for the indigent.

In *State v. Borst*, 278 Minn. 388, 154 N.W.2d 888 (1967), the Minnesota Supreme Court, using its inherent supervisory powers, anticipated the United States Supreme Court's *Argersinger* and *Scott* decisions, and shortly after *Gideon*, required the appointment of counsel even in misdemeanor cases "which may lead to incarceration in a penal institution." *Id.* at 397, 154 N.W.2d at 894. *Accord City of St. Paul v. Whidby*, 295 Minn. 129, 203 N.W.2d 823 (1972); *State v. Collins*, 278 Minn. 437, 154 N.W.2d 688 (1967); *State v. Illingworth*, 278 Minn. 484, 154 N.W.2d 687 (1967) (ordinance violation). The *Borst* Court relied, in part, upon *Gault's* ruling on the need for counsel in delinquency cases to expand the scope of the right to counsel for adult defendants in any misdemeanor or ordinance prosecutions that could result in confinement. 278 Minn. at 392-93, 154 N.W.2d at 891. Like the Court in *Gault*, *Borst* recognized the adversarial reality of even "minor" prosecutions.

At the very least, Minn. R. Juv. Del. P. 3.02 subd 3 places the prosecution and court on notice that out-of-home placement may not occur unless counsel or standby counsel is appointed. For example, a child appearing on a third alcohol offense faces a dispositional possibility of out-of-home placement, but cannot be placed out of the home if the child is not represented by counsel unless the child is given the opportunity to withdraw the plea or obtain a new trial. See Minn. R. Juv. Del. P. 17.02. The prosecutor should indicate, either on the petition or through a statement on the record, whether out-of-home placement will be proposed. Obviously, basing the initial decision to appoint counsel on the eventual sentence poses severe practical and administrative problems. It may be very difficult for a judge to anticipate what the eventual sentence likely would be without prejudging the child or prejudicing the right to a fair and impartial trial. Minn. R. Juv. Del. P. 3.02 subd 3 also provides that a child retains an absolute right to withdraw any plea obtained without the assistance of counsel or to obtain a new trial if adjudicated without the assistance of counsel, if that adjudication provides the underlying predicate for an out-of-home placement. See, e.g., *In re D.S.S.*, 506 N.W.2d 650, 655 (Minn. Ct. App. 1993) ("The cumulative history of uncounseled admissions resulting after an inadequate advisory of the right to counsel

constitutes a manifest injustice"). Appointing counsel solely at disposition is inadequate to assure the validity of the underlying offenses on which such placement is based. Of course, routine appointment of counsel in all cases would readily avoid any such dilemma.

Minnesota Statutes, section 260B.007, subdivision 16, defines "juvenile petty offenses," and converts most offenses that would be misdemeanors if committed by an adult into petty offenses. Minn. R. Juv. Del. P. 3.02 subd 5 and 17.02 explain when a juvenile petty offender is entitled to court-appointed counsel. If a child is charged as a juvenile petty offender, the child or the child's parents may retain and be represented by private counsel, but the child does not have a right to the appointment of a public defender or other counsel at public expense. The denial of access to court-appointed counsel is based on the limited dispositions that the juvenile court may impose on juvenile petty offenders. Minnesota Statutes 2002, section 260B.235, subdivision 4. However, children who are charged with a third or subsequent juvenile alcohol or controlled substance offense are subject to out-of-home placement and therefore have a right to court-appointed counsel, despite their status as juvenile petty offenders. If the court is authorized to impose a disposition that includes out-of-home placement, then the provisions of Minn. R. Juv. Del. P. 3.02 subd 5 and 17.02 are applicable and provide the child a right to counsel at public expense.

Minn. R. Juv. Del. P. 3.02 subd 6 is an exception to the prohibition of appointment of counsel at public expense for a juvenile traffic or juvenile petty offender. If such a child is detained, at any hearing to determine if continued detention is necessary, the child is entitled to court-appointed counsel if unrepresented because substantial liberty rights are at issue.

Minn. R. Juv. Del. P. 3.02 subd 7 is an exception to the prohibition of appointment of counsel at public expense for a juvenile traffic or juvenile petty offender. As soon as any child is alleged to be incompetent to proceed, that child has a right to be represented by an attorney at public expense for the proceeding to determine whether the child is competent to proceed. Substantial liberty rights are at issue in a competency proceeding. A finding of incompetency is a basis for a Child in Need of Protection or Services adjudication and possible out-of-home placement. Minnesota Statutes 2002, sections 260C.007, subdivision 6, clause (15) and 260C.201. See also Minn. R. Juv. Del. P. 20.01. Because out-of-home placement is a possibility, the child is entitled to court-appointed counsel.

Minn. R. Juv. Del. P. 3.03 regarding advising children of the perils of dual representation is patterned after Minn. R. Crim. P. 17.03 subd 5.

Minn. R. Juv. Del. P. 3.04 prescribes the circumstances under which a child charged with an offense may waive counsel. The validity of relinquishing a constitutional right is determined by assessing whether there was a "knowing, intelligent, and voluntary waiver" under the "totality of the circumstances." See, e.g., *Fare v. Michael C.*, 442 U.S. 707 (1979); *Johnson v. Zerbst*, 304 U.S. 458 (1938) (waiver of counsel); *In re M.D.S.*, 345 N.W.2d 723 (Minn. 1984); *State v. Nunn*, 297 N.W.2d 752 (Minn. 1980); *In re L.R.B.*, 373 N.W.2d 334 (Minn. Ct. App. 1985). The judicial position that a young minor can "knowingly and intelligently" waive constitutional rights is consistent with the legislature's judgment that a youth can make an informed waiver decision without parental concurrence or consultation with an attorney. Minnesota Statutes 2002, section 260B.163, subdivision 10 ("Waiver of any right ... must be an express waiver intelligently made by the child after the child has been fully and effectively informed of the right being waived").

While recognizing a right to waive counsel and proceed *pro se*, Minn. R. Juv. Del. P. 3.02 requires juvenile courts to appoint standby counsel to assist a child charged with a felony or gross misdemeanor, or where out-of-home placement is proposed, and to provide temporary counsel to consult with a child prior to any waiver in other types of cases. See, e.g., *State v. Rubin*, 409 N.W.2d 504, 506 (Minn. 1987) ("[A] trial court may not accept a guilty plea to a felony or gross misdemeanor charge made by an unrepresented defendant if the defendant has not consulted with counsel about waiving counsel and pleading

guilty"); *Jones*, 266 N.W.2d 706 (standby counsel available to and did consult with defendant throughout proceedings and participated occasionally on defendant's behalf); *Burt*, 256 N.W.2d at 635 ("One way for a trial court to help ensure that a defendant's waiver of counsel is knowing and intelligent would be to provide a lawyer to consult with the defendant concerning his proposed waiver").

In *State v. Rubin*, the court described the type of "penetrating and comprehensive examination" that must precede a "knowing and intelligent" waiver and strongly recommended the appointment of counsel "to advise and consult with the defendant as to the waiver." See also *ABA Standards of Criminal Justice, Providing Defense Services*, sections 5-7.3 (1980); Minn. R. Crim. P. 5.02. Minn. R. Juv. Del. P. 3.04 subd 1 prescribes the type of "penetrating and comprehensive examination" expected prior to finding a valid waiver. Prior to an initial waiver of counsel, a child must consult privately with an attorney who will describe the scope of the right to counsel and the disadvantages of self-representation. Following consultation with counsel, any waiver must be in writing and on the record, and counsel shall appear with the child to assure the court that private consultation and full discussion has occurred.

To determine whether a child "knowingly, intelligently, and voluntarily" waived the right to counsel, Minn. R. Juv. Del. P. 3.04 subd 1 requires the court to look at the "totality of the circumstances," which includes but is not limited to the child's age, maturity, intelligence, education, experience, and ability to comprehend and the presence and competence of the child's parent(s), legal guardian or legal custodian. In addition, the court shall decide whether the child understands the nature of the charges and the proceedings, the potential disposition that may be imposed, and that admissions or findings of delinquency may be valid even without the presence of counsel and may result in more severe sentences if the child re-offends and appears again in juvenile court or in criminal court. *United States v. Nichols*, 511 U.S. 738 (1994); *United States v. Johnson*, 28 F.3d 151 (D.C. Cir. 1994) (use of prior juvenile convictions to enhance adult sentence). The court shall make findings and conclusions on the record as to why it accepts the child's waiver or appoints standby counsel to assist a juvenile who purports to waive counsel.

Even though a child initially may waive counsel, the child continues to have the right to counsel at all further stages of the proceeding. Minn. R. Juv. Del. P. 3.05 requires that at each subsequent court appearance at which a child appears without counsel, the court shall again determine on the record whether or not the child desires to exercise the right to counsel.

Minn. R. Juv. Del. P. 3.06 prescribes the standard to be applied by the court in determining whether a child or the child's family is sufficiently indigent to require appointment of counsel. The standards and methods for determining eligibility are the same as those used in Minn. R. Crim. P. 5.02 subds 3-5.

Minn. R. Juv. Del. P. 3.06 subd 2 provides that if the parent(s) of a child can afford to retain counsel but have not done so and the child cannot otherwise afford to retain counsel, then the court shall appoint counsel for the child. When parents can afford to retain counsel but do not do so and counsel is appointed for the child at public expense, in the exercise of its sound discretion, the court may order reimbursement for the expenses and attorney's fees expended on behalf of the child. Minnesota Statutes 2002, section 260B.331, subdivision 5 ("[T]he court may inquire into the ability of the parents to pay for such counsel's services and, after giving the parents a reasonable opportunity to be heard, may order the parents to pay attorneys fees"). See, e.g., *In re M.S.M.*, 387 N.W.2d 194, 200 (Minn. Ct. App. 1986).

Minn. R. Juv. Del. P. 3.07 implements the rights of a child's parent(s), legal guardian or legal custodian to participate in hearings affecting the child. After a child has been found to be delinquent and state intervention potentially may intrude upon the parent's custodial interests in the child, the parent(s) have an independent right to the assistance of counsel appointed at public expense if they are eligible for such services.

Rule 4. Warrants**4.01 Search Warrants Upon Oral Testimony**

Issuance of search warrants based on oral testimony is governed by Minn. R. Crim. P. 33.04 and 36, except as modified by this Rule. If the focus of the warrant pertains to a juvenile, the court may designate on the face of the warrant that it shall be filed in the juvenile court. When so designated, the original warrant, the duplicate original warrant, the certified transcript of the oral application for the warrant, any longhand verbatim record, and any related documents shall be deemed to be a juvenile court record under Rule 30.

(Added 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.)

4.02 Search Warrants Upon Written Application

Issuance of search warrants based upon written application is governed by Minnesota Statutes, sections 626.04 to 626.18, and Minn. R. Crim. P. 33.04, except as modified by this Rule. If the focus of the warrant pertains to a juvenile, the court may designate on the face of the warrant that it shall be filed in the juvenile court. When so designated, the search warrant, warrant application, affidavit(s) and inventories, including statements of unsuccessful execution and documents required to be served shall be deemed to be a juvenile court record under Rule 30.

(Added 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.)

4.03 Warrants for Immediate Custody

Subdivision 1. Probable Cause Required. Probable cause may be established by facts set forth in writing attached to the charging document, by facts set forth in the charging document, by affidavit(s) attached to the charging document, or by sworn testimony presented to the court on the record.

Subd. 2. Warrant for Delinquent Offenders. The court may issue a warrant for immediate custody of a delinquent child or a child alleged to be delinquent if the court finds that there is probable cause to believe that the child has committed a delinquent act as defined by Minnesota Statutes, section 260B.007, subdivision 6, and:

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

(B) the child or others are in danger of imminent harm; or

(C) the child has left the custody of the detaining authority without permission of the court; or

(D) the child has violated a court order; or

(E) the child has violated the terms of probation.

Subd. 3. Warrant for Juvenile Petty or Traffic Offenders. The court may only issue a warrant for immediate custody of a juvenile petty or juvenile traffic offender or a child alleged to be a juvenile petty or juvenile traffic offender if the court finds that there is probable cause to believe that:

(A) the child has committed a juvenile petty offense as defined by Minnesota Statutes, section 260B.007, subdivision 16, or a juvenile traffic offense as defined by Minnesota Statutes, section 260B.225; 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.

Subd. 4. Contents of Warrant for Immediate Custody. A warrant for immediate custody shall be signed by a judge and shall:

(A) order the child to be brought immediately before the court or the child to be taken to a detention facility in accordance with Rule 5.02, subdivisions 3 and 4, to be detained pending a detention hearing or the child to be transferred to an individual or agency, including but not limited to any welfare agency or hospital as the welfare of the child might require;

(B) state the name and address of the child, or if unknown, designate the child by any name or description by which the child can be identified with reasonable certainty;

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

(D) state the reasons why the child is being taken into custody;

(E) where applicable, state the reasons for a limitation on the time or location of the execution of the warrant; and

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

Subd. 5. Who May Execute. The warrant for immediate custody may only be executed by a peace officer authorized by law to execute a warrant.

Subd. 6. How Executed. The warrant for immediate custody shall be executed by taking the child into custody.

Subd. 7. Where Executed. The warrant for immediate custody may be executed at any place in the state except where prohibited by law, unless the judge who issues the warrant limits in writing on the warrant the location where the warrant may be executed.

Subd. 8. When Executed. A warrant may be executed at any time unless the judge who issues the warrant limits in writing on the warrant the time during which the warrant may be executed. If the offense is a misdemeanor, petty offense or juvenile traffic offense, the child may not be taken into custody on Sunday or between the hours of 10:00 p.m. and 8:00 a.m. on any other day except by direction of the judge.

Subd. 9. Possession of Warrant. A warrant for immediate custody need not be in the peace officer's possession at the time the child is taken into custody.

Subd. 10. Advisory. When a warrant is executed, the child and the child's parent(s), legal guardian or legal custodian, if present, shall immediately be informed of the existence of the warrant for immediate custody and as soon as possible of the reasons why the child is being taken into custody.

(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 January 1, 2008.)

Comment--Rule 4

If the child fails to appear in response to a summons without reasonable cause, then the court may issue a warrant to take the child into immediate custody pursuant to Minn. R. Juv. Del. P. 4.03 subd 2. See Minnesota Statutes 2002, section 260B.154. Probable cause is required for every warrant issued. Before the court may issue a warrant, it shall make a finding of probable cause based on the contents of the charging document, any supporting affidavits or sworn supplemental testimony to believe that the child committed an act governed by Minnesota Statutes, section 260B.007, subdivision 6 or 16, or Minnesota Statutes, section 260B.225. In addition, the court must also find either that the summons was personally served on the child and the child failed to appear; that service will be ineffectual, or, for a delinquent child or child alleged to be delinquent, that there is a substantial likelihood that the child will not respond to a summons, or that the child or others are in danger of imminent harm. Minnesota Statutes 2002, section 260B.154.

Minn. R. Juv. Del. P. 4.03 subd 4 prescribes the contents of the warrant. When a child is taken into custody, a detention hearing shall commence pursuant to Minn. R. Juv. Del. P. 5.07 within thirty-six (36) hours, excluding Saturdays, Sundays, and holidays, or within twenty-four hours, excluding Saturdays, Sundays, and holidays, if the child is detained in an adult jail or municipal lockup.

Under Minn. R. Juv. Del. P. 4.03 subd 5, a warrant may be executed only by a peace officer. Limitations on the manner of execution are the same as those set out in Minn. R. Crim. P. 3.03 subd 3 for adults where the offense charged is a misdemeanor or non-criminal offense. The minor nature of misdemeanors, juvenile petty and juvenile traffic offenses should not ordinarily justify taking a child into immediate custody during the prescribed period of time.

Rule 5. Detention

5.01 Scope and General Principles

Rule 5 governs all physical liberty restrictions placed upon a child before trial, disposition, or pending a probation violation hearing. For purposes of this Rule, the day of the act or event from which the designated period of time begins to run shall be included.

(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.)

5.02 Definitions

Subdivision 1. Detention. Detention includes all liberty restrictions that substantially affect a child's physical freedom or living arrangements before trial, disposition or pending a probation violation hearing. A child's physical liberty is restricted when:

- (A) the child is taken into custody;
- (B) the court orders detention of the child;
- (C) the court orders out-of-home placement; or
- (D) the court orders electronic home monitoring or house arrest with substantial liberty restrictions.

Subd. 2. Detaining Authority. The detaining officer, the detaining officer's supervisor, the person in charge of the detention facility, the prosecuting attorney or the court is a detaining authority for the purposes of this rule.

Subd. 3. Place of Detention for Juvenile Delinquent Offenders. A place of detention for a juvenile delinquent offender can be any one of the following places:

- (A) the child's home subject to electronic home monitoring or house arrest with substantial liberty restrictions;
- (B) a foster care or shelter care facility;
- (C) a secure detention facility;
- (D) a detoxification, chemical dependency, or psychiatric facility;
- (E) an adult jail; or
- (F) any other place of detention.

Subd. 4. Place of Detention for Juvenile Petty or Traffic Offenders. A place of detention for a juvenile petty or traffic offender can be any one of the following places:

- (A) a child's relative;
- (B) a designated caregiver under Minnesota Statutes, chapter 257A; or
- (C) a shelter care facility.

(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 January 1, 2008.)

5.03 Detention Decision

Subdivision 1. Presumption for Unconditional Release. The child shall be released unless:

- (A) the child would endanger self or others;
- (B) the child would not appear for a court hearing;
- (C) the child would not remain in the care or control of the person into whose lawful custody the child is released; or
- (D) the child's health or welfare would be immediately endangered.

There is a presumption that a child will not appear for a court hearing when the person to whom the child is to be released refuses to sign a written promise to bring the child to court.

Subd. 2. Detention Factors. The following nonexclusive factors may justify a decision to detain a child:

- (A) the child is charged with the misdemeanor, gross misdemeanor or felony offense of arson, assault, prostitution or a criminal sexual offense;
- (B) the child was taken into custody for an offense which would be a presumptive commitment to prison offense if committed by an adult, or a felony involving the use of a firearm;
- (C) the child was taken into custody for additional felony charges while other delinquency charges are pending;
- (D) the child was taken into custody for a felony and, as a result of prior delinquency adjudication(s), has received an out-of-home placement;
- (E) the child was an escapee from an institution or other placement facility to which the court ordered the child;
- (F) the child has a demonstrable recent record of willful failure to appear at juvenile proceedings;
- (G) the child is a fugitive from another jurisdiction; or
- (H) the above factors are not met but the detaining authority documents in writing, objective and articulable reasons why the child's welfare or public safety would be immediately endangered if the child were released.

Subd. 3. Discretion to Release Even if One or More Factors are Met. Even if a child meets one or more of the factors in Rule 5.03, subdivisions 1 and 2, the detaining authority has broad discretion to release that child before the detention hearing if other less restrictive measures would be adequate.

Subd. 4. Factors Which Cannot Support Detention Decision. In deciding whether detention is justified, the detaining authority shall not consider the child or the child's family's race, color, gender, sexual orientation, religion, national origin, economic or public assistance status, family structure or residential mobility.

(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.)

5.04 Release or Continued Detention**Subdivision 1. For Child Taken Into Custody Pursuant to Court Order or Warrant.**

(A) *Detention Required.* Unless the court orders an earlier release, the child may be detained for thirty-six (36) hours after being taken into custody, excluding Saturdays, Sundays and holidays.

(B) *When Release is Mandatory.* Unless the time for the detention hearing is extended by twenty-four (24) hours pursuant to Rule 5.07, subdivision 7, the child shall be released no later than thirty-six (36) hours after being taken into custody, excluding Saturdays, Sundays and holidays, unless the court orders continued detention following a detention hearing commenced within that time period.

Subd. 2. For Child Taken Into Custody Without a Court Order or Warrant.

(A) *Exception Permitting Detention.* The officer taking a child into custody without a court order or warrant shall release the child unless the officer reasonably believes, after consideration of the factors set out in Rule 5.03, that:

- (1) the child would endanger self or others;
- (2) the child would not appear for a court hearing;
- (3) the child would not remain in the care or control of the person into whose lawful custody the child is released; or
- (4) the child's health or welfare would be immediately endangered.

There is a presumption that a child will not appear for a court hearing when the person to whom the child is to be released refuses to sign a written promise to bring the child to court.

(B) *Discretionary Release Any Time Before Detention Hearing.* The detaining authority has discretion to release a child any time before the detention hearing if other less restrictive measures would be adequate.

(C) *When Release is Mandatory.* Unless the time for the detention hearing is extended by twenty-four (24) hours pursuant to Rule 5.07, subdivision 7, the child shall be released no later than thirty-six (36) hours after being taken into custody, excluding Saturdays, Sundays and holidays, unless the court orders continued detention following a detention hearing commenced within that time period.

Subd. 3. Child Taken Into Custody and Placed in an Adult Jail or Municipal Lockup.

(A) *Generally.* The child shall be released no later than twenty-four (24) hours after being taken into custody, excluding Saturdays, Sundays and legal holidays, unless within that time period, a charging document has been filed with the court and the court has determined at a detention hearing that the child shall remain detained. If the court's decision at the detention hearing is that the child shall remain detained, the child shall be detained at a juvenile facility in accordance with Rule 5.02, subdivision 3. The court may extend the time for a detention hearing for good cause pursuant to Rule 5.07, subdivision 7 only if a charging document has been filed with the court within twenty-four (24) hours of the child being taken into custody, excluding Saturdays, Sundays and legal holidays.

(B) *Adult Jail or Municipal Lockup in a Standard Metropolitan Statistical Area.* If the jail or municipal lockup is in a standard metropolitan statistical area, the child shall be held no longer than six (6) hours after the child was taken into custody including Saturdays, Sundays and holidays unless a charging document has been filed with the court within that time period and the court has determined after a detention hearing that the child shall remain detained. If the court's decision at the detention hearing is that the child shall remain detained, the child shall be detained at a juvenile facility in accordance with Rule 5.02, subdivision 3. The time for a detention hearing shall not be extended.

Subd. 4. Probable Cause Determination.

(A) *Time Limit.* The child shall be released no later than forty-eight (48) hours after being taken into custody without a court order or warrant signed by a judge, including the day the child was detained, Saturdays, Sundays and legal holidays, unless the court determines there is probable cause to believe the child committed the offense(s) alleged.

(B) *Application and Record.* The facts establishing probable cause to believe the offense(s) was committed and that the child committed the offense(s) shall be presented to the judge upon oath, either orally or in writing. Oral testimony shall be recorded and retained by the judge. Written facts may be presented to the judge by telephone, facsimile, video, or other similar device. If probable cause is determined on written facts and the judge is not personally present to sign the determination, the document shall be presented to the judge for signature within two (2) business days. The judge shall be advised if a prior request for a probable cause determination was made and turned down relative to the same incident.

(C) *Approval of Prosecuting Attorney.* No request for a probable cause determination may proceed without approval by the prosecuting attorney. The person requesting the probable cause determination shall, under oath, state that the prosecutor approves the request. If the prosecutor is unavailable, the court may make the probable cause determination if the matter should not be delayed.

(D) *Determination.* After the information is presented, the court shall determine whether there is probable cause to believe an offense(s) was committed and that the child committed the offense(s). If probable cause is found, the court may order continued detention pursuant to Rule 5, and release the child with conditions or with no conditions. A written determination of probable cause shall be filed with the court and a copy provided to the child and child's counsel.

Subd. 5. Release of Any Child at Any Time by the Court and Conditions of Release. Only the court may impose conditions of release. The court at any time may release a child and may impose one or more of the following conditions:

- (A) require the parent(s), legal guardian, legal custodian or child to post bail;
- (B) place restrictions on the child's travel, associations or place of abode during the period of the child's release; or
- (C) electronic home monitoring or any other conditions deemed reasonably necessary and consistent with factors for detaining the child.

Unless the time for the detention hearing is extended by twenty-four (24) hours pursuant to Rule 5.07, subdivision 7, all conditions of release which restrict the physical liberty of a child terminate after thirty-six (36) hours excluding Saturdays, Sundays and legal holidays unless a detention hearing has commenced and the court has ordered continued detention.

Subd. 6. Release to Custody of Parent or Other Responsible Adult. A child released from a place of detention shall be released to the custody of the child's parent(s), legal guardian, or legal custodian if deemed appropriate by the detaining authority. If these individuals are unavailable or deemed inappropriate, the detaining authority may release the child to a member of the extended family or kinship network or other suitable adult deemed appropriate by the detaining authority and acceptable to the child.

(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 January 1, 2008.)

5.05 Detention Reports

Subdivision 1. Report by Detaining Authority. When a child has been detained, the detaining officer or his agent shall file a signed report with the court and deliver a copy to the supervisor of the facility containing the following information:

(A) the time the child was taken into custody and the reasons why the child was taken into custody;

(B) the time the child was delivered to the place of detention and the reasons why the child is being held there;

(C) a statement that the child and the child's parent(s), legal guardian or legal custodian have received the notification required by Minnesota Statutes, section 260B.176, subdivisions 3 and 5, including the advisory that every child at a detention hearing has a right to counsel at public expense pursuant to Rule 3.02, subdivision 6, and the time such notification was given to each or the efforts made to notify them.

Subd. 2. Report by Supervisor of the Secure Detention Facility or Shelter Care Facility. When a child has been delivered to a secure detention facility or shelter care facility, the supervisor of the facility shall file with the court a signed report acknowledging receipt of the child and containing a statement that the child and the child's parent(s), legal guardian or legal custodian have received the notification required by Minnesota Statutes, section 260B.176, subdivisions 3 and 5, and the time such notification was given to each or the efforts made to notify them.

Subd. 3. Timing of Reports. The reports shall be filed with the court on or before the court day following detention of the child or by the time of the detention hearing, whichever is earlier.

Subd. 4. Notice to Child's Counsel; Child's Counsel Access to Child and Reports. If a child is detained pending a detention hearing in a place of detention other than home detention or at home on electronic home monitoring, the court administrator shall give the Office of the Public Defender or the child's attorney, if privately retained, notice that the child is in custody, notice of the detention hearing and provide copies of the reports filed with the court by the detaining officer and the supervisor of the place of detention. Child's counsel shall have immediate and continuing access to the child.

(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.)

5.06 Identification Procedures

Subdivision 1. Photographing.

(A) *Generally.* A detained child may be photographed when the child is taken into custody in accordance with the laws relating to arrests. All children in custody alleged to have committed a felony or gross misdemeanor shall be photographed without a court order.

(B) *Report.* A report stating the name of the child photographed and the date the photograph was taken shall be filed with the court.

Subd. 2. Fingerprinting.

(A) *Generally.* All children in custody alleged to have committed a felony or gross misdemeanor shall be fingerprinted without court order. Otherwise, a court order is required pursuant to Rule 10.

(B) *Report.* A report stating the name of the child fingerprinted and the date of the fingerprinting shall be filed with the court.

Subd. 3. Line-Up.

(A) *Generally.* A detained child may be placed in a line-up. A child may choose not to participate in a line-up which is not related to the matter for which the child is detained unless ordered by the court to appear in a line-up pursuant to Rule 10.05, subdivision 2(A).

(B) *Right to Counsel During Line-Up for Child Alleged to be Delinquent.* A child has the right to have counsel present when placed in a line-up related to a delinquent act for which the child has been taken into custody unless exigent circumstances exist such that providing counsel would unduly interfere with a prompt investigation of the crime. When a delinquency petition has been filed, counsel for the child shall be present for any line-up. Any identification evidence obtained without the presence of counsel shall be inadmissible, unless the line-up occurred before the filing of the petition and exigent circumstances existed preventing the presence of counsel.

(C) *Report.* A report stating the name of the children who participated in the line-up and the date of the line-up shall be filed with the 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.)

5.07 Detention Hearing

Subdivision 1. Time and Filing. For a child detained in a secure juvenile detention facility or shelter care facility, the court shall commence a detention hearing within thirty-six (36) hours of the time the child was taken into custody, excluding Saturdays, Sundays, and holidays, unless a charging document has been filed and the judge or referee determines pursuant to Minnesota Statutes, section 260B.178, that the child shall remain in detention. For a child detained in an adult jail or municipal lockup, the court shall commence a detention hearing within twenty-four (24) hours of the time the child was taken into custody, excluding Saturdays, Sundays, and holidays, or within six (6) hours of the time the child was taken into custody if the child is detained in an adult jail or municipal lockup in a standard metropolitan statistical area, including Saturdays, Sundays, and holidays, unless a charging document has been filed and the judge or referee determines pursuant to Minnesota Statutes, section 260B.178, that the child shall remain in detention.

The following documents shall be filed with the court before the detention hearing:

(A) a report or reports that the child is being held in detention filed pursuant to Rule 5.05; and

(B) a charging document with probable cause.

Subd. 2. Notice.

(A) *Child, Child's Counsel, Prosecuting Attorney, Child's Parent(s), Legal Guardian or Legal Custodian and Spouse of the Child.* The court shall inform the child, the child's counsel, the prosecuting attorney, the child's parent(s), legal guardian or legal custodian and spouse of the child of the time and place of the detention hearing pursuant to Rule 25. Failure to inform the parent(s), legal guardian or legal custodian or spouse of the child or their absence at the hearing shall not prevent the hearing from being conducted or invalidate an order of detention.

(B) *Victim.* If a detained child is charged with a crime of violence against a person or attempting a crime of violence against a person, the court administrator shall make reasonable and good faith efforts to notify the victim of the alleged crime of:

- (1) the time and place of the detention hearing;
- (2) the name and telephone number of a person that can be contacted for additional information; and
- (3) the right of the victim and victim's family to attend the detention hearing.

If the victim is incapacitated or deceased, notice must be given to the victim's family. If the victim is a minor, notice must be given to the victim's parent, legal guardian or legal custodian.

Subd. 3. Advice of Rights. At the beginning of the detention hearing, the court shall advise all persons present of:

- (A) the reasons why the child was taken into custody;
- (B) the allegations of the charging document;
- (C) the purpose and scope of the detention hearing;
- (D) the right of the child to be represented by counsel at the detention hearing and at every other stage of the proceedings, and the right of a child alleged to be delinquent to counsel at public expense; and
- (E) the right of the child to remain silent.

Subd. 4. Evidence. The court may admit any evidence including reliable hearsay and opinion evidence that is relevant to the decision whether to detain the child. The court may not admit evidence of privileged communications.

Subd. 5. Findings Necessary for Continued Detention. A court may detain a child beyond the time set in subdivision 1 of this rule if, after a hearing, the court finds:

(A) probable cause to believe the child committed the offense(s) alleged pursuant to Rule 5.04, subdivision 4; and

(B) there is reason to believe that if the child were released, after consideration of the factors set forth in Rule 5.03, that:

- (1) the child would endanger self or others;
- (2) the child would not appear for a court hearing;
- (3) the child would not remain in the care or control of the person into whose lawful custody the child is released; or
- (4) the child's health or welfare would be immediately endangered.

There is a presumption that a child will not appear for a court hearing when the person to whom the child is to be released refuses to sign a written promise to bring the child to court.

Subd. 6. Order.

(A) *Release.* The child shall be released if the findings required by Rule 5.07, subdivision 5, are not made.

(B) *Detention.* If the findings required by Rule 5.07, subdivision 5, are made, the court may order continued detention or release with the posting of bail or bond and other conditions deemed appropriate by the court. An order stated on the record shall also be reduced to writing by the court within five (5) days of entry of the order.

(C) *Notice of Next Hearing.* On the record, the court shall advise all persons present of the date, time, and place of the next hearing. If persons entitled to participate at the next hearing are not present, the court shall provide those persons with notification of the next hearing by written notice of hearing. If the child is released, the child may be required to sign a promise to appear.

Subd. 7. Extension of Time for Detention Hearing. For good cause shown, the court may extend the time for a detention hearing by twenty-four (24) hours on written application of the prosecuting attorney, if the application for extension is filed with the court within the time prescribed by this rule. The court may extend the time for one additional twenty-four (24) hour period upon a second written application being filed within the extended time previously ordered by the 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 delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008.)

5.08 Detention Review

Subdivision 1. Informal Review. An informal review of detention shall be made by the court every eight (8) days, excluding Saturdays, Sundays and holidays, of the child's detention. If the circumstances justifying detention have not changed, detention may be continued. If the circumstances justifying detention have changed, detention may be modified with consent of the child, child's counsel, and the prosecuting attorney. An order stated on the record shall also be reduced to writing by the court within five (5) days of entry of the order.

Subd. 2. Formal Review. The court may schedule a formal review of detention at any time.

(A) *Request by Child, Child's Counsel or Prosecuting Attorney.* If the court finds a substantial basis exists for the request to schedule a hearing to review detention, a hearing shall be scheduled as soon as possible, and at least within eight (8) days of the request.

(B) *Notice.* The person requesting a formal review shall make the request by motion as provided in Rule 27.

(C) *Relevant Evidence.* Subject to constitutional limitations and privileged communications, the court may admit any evidence, including reliable hearsay and opinion evidence that is relevant to the decision regarding continued detention of the child.

(D) *Continued Detention.* The court may continue the child in detention if the court makes findings pursuant to Rule 5.07, subdivision 5. An order stated on the record shall also be reduced to writing by the court within five (5) days of entry of the order.

(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 January 1, 2008.)

Comment--Rule 5

There is a presumption in favor of releasing an accused child unconditionally. If the child cannot be released unconditionally, the least restrictive liberty restriction is favored. The American Bar Association's Juvenile Justice Standards Relating to Interim Status: The Release Control, and Detention of Accused Juvenile Offenders Between Arrest and Disposition (1980) describes the general principles governing liberty restrictions. These general principles and policy considerations do not determine the outcomes of specific cases. Rather, they provide the process framework within which law enforcement and intake personnel, prosecuting attorneys and judges decide individual cases. When these decision makers decide whether or not to place a child in detention or to impose other physical liberty restrictions, the following policy considerations apply: to the greatest extent possible, any interim liberty restrictions should respect the autonomy interests of the accused child and family, ensure equality of treatment by race, class, ethnicity, and sex, ensure the child promptly receives access and continuing access to legal assistance, protect the child's access to education to the extent reasonably possible, and ensure public safety.

The primary concern of this rule is a child's physical liberty and living arrangements pending trial and disposition. For purposes of this rule, other nonphysical limitations on a child's autonomy, such as a court order to avoid contact with victims or witnesses, to attend school, to remain under the control of parents or custodians, or the like, do not constitute liberty restrictions that invoke either the procedures of this rule or the expedited timing of procedures for youths physically detained or restricted.

Minnesota Statutes 2002, section 260B.154, authorizes the court to issue a warrant for immediate custody for a child who fails to appear in court in response to a summons. Minnesota Statutes 2002, section 260B.175, authorizes a child to be taken into custody: 1) when the child has failed to obey a summons or subpoena; 2) pursuant to the laws of arrest; or 3) by a peace officer or probation or parole officer when it is reasonably believed that the

child has violated the terms of probation, parole, or other field supervision. Minn. R. Juv. Del. P. 5.07 defines the circumstances under which a child is subject to continuing physical restraints. Minnesota Statutes 2002, section 260B.176, authorizes a detention hearing and provides the statutory framework that governs this rule.

Minn. R. Juv. Del. P. 5.02 subd 3 defines the places in which a child's liberty is restricted. A child's liberty is restricted when the child is placed at home, but his or her physical mobility is limited by electronic home monitoring, or house arrest with substantial liberty restrictions. In addition, the provisions of this rule apply whenever, prior to disposition, the child is placed outside of the home, whether or not the placement is in a secure facility. Thus, a child's liberty is restricted when placed in a foster care (Minnesota Statutes 2002, section 260B.007, subdivision 7) or shelter care facility (Minnesota Statutes 2002, section 260B.007, subdivision 15), in a detoxification or mental health treatment facility, in a secure detention facility (Minnesota Statutes 2002, section 260B.007, subdivision 14), in an adult jail or lock-up, or other place of detention. A child who is returned to an out-of-home placement which was made voluntarily or pursuant to a CHIPS proceeding is not "detained" for the purposes of this rule.

Minn. R. Juv. Del. P. 5.03 subd 1 establishes a general presumption in favor of unconditional release for all children taken into custody. Minn. R. Juv. Del. P. 5.03 subd 2 provides some nonexclusive evidentiary guidelines by which detaining authorities can decide whether a child meets the criteria for detention. Under Minn. R. Juv. Del. P. 5.03 subd 2, the detaining authority may detain a child if it believes or the court finds that the child poses a danger to other people because the child is charged with a presumptive commitment to prison offense. The presumptive commitment to prison offenses are enumerated under Section V, Offense Severity Reference Table of the Minnesota Sentencing Guidelines. In addition, an inference the child poses a danger to others applies when the child uses a firearm in the commission of a felony pursuant to Minnesota Statutes 2002, section 260B.125, subdivisions 3 and 4. However, detaining authorities should exercise individualized discretion. Moreover, detaining authorities ought not detain children who meet the evidentiary criteria if other, less restrictive alternatives would assure the child's subsequent court appearance, welfare, and public safety. The nonexclusive evidentiary criteria emphasize objective indicators that the child poses a danger to self or others, or would fail to return for court appearances. The list of criteria set out in Minn. R. Juv. Del. P. 5.03 subd 2 are examples of factors which may justify pretrial detention. If a detained child does not meet any of the enumerated criteria, the detaining authority may justify detention only if a written report is filed stating objective and articulable reasons for detention. Minn. R. Juv. Del. P. 5.03 subd 2.

Minn. R. Juv. Del. P. 5.03 governs the initial custody decisions affecting a juvenile by the police, detention and court intake personnel, and the prosecuting attorney. Minn. R. Juv. Del. P. 5.04 subd 1 governs the liberty restrictions on a child taken into custody pursuant to a court order or warrant. Minn. R. Juv. Del. P. 5.04 subd 2 governs the liberty restrictions of a child taken into custody by a peace officer or other person, and then brought to a detention facility or other place of custody.

Minn. R. Juv. Del. P. 5.04 subd 3 is based upon Minnesota Statutes 2002, section 260B.176, subdivision 2. The statute provides for an extension of the time for a detention hearing for a child detained in an adult detention facility outside of a standard metropolitan statistical area county only under two circumstances: 1) where the adult facility in which the child is detained is located where conditions of distance to be traveled or other ground transportation do not allow for court appearances within 24 hours (with the delay not to exceed 48 hours); and 2) where "conditions of safety exist" including adverse life-threatening weather conditions which do not allow for reasonably safe travel. The time for appearance may be delayed until 24 hours after the time that conditions allow for reasonably safe travel. Minnesota Statutes 2002, section 260B.176, subdivision 2. See also 42 U.S.C.A. section 5633(a)(13) and (14) (1995). Even though the statute permits an extension of the time for a detention hearing in such circumstances, the extension may be granted only if

the prosecuting attorney has filed a charging document within twenty-four (24) hours of the child being taken into custody, excluding Saturdays, Sundays and legal holidays. Minn. R. Juv. Del. P. 5.04 subd 3(A). If the court determines after the detention hearing that the child should remain detained, the child shall be detained in a juvenile facility in accordance with Minn. R. Juv. Del. P. 5.02 subd 3. *Id.* See also 42 U.S.C.A. section 5633(a)(14) (1995). The placement options in Minn. R. Juv. Del. P. 5.02 subd 4 are not referenced in Minn. R. Juv. Del. P. 5.04 subd 3(A) and (B) because the placement limitations in Minnesota Statutes, section 260B.181, subdivisions 2 and 3, preclude the initial detention of juvenile petty offenders in an adult jail or municipal lockup.

Minn. R. Juv. Del. P. 5.04 subd 4 is based upon Minn. R. Crim. P. 4.03. Under Minn. R. Juv. Del. P. 5.04 subd 4, if a child arrested without a warrant is not released by law enforcement, court intake, the court, or the prosecuting attorney, then a judge or judicial officer must make a probable cause determination without unnecessary delay and in any event within forty-eight (48) hours from the time of the arrest including the day of arrest, Saturdays, Sundays, and legal holidays. If the Court determines that probable cause does not exist or if there is no determination as to probable cause within the time as provided by this rule, the person shall be released immediately. *County of Riverside v. McLaughlin*, 500 U.S. 44, 111 S.Ct. 1661, 114 L.Ed.2d 49 (1991), requires a prompt judicial determination of probable cause following a warrantless arrest. That determination must occur without unreasonable delay and in no event later than forty-eight (48) hours after the arrest. There are no exclusions in computing the forty-eight-hour time limit. Even a probable cause determination within forty-eight (48) hours will be too late if there has been unreasonable delay in obtaining the determination. "Examples of unreasonable delays are delays for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill will against the arrested individual or delay for delay's sake." *County of Riverside v. McLaughlin*, 500 U.S. 44, 64, 111 S.Ct. 1661, 1670, 114 L.Ed.2d 49 (1991). The requirements of Minn. R. Juv. Del. P. 5.04 subd 4 are in addition to the requirement that a child arrested without a warrant must receive a detention hearing within thirty-six (36) hours after the arrest, exclusive of Saturdays, Sundays, and legal holidays. Because of the exclusion permitted in computing time under the "36-hour rule," compliance with that rule will not necessarily assure compliance with the "48-hour rule." The "48-hour rule" also applies to all misdemeanor cases.

Minn. R. Juv. Del. P. 5.05 subd 4 requires the court administrator to notify the office of the Public Defender that a child is in custody and the time of the detention hearing and to provide facsimile copies of all reports transmitted to the court. If a specific attorney has been assigned to represent the child, that attorney should receive notice. In jurisdictions where public defenders rotate, notice to the chief public defender would be sufficient. Minnesota data privacy laws do not restrict notification of counsel of a child's detention prior to the first appearance in court and appointment of counsel. The rules of professional responsibility and attorney client privilege adequately protect the privacy of the child.

Minn. R. Juv. Del. P. 5.06 subd 1 implements the provision of Minnesota Statutes 2002, section 299C.10, which requires peace officers to take the fingerprints and photograph of a child taken into custody according to the laws of arrest, pursuant to Minnesota Statutes 2002, section 260B.175, subdivision 1, paragraph (b). Any photograph taken of a child must be destroyed when the child reaches the age of 19 years. Minnesota Statutes 2002, section 260B.171, subdivision 5, paragraph (c). Minn. R. Juv. Del. P. 5.06 subd 2 implements the provisions of Minnesota Statutes 2002, section 299C.10, which requires law enforcement personnel to take the fingerprints of all juveniles arrested or charged with felony- or gross misdemeanor-level offenses.

Minn. R. Juv. Del. P. 5.06 subd 3 implements the policies of *U.S. v. Wade*, 388 U.S. 218 (1967) to provide the assistance of counsel to minimize the dangers of erroneous misidentification. See Feld, "Criminalizing Juvenile Justice: Rules of Procedure for the Juvenile Court," 62 Minn. L. Rev. 141, 209-16 (1984). Unlike the formalistic limitations imposed by *Kirby v. Illinois*, 406 U.S. 682 (1972), the rule recognizes that the dangers of unreliability, suggestibility, and error are inherent in all identification procedures. The rule attempts to

balance the protection of a child from prejudicial misidentification with the State's interest in prompt investigation. A child who is in custody is entitled to have counsel present at a line up, even prior to the filing of a delinquency petition, unless exigent circumstances exist and delay to provide counsel would unduly interfere with an expeditious investigation. Blue v. State, 558 P.2d 636 (Alaska 1977); People v. Jackson, 391 Mich. 323, 217 N.W.2d 22 (Mich. 1974); Commonwealth v. Richman, 238 Pa. Super. 413, 357 A.2d 585 (1976). Once an investigation proceeds beyond an immediate on-the-scene show-up, and especially once the child is in custody, there are no compelling law enforcement exigencies that offset the dangers of prejudice to the child. Since youth in custody already have a Miranda right to counsel, 384 U.S. 436 (1966), the delay involved in securing counsel will be a matter of hours at most and if conditions require immediate identification without even minimal delay or if counsel cannot be present within reasonable time, such existent circumstances will justify proceeding without counsel. People v. Bustamante, 30 Cal. 3d 88, 634 P.2d 927 (Cal. 1981).

Minn. R. Juv. Del. P. 5.07 implements Minnesota Statutes 2002, section 629.725, by providing that, in addition to giving notice to the child, child's counsel, prosecuting attorney, child's parent(s), legal guardian or legal custodian and spouse of the child, the court administrator must make a reasonable and good faith effort to give notice of the time and place of the detention hearing to the victim if the child is charged with a crime of violence against a person or attempting a crime of violence against a person. If the victim is deceased or incapacitated, the victim's family must receive notice. If the victim is a minor, the victim's parent or guardian must receive notice. Minnesota Statutes 2002, section 629.725. "Crime of violence" has the meaning given it in Minnesota Statutes 2002, section 624.712, subdivision 5, and also includes Minnesota Statutes 2002, section 609.21, gross misdemeanor violations of Minnesota Statutes 2002, section 609.224, and nonfelony violations of Minnesota Statutes 2002, sections 518B.01, 609.2231, 609.3451, 609.748, and 609.749. Id.

Rule 6. Charging Document

6.01 Generally

A charging document is a petition, tab charge or a citation.

6.02 Tab Charge or Citation

Subdivision 1. Generally. Juvenile petty offenses as defined by Minnesota Statutes, section 260B.007, subdivision 16, misdemeanors, juvenile traffic offenses and gross misdemeanors under Minnesota Statutes, chapter 169A, may be charged by tab charge or citation. Before entering a plea of guilty or not guilty to alleged misdemeanor or gross misdemeanor charge(s), the child may demand that a petition be filed with the court. If a petition is demanded, the prosecuting attorney shall have thirty (30) days to file the petition unless the child is in custody. The prosecuting attorney shall have ten (10) days to file a petition if a demand is made by a child in custody or the child shall be released.

Subd. 2. Filing. Before a tab charge or citation may be filed with the court by the peace officer or attendance officer who issued the charges, it shall be endorsed by the prosecuting attorney to permit screening for diversion programs. Filing a tab charge or citation gives the juvenile court jurisdiction over the matter.

Subd. 3. Contents of Tab Charge or Citation. Tab charges or citations shall contain:

- (A) the name, address, date of birth, and race of the child;
- (B) the name and address of the parent, legal guardian or legal custodian of the child;
- (C) the offense charged and a reference to the statute or local ordinance which is the basis for the charge;
- (D) the time and place and county of the alleged offense.

Subd. 4. Notice of Court Appearance. When a tab charge or citation is filed with the court, the court administrator shall promptly schedule the matter for hearing and send notices as provided by Rule 25.

(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.)

6.03 Petition

Subdivision 1. Generally. A child alleged to be delinquent because of a felony or gross misdemeanor offense (except gross misdemeanors under Minnesota Statutes, chapter 169A, which may be charged by tab charge or citation) shall be charged by petition. A child alleged to be delinquent because of a misdemeanor offense may be charged by petition. A child charged with a juvenile petty offense or a juvenile traffic offense may be charged by petition.

Subd. 2. Filing. Each petition shall be signed by the prosecuting attorney before it is filed with the court. The signature of the prosecuting attorney shall be an acknowledgment that the form of the petition is approved and that reasonable grounds exist to support the petition. A delinquency petition may be filed without the prosecutor's signature if the prosecutor is unavailable and a judge determines that filing and the issuance of process should not be delayed.

Subd. 3. Contents of the Delinquency Petition. Every petition alleging a child is delinquent shall contain:

- (A) a concise statement alleging the child is delinquent;
- (B) a description of the alleged offense and reference to the statute or ordinance which was violated;
- (C) the applicable Minnesota Offense Code (MOC);
- (D) the name, date of birth, address, and race of the child;
- (E) the names and addresses of the child's parent(s), legal guardian, legal custodian, or nearest known relative;
- (F) the name and address of the child's spouse; and
- (G) other administrative information authorized by the Supreme Court Juvenile Delinquency Rules Committee and published by the State Court Administrator.

Subd. 4. Separate Counts. A petition may allege separate counts, whether the alleged delinquent acts arise out of the same or separate behavioral incidents.

Subd. 5. Contents of Petition Alleging Juvenile Petty Offender or Juvenile Traffic Offender. Every petition alleging a child is a juvenile petty offender or alleging a child is a juvenile traffic offender shall contain:

- (A) a concise statement alleging that the child is a juvenile petty offender or a juvenile traffic offender;
- (B) the name, address, date of birth, and for juvenile traffic offenders, the driver's license number of the child, if known;
- (C) the name and address of the parent(s), legal guardian, or legal custodian of the child;
- (D) a description of the offense charged and reference to the statute or ordinance which is the basis for the charge;
- (E) the applicable Minnesota Offense Code (MOC);
- (F) the date, county, and place of the alleged offense; and

(G) other administrative information authorized by the Supreme Court Juvenile Delinquency Rules Committee and published by the State Court Administrator.

(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 January 1, 2008.)

6.04 Amendment

Subdivision 1. Permissive. A charging document may be amended by order of the court at any time:

(A) before the introduction of evidence at the trial by motion of the prosecuting attorney; or

(B) after the commencement of the trial with consent of the child and prosecuting attorney; or

(C) after trial but before a finding that the allegations of the charging document have been proved, upon motion of the prosecuting attorney, if no additional or different offense is alleged and if substantial rights of the child are not prejudiced.

Amendments shall be granted liberally in the interest of justice and the welfare of the child. If the court orders a charging document amended, additional time may be granted to the child or prosecuting attorney to adequately prepare for and ensure a full and fair hearing.

Subd. 2. Prohibited.

(A) A charging document alleging a child is delinquent shall not be amended to allege a child is in need of protection or services.

(B) A charging document alleging a juvenile petty or traffic offense shall not be amended to allege the child is delinquent.

(C) A petition alleging that a child is in need of protection or services shall not be amended to allege a delinquency, petty offense or juvenile traffic offense.

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

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 Minn. R. Crim. P. 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.)

6.06 Procedure on Filing a Charging Document With the Court

Subdivision 1. Dismissal. The court shall dismiss a charging document if it does not allege an act of delinquency as defined by Minnesota Statutes, section 260B.007, subdivision 6, a juvenile petty offense as defined by Minnesota Statutes, section 260B.007, subdivision 16, or a juvenile traffic offense as defined by Minnesota Statutes, section 260B.225.

Subd. 2. Arraignment. When a charging document is filed, the court administrator shall promptly schedule an arraignment on the charging document and send notices pursuant to Rule 25.

(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, 2005.)

Comment--Rule 6

Previously, this rule only related to petitions in juvenile court. Due in large part to the high volume of gross misdemeanor alcohol related driving offenses, the law was amended to permit tab charges for these offenses to get cases to court more promptly.

A citation is defined as a writ issued out of a court of competent jurisdiction or an order issued by police commanding the person named to appear on a designated day and respond to a particular violation. It is most commonly used for minor offenses such as traffic violations. Some "tickets" issued by police are called "citation," some are called "complaint," and some are called "tab charge." The terms have become interchanged in everyday use.

In its revision of juvenile statutes, the legislature also expanded the list of offenses that may be charged by tab charge rather than petition in juvenile court. See Minnesota Statutes 2002, section 260B.007, subdivision 16. A tab charge is a brief statement entered upon the records by the clerk of the offense charged and citation to the statute, rule, regulation, ordinance or other provision of the law a child is alleged to have violated. The tab charge serves as a substitute for a petition. Tab charges may be used for any misdemeanor and for gross misdemeanors under Minnesota Statutes, chapter 169A. Adults have the right to demand a formal complaint in place of a tab charge. If a demand for a formal complaint is made by an adult charged with a gross misdemeanor alcohol offense, the prosecutor must file the complaint within 48 hours if the defendant is in custody, and within 10 days if not in custody. These rules have afforded juveniles the right to demand a petition where the child is charged with a misdemeanor(s) or gross misdemeanor(s).

Minn. R. Juv. Del. P. 6.06 subd 2 provides that the court administrator shall promptly schedule the matter for hearing when a charging document is filed with the court. Certain offenses may be resolved without a court appearance by mailing or delivering to the court administrator a payable fine which has been predetermined by the court. Each judicial district may establish a list of minor offenses which may be settled by paying a fine. It is

recommended that the list be made part of or considered by the district in establishing its dispositional criteria.

Minn. R. Juv. Del. P. 6.03 subd 2 provides that a petition shall be signed by the prosecuting attorney before it is filed with the court. Minnesota Statutes 2002, section 260B.141, subdivision 1, provides that any reputable person having knowledge of a child who is a resident of this state, who appears to be delinquent, may petition the juvenile court.

Minn. R. Juv. Del. P. 6.03 subds 3 and 5 set forth the necessary contents of the petition. A sample petition form as well as a listing of the administrative content approved by the Juvenile Delinquency Rules Committee will be published by the State Court Administrator on the Minnesota Judicial Branch Web site.

Rule 7. Arraignment

7.01 Application

This rule is not applicable to proceedings on juvenile petty offenses or juvenile traffic offenses, which are governed by Rule 17.

(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.)

7.02 Generally

Arraignment is a hearing at which the child shall enter a plea in the manner provided in Rule 8.

(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.)

7.03 Timing

Upon the filing of a charging document, the court administrator shall promptly fix a time for arraignment and send notices pursuant to Rule 25.

Subdivision 1. Child in Custody. The child in custody may be arraigned at a detention hearing and shall be arraigned no later than five (5) days after the detention hearing. The child has the right to have a copy of the charging document for three (3) days before being arraigned.

Subd. 2. Child Not in Custody. The child not in custody shall be arraigned no later than thirty (30) days after the filing of the charging document. The child has the right to have a copy of the charging document for three (3) days before being arraigned.

(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.)

7.04 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 residence of the child who is charged;
- (B) determine whether all necessary persons are present and identify those present for the record;
- (C) determine whether notice requirements have been met and if not, whether the affected persons waive notice;
- (D) determine whether the child is either represented by counsel or waives counsel in the manner provided by Rule 3;
- (E) if the child appears without counsel, and the court determines the child has properly waived the child's right to counsel, the court shall advise the child of all trial rights and other rights provided by these rules;

(F) explain to the child and the child's parent(s), legal guardian or legal custodian, if present, the child's right to remain silent in this and subsequent appearances before the court; and

(G) if two or more children are charged jointly with the same offense, advise the child of the danger of dual representation pursuant to Rule 3.03.

Subd. 2. Reading of Allegations of Charging Document. Unless waived by the child, the court shall read the allegations of the charging document to the child and determine that the child understands them, and if not, provide an explanation.

Subd. 3. Motions. The court shall hear and make findings on any motions regarding the sufficiency of the charging document, including its adequacy in stating probable cause of charges made, and the jurisdiction of the court, without requiring the child to plead guilty or not guilty to the charges stated in the charging document. A challenge on probable cause shall not delay the setting of trial proceedings in cases where the child has demanded a speedy trial.

Subd. 4. Response to Charging Document. After considering the wishes of the parties to proceed later or at once, the court may continue the arraignment without requiring that the child plead guilty or not guilty to charges stated in the charging document.

(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.)

Comment--Rule 7

Minn. R. Juv. Del. P. 7.04 subd 1(G) and Minn. R. Juv. Del. P. 3.03 regarding advising children of the perils of dual representation are patterned after Minn. R. Crim. P. 17.03 subd 5.

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 Minn. R. Crim. P. 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.)

8.02 Generally

If the child pleads not guilty to charges alleged in the charging document, the court shall conduct proceedings in accordance with Rules 9 through 16. If the child remains silent when confronted with charges, or if the court refuses to accept a guilty plea by the child, the court shall proceed in the same manner as if the child pled not guilty.

(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.)

8.03 Plea of Not Guilty Without Appearance

Except when the child is in detention, the court may permit a written plea of not guilty or a plea of not guilty on the record to be entered by child's counsel without the personal appearance of the child, child's parent(s), legal guardian or legal custodian or their counsel.

The child's counsel shall immediately furnish a copy of the written plea of not guilty to the prosecuting attorney, either personally or by mail.

(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.)

8.04 Plea of Guilty

Subdivision 1. Waiver of Right to Trial. The court shall not accept a child's plea of guilty until first determining, the following, under the totality of the circumstances, and based on the child's statements, whether on the record or contained in a written document signed by the child and the child's counsel:

(A) *Charges in Charging Document; Factual Basis for Plea.* That the child understands the charges stated in the charging document, and the essential elements of each charge, and that there is a factual basis for the guilty plea;

(B) *Right to Trial.* That the child understands the child's right to have a trial, that is, to require proof of all elements of each offense stated in the charging document, and that this includes an understanding of the following related rights:

(1) the right to be presumed innocent of each charge until and unless the petitioner succeeds in proving beyond a reasonable doubt that the child is guilty;

(2) the right to remain silent during trial proceedings if the child wishes and the right of the child to testify on the child's own behalf if the child wants to;

(3) the right to call witnesses to testify on the child's behalf, including the right to use court subpoenas to require that witnesses for the child attend the trial; and

(4) the right to hear the testimony of all witnesses called by the prosecuting attorney, and to cross-examine these witnesses;

(C) *Dispositions.* That the child understands the powers of the court to make a disposition if the court finds that the allegations in the charging document are proved, including the child's understanding that:

(1) the court's powers range up to the most severe step of placing custody of the child in an institution;

(2) the court's disposition could be for a duration ranging upward to the time the child attains age 19;

(3) the court can modify an initial disposition, even repeatedly, for a term ranging up to the time the child attains age 19; and

(4) the child understands the potential future consequences if the court finds that the allegations in the charging document are proved, including the child's understanding of:

(a) the effect of the finding on sentencing of the child if the child, when an adult, is convicted of an adult offense; and

(b) the effect of the finding in the event the child commits any further offenses while a juvenile, including the prospects for certification of the child for an adult court prosecution or for prosecution in juvenile court as an extended jurisdiction juvenile;

(D) *Right to Counsel.* If a child charged with a misdemeanor remains without counsel or with only standby counsel, that the child understands the continued right to be represented by counsel, and understands that counsel:

(1) could give the child further information and advice on the child's rights and on the choice to plead guilty or not guilty to the offense(s) in the charging document; and

(2) could assist the child during a trial, to protect all rights of the child that arise in the course of a trial;

(E) *Free Choice*. That any plea of guilty is made freely, and that no one has made either threats or promises to the child to encourage a plea of guilty other than those that the parties have disclosed to the court; and

(F) *No Claim of Innocence*. That the child is not making any claim of innocence.

Subd. 2. Withdrawal of Plea. The child may, on the record or by written motion filed with the court, request to withdraw a plea of guilty. The court may allow the child to withdraw a guilty plea:

(A) before disposition, if it is fair and just to do so, giving due consideration to the reasons the child gives and any prejudice that withdrawal of the plea would cause because of actions taken in reliance on the child's plea; or

(B) at any time, upon showing that withdrawal is necessary to correct a manifest injustice.

Subd. 3. Plea to a Lesser Offense or a Different Offense. With the consent of the prosecuting attorney and the approval of the court, the child shall be permitted to enter:

(A) a plea of guilty to a lesser included offense or to an offense of lesser degree, or

(B) a plea of guilty to a different offense than alleged in the original charging document.

A plea of guilty to a lesser included offense or to an offense of lesser degree may be entered without an amendment of the charging document. If a plea to a different offense is accepted, the charging document must be amended on the record or a new charging document must be filed with the court.

Subd. 4. Acceptance or Nonacceptance of Plea of Guilty. The court shall make a finding within fifteen (15) days of a plea of guilty:

(A) that the plea has been accepted and allegations in the charging document have been proved; or

(B) that the plea has not been accepted.

Subd. 5. Future Proceedings. If the court accepts a plea of guilty and makes a finding that the allegations in the charging document are proved, the court shall schedule further proceedings pursuant to Rules 14 and 15.

(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 July 1, 2004.)

Comment--Rule 8

It is also desirable that the child be asked to acknowledge by signing the plea petition that the child has read the questions set forth in the petition or that they have been read to the child; that the child understands them; that the child gave the answers set forth in the petition; and that they are true. Suggested forms of the plea petition are appended to the rules.

Rule 9. Settlement Discussions and Plea Agreements

9.01 Generally

In cases in which it appears that it would serve the interests of the public in the effective administration of juvenile justice under the principles set forth in this rule, the prosecuting attorney may engage in settlement discussions for the purposes of reaching a settlement agreement. If the child is represented, the prosecuting attorney shall engage in settlement discussions only through the child's counsel.

9.02 Relationship Between the Child and the Child's Counsel

The child's counsel shall conclude a settlement agreement only with the consent of the child and shall ensure that the decision to enter a guilty plea is ultimately made by the child.

9.03 Disclosure of Settlement Agreement

If a settlement agreement has been reached which contemplates a guilty plea, the court shall require the disclosure of the agreement and the reasons for it before the plea. The court shall reject or accept the plea on the terms of the settlement agreement. The court may postpone its acceptance or rejection until it has received the results of a pre-disposition report. If the court rejects the settlement agreement, it shall advise the parties in open court and then ask the child to either affirm or withdraw the plea.

9.04 Settlement Discussions and Agreements Not Admissible

If the child enters a guilty plea which is not accepted or which is withdrawn, neither the settlement discussions, nor the settlement agreement, nor the plea shall be received in evidence against or in favor of the child in any subsequent proceeding against the child.

Rule 10. Discovery**10.01 Scope and Application**

Rule 10 applies to discovery for delinquency proceedings, certification hearings and extended jurisdiction juvenile proceedings and prosecutions. Pursuant to Rule 17.07, this rule may apply, in the discretion of the court, to juvenile petty and juvenile traffic proceedings. The discovery procedures provided for by this rule do not exclude other lawful methods available for obtaining evidence.

(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.)

10.02 Evidence and Identification Disclosure

The prosecuting attorney shall advise the child's counsel in writing of:

(A) any evidence against the child obtained as a result of a search, seizure, wiretapping or any form of electronic or mechanical eavesdropping;

(B) any confessions, admissions, or statements in the nature of confessions made by the child;

(C) any evidence against the child discovered as a result of confessions, admissions or statements in the nature of confessions made by the child; and

(D) any identification procedures involving the child, including but not limited to line-ups or other observations of the child and the exhibition of photographs of the child.

The notice required by this rule shall be provided by the prosecutor within five (5) days of a not guilty plea by the child. If child's counsel makes a demand for disclosure pursuant to this rule, the disclosures shall be provided within five (5) days of the demand. Evidence which becomes known to the prosecutor after the deadlines for disclosure provided here, shall immediately be disclosed to child's counsel.

(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.)

10.03 Notice of Additional Offenses

The prosecuting attorney shall advise child's counsel of evidence of any additional offenses that may be offered at the trial under any exclusionary rule exceptions. Such additional acts shall be described with sufficient particularity to enable the child to prepare for the trial. The notice need not include offenses for which the child has been previously prosecuted, or that may be offered in rebuttal of character witnesses for the child or as a part of the occurrence or episode out of which the charges against the child arose. Notice of additional offenses shall be given at or before the pretrial or omnibus hearing or as soon

after those hearings as the offenses become known to the prosecutor. If there is no pretrial or omnibus hearing, the notice shall be given at least seven (7) days before 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.)

10.04 Disclosure by Prosecuting Attorney

Subdivision 1. Disclosure by Prosecuting Attorney Without Order of Court. After a charging document is filed, if the child's counsel makes a request, the prosecuting attorney shall make the following disclosures within five (5) days of the receipt of the request:

(A) *Trial Witnesses.* The prosecuting attorney shall disclose to the child's counsel the names and addresses of the persons the prosecuting attorney intends to call as witnesses at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing, together with their prior record of adult convictions, any prior record of allegations of delinquency which have been proved and any prior delinquency adjudications within the actual knowledge of the prosecuting attorney. The prosecuting attorney shall permit the child's counsel to inspect and copy the witnesses' relevant written or recorded statements and any written summaries of the substance of relevant oral statements made by the witnesses to the prosecuting attorney or agents of the prosecuting attorney within the knowledge of the prosecuting attorney.

(B) *Statements of Child and Accomplices.* The prosecuting attorney shall disclose and permit the child's counsel to inspect and copy any relevant written or recorded statements made by the child and accomplices within the possession or control of the prosecuting attorney, the existence of which is known by the prosecuting attorney, and shall provide the child's counsel with the substance of any oral statements made by the child and accomplices which the prosecuting attorney intends to offer in evidence at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing.

(C) *Documents and Tangible Objects.* The prosecuting attorney shall disclose and permit the child's counsel to inspect and copy books, papers, documents, photographs and tangible objects that the prosecutor intends to introduce in evidence at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing, or which were obtained from or belong to the child and which the prosecuting attorney intends to offer as evidence at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing. If the prosecuting attorney intends to offer evidence of buildings or places at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing, the prosecuting attorney shall permit the child's counsel to inspect and photograph such buildings or places.

(D) *Reports of Examinations and Tests.* The prosecuting attorney shall disclose and permit the child's counsel to inspect and copy any results or reports of physical or mental examinations, scientific tests, experiments or comparisons made which are relevant to the case.

(E) *Record of the Child.* The prosecuting attorney shall inform the child's counsel of any prior allegations of delinquency which have been proved and of prior adjudications of delinquency of the child within the possession or control of the prosecuting attorney.

(F) *Special Education and School Disciplinary Records.* The prosecuting attorney shall disclose and permit the child's counsel to inspect and copy all special education and school disciplinary records of the child, which were transmitted by the agency reporting the crime for consideration in charging.

(G) *Exculpatory Information.* The prosecuting attorney shall disclose to the child's counsel any material or information within the possession and control of the prosecuting attorney that tends to disprove the allegation(s).

(H) *Scope of the Prosecuting Attorney's Obligations.* The prosecuting attorney's obligations under this rule extend to material and information in the possession or control

of members of the prosecuting attorney's staff and of any others who have participated in the investigation or evaluation of the matter and who report to the prosecuting attorney's office.

Subd. 2. Disclosure Upon Order of Court. Upon motion of the child's counsel, the court at any time before trial may require the prosecuting attorney to disclose to the child's counsel any information requested that is relevant to guilt, innocence or culpability of the child. If the motion is denied, the court upon application of the child shall inspect and preserve any relevant information.

Subd. 3. Information Not Subject to Disclosure by Prosecuting Attorney.

(A) *Opinions, Theories or Conclusions.* Unless otherwise provided by these rules, any legal research, records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the prosecuting attorney or members of the prosecuting attorney's staff or officials or agents of the prosecuting attorney participating in the matter are not subject to disclosure.

(B) *Reports.* Except as provided in Rule 10.04, subdivision 1(C)-(G), reports, memoranda or internal documents made by the prosecuting attorney or members of the prosecuting attorney's staff or by agents of the prosecuting attorney in connection with the matter are not subject to disclosure.

(C) *Prosecution Witnesses Under Prosecuting Attorney's Certificate.* The information relative to the witnesses and persons described in Rule 10.04, subdivision 1(A) and (B), shall not be subject to disclosure if approved by the court when the prosecuting attorney files a written certificate with the court that to do so may subject the witnesses or persons or others to physical harm or coercion, provided, however, that non-disclosure under this rule shall not extend beyond the time the witnesses are sworn to testify.

(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.)

10.05 Disclosure by Child

Subdivision 1. Information Subject to Disclosure Without Order of Court. After a charging document is filed, if the prosecuting attorney makes a request, the child's counsel shall make the following disclosures within five (5) days of the receipt of the request.

(A) *Documents and Tangible Objects.* The child's counsel shall disclose and permit the prosecuting attorney to inspect and copy books, papers, documents, photographs and tangible objects which the child intends to introduce in evidence at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing. If the child's counsel intends to offer evidence of buildings or places at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing, the child's counsel shall permit the prosecuting attorney to inspect and photograph such buildings or places.

(B) *Reports of Examinations and Tests.* The child's counsel shall disclose and permit the prosecuting attorney to inspect and copy any results or reports of physical or mental examinations, scientific tests, experiments and comparisons made in connection with the particular matter within the possession or control of the child which the child intends to introduce in evidence at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing or which were prepared by a witness whom the child intends to call at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing when the results or reports relate to the testimony of the witness.

(C) *Notice of Defense, Witnesses for the Child and Record.*

(1) *Notice of Defenses.* The child's counsel shall inform the prosecuting attorney in writing of any defense, other than that of a denial, on which the child intends to rely at the trial, including but not limited to the defenses of self-defense, entrapment, duress,

alibi, double jeopardy, statute of limitations, collateral estoppel, a defense pursuant to Minnesota Statutes, section 609.035, or intoxication. Notice of a defense of mental illness or mental deficiency is governed by Rule 20.02, subdivision 1.

(2) **Witnesses for the Child.** The child's counsel shall provide the prosecuting attorney with the names and addresses of persons whom the child intends to call as witnesses at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing together with their prior record of adult convictions, any prior record of proven allegations of delinquency and any prior delinquency adjudications within the actual knowledge of the child's counsel.

(3) **Statements of Witnesses for the Child.** The child's counsel shall permit the prosecuting attorney to inspect and copy any relevant written or recorded statements of the persons whom the child intends to call as witnesses at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing and which are within the possession or control of the child's counsel and shall permit the prosecuting attorney to inspect and copy any written summaries within the knowledge of the child or the child's counsel of the substance of any oral statements made by such witnesses to the child's counsel or obtained by the child at the direction of counsel.

(4) **Alibi.** If the child intends to offer evidence of an alibi, the child's counsel shall also inform the prosecuting attorney of the specific place or places where the child contends the child was when the alleged delinquent act occurred and shall inform the prosecuting attorney of the names and addresses of the witnesses the child intends to call at the trial in support of the alibi.

(5) **Record.** The child's counsel shall inform the prosecuting attorney of any prior allegations of a delinquency which have been proved and any prior adjudications of delinquency of the child. A child shall not be required to reveal prior offenses which might result in enhancement of pending enhanceable offenses.

Subd. 2. Disclosure Upon Order of Court.

(A) *Disclosure Procedures With Child.* Upon motion of the prosecuting attorney and a showing that one or more of the following procedures will be material in determining whether the child committed the alleged act or should be certified or is an extended jurisdiction juvenile, the court at any time before a hearing may, subject to constitutional limitations, order the child to:

- (1) appear in a line-up;
- (2) speak for identification by witnesses to an offense or for the purpose of taking voice prints;
- (3) be fingerprinted or permit palm prints or footprints to be taken;
- (4) permit measurements of the child's body to be taken;
- (5) pose for photographs not involving re-enactment of a scene;
- (6) permit the taking of samples of blood, hair, saliva, urine and other materials of the child's body which involve no unreasonable intrusion;
- (7) provide specimens of handwriting; or
- (8) submit to reasonable physical or medical inspection of the child's body.

(B) *Notice of Time and Place of Discovery Procedures With Child.* Whenever the personal appearance of the child is required for procedures ordered pursuant to Rule 10.05, subdivision 2(A), the prosecuting attorney shall inform the child's counsel of the time and place of the procedure.

(C) *Medical Supervision.* Blood tests shall be conducted under medical supervision and the court may require medical supervision for any other test ordered pursuant to

this rule when the court deems such supervision necessary. Upon motion of the child's counsel, the court may order the child's appearance delayed for a reasonable time or may order that tests take place at the child's residence or some other convenient place.

(D) *Notice of Results.* The prosecuting attorney shall make available to the child's counsel the results of the procedures provided by Rule 10.05, subdivision 2(A) within five (5) days from the date the results become known to the prosecuting attorney, unless otherwise ordered by the court.

Subd. 3. Information Not Subject to Disclosure by Child.

(A) *Opinions, Theories or Conclusions.* Unless otherwise provided by these rules, any legal research, records, correspondence, reports or memoranda to the extent that they contain the opinions, theories, or conclusions of the child, the child's counsel, members of counsel's staff or counsel's agents participating in the representation of the child are not subject to disclosure.

(B) *Reports.* Except as provided by Rule 10.05, subdivision 1(A) and (B) and (C)(2), (3), and (5), reports, memoranda or internal documents made by the child's counsel or members of counsel's staff, or counsel's agents in connection with the defense of the matter against the child are not subject to disclosure.

(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.)

10.06 Regulation of Discovery

Subdivision 1. Investigations Not to be Impeded.

(A) *Prosecuting Attorney.* The prosecuting attorney or agents for the prosecuting attorney shall not advise persons having relevant material or information to refrain from discussing the case with the child's counsel or from showing opposing counsel any relevant materials nor shall they otherwise impede investigation of the case by the child's counsel.

(B) *Child, Child's Counsel, or Agents for Child's Counsel.* The child, child's counsel, or agents for the child or child's counsel shall not advise persons having relevant material or information to refrain from discussing the case with opposing counsel or their agents or from showing opposing counsel any relevant materials nor shall they otherwise impede opposing counsel's investigation of the case except the child's counsel may:

(1) advise the child that the child need not talk to anyone, and

(2) advise the child's parent(s), legal guardian, and legal custodian that they may refrain from discussing any relevant material or information obtained as a result of privileged communication between the child and the child's counsel.

Subd. 2. Continuing Duty to Disclose. If, after compliance with any discovery rule or order, the prosecuting attorney or the child's counsel discovers additional material, information or witnesses subject to disclosure, counsel shall promptly notify the opposing side of the existence of the additional material or information and the identity of the witnesses. The prosecuting attorney and the child's counsel have a continuing duty at all times before and during trial to supply the materials and information required by these rules.

Subd. 3. Time, Place and Manner of Discovery and Inspection. An order of the court permitting discovery shall specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

Subd. 4. Custody of Materials. Any materials furnished to the prosecuting attorney or the child's counsel under discovery rules or court orders shall remain in the custody of the prosecuting attorney or the child's counsel and shall be used only for the pending case and shall be subject to such other terms and conditions as the court may prescribe.

Subd. 5. Protective Orders. Upon a showing of reasonable cause, the court may at any time order that specified disclosures be restricted or deferred or make such other order as is appropriate. However, all materials and information to which the prosecuting attorney

or the child's counsel is entitled must be disclosed in time to afford the opportunity to make beneficial use of it.

Subd. 6. Excision. If only a portion of materials are discoverable under these rules, that portion shall be disclosed. If material is excised pursuant to judicial order, it shall be sealed and preserved in the records of the court to be made available to the reviewing court in the event of an appeal or habeas corpus proceeding.

Subd. 7. Sanctions.

(A) *Continuance or Order.* If at any time it is brought to the attention of the court that the prosecuting attorney, the child or child's counsel has failed to comply with an applicable discovery rule or order, the court may upon motion, order discovery or inspection, grant a continuance, or enter such order as it deems just in the circumstances.

(B) *Contempt.* Any person who willfully disobeys a court order under these discovery rules may be held in contempt.

Subd. 8. Expense. If the child or the parent(s) of the child cannot afford the costs of discovery, these costs will be at public expense in whole or in part depending on the ability of the child or the parent(s) of the child to pay.

(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.)

10.07 Taking Depositions

Subdivision 1. Deposition of Unavailable Witness. Upon motion, the court may order the deposition of a prospective witness when there is a reasonable probability the testimony of the witness will be used at a trial or hearing and:

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

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

(C) there is a stipulation by counsel; or

(D) there is another reason accepted by the court.

Subd. 2. Procedure. The court may order that the deposition be taken orally before any designated person authorized to administer oaths and that any designated book, paper, document, record, recording or other material not privileged, be produced at the same time and place. The order shall direct the child to be present when the deposition is being taken.

(A) *Oral Deposition.* Depositions shall be taken upon oral examination.

(B) *Oath and Record.* The witness shall be put under oath and a verbatim record of the testimony shall be made in the manner directed by the court. In the event the court orders that the testimony at a deposition be recorded by other than stenographic means, the order shall designate the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If this order is made, the prosecuting attorney or the child's counsel may nevertheless arrange to have a stenographic transcription made at their own expense.

(C) *Scope and Manner of Examination--Objections, Motion to Terminate.*

(1) **Consent Required.** In no event shall the deposition of a child who is charged with an offense be taken without the child's consent.

(2) **Scope and Manner of Taking.** The scope and manner of examination and cross-examination in the taking of a deposition to be used at trial shall be the same as that allowed at the trial. The scope and manner of examination and cross-examination in the taking of a deposition to be used at a certification or extended jurisdiction juvenile hearing

shall be the same as would be allowed at a certification or extended jurisdiction juvenile hearing.

(3) **Objections.** All objections made at the time of the examination to the qualifications of the person taking the deposition, or to the manner of taking it, or to the evidence presented or to the conduct of any person present at the depositions and any other objection to the proceedings shall be recorded by the person before whom the deposition is taken. Evidence objected to shall be taken subject to the objections unless the objection is based on the witness's use of the Fifth Amendment.

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

At any time during the taking of the deposition, on motion of the child's counsel or the prosecuting attorney, or of the deponent, and upon a showing that the examination is being conducted in bad faith or in such manner as to annoy, embarrass or oppress the deponent, the child, the child's counsel or prosecuting attorney or to elicit privileged testimony, the court which ordered the deposition taken may order the person conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of taking the deposition by ordering as follows:

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

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

Upon demand of the child's counsel, the prosecuting attorney or the deponent, the taking of the deposition shall be suspended for the time necessary to move for the order.

Subd. 3. Transcription, Certification, and Filing. When the testimony is fully transcribed, the person before whom the deposition was taken shall certify on the deposition that the witness was duly sworn and that the deposition is a verbatim record of the testimony given by the witness. That person shall then securely seal the deposition in an envelope endorsed with the title of the case and marked "Deposition of (here insert name of witness)" and shall promptly file it with the court in which the case is pending or send it by registered or certified mail to the court administrator thereof for filing. Upon the request of the child's counsel or the prosecuting attorney, documents and other things produced during the examination of a witness, or copies thereof, shall be marked for identification and annexed as exhibits to the deposition, and may be inspected and copied by the child's counsel and the prosecuting attorney. The person taking the deposition shall mark the exhibits, and after giving opposing counsel an opportunity to inspect and copy them, return the exhibits to the person producing them. The exhibits may then be used in the same manner as if annexed to the deposition.

Subd. 4. Failure to Appear. Failure of the child to appear after notice is given will not prohibit the deposition from being taken.

Subd. 5. Expense of Depositions. If the child or the parent(s) of the child cannot afford the costs of depositions, these costs shall be paid at public expense in whole or in part, depending on the ability of the child or the parent(s) of the child to pay.

(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.)

Comment--Rule 10

Minn. R. Juv. Del. P. 10.02 is modeled after the Minn. R. Crim. P. 7.01. A suggested form for the notice to be provided by this rule is included in the appendix of forms, following these rules.

Minn. R. Juv. Del. P. 10.03 is modeled after Minn. R. Crim. P. 7.02 and would encompass the commonly referred to Spreigl notice derived from State v. Spreigl, 139 N.W.2d 167 (1965).

Minn. R. Juv. Del. P. 10.05 subd 1(C)(5) provides that a child is not required to reveal prior offenses which might result in enhancement of pending enhanceable offenses. An example of an "enhanceable offense" is a pending misdemeanor fifth degree assault which could be amended to a gross misdemeanor under Minnesota Statutes 2002, section 609.224, subdivision 2, if the prosecutor knew, for instance, of the child's prior adjudication for misdemeanor assault against the same victim in another county.

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

Rule 11. Pretrial Conference

11.01 Timing

The court, in its discretion or upon motion of the child's counsel or the prosecuting attorney, may order a pretrial conference. Where there has been no pretrial conference, pretrial issues and motions shall be heard immediately before trial unless the court orders otherwise for good cause.

11.02 Evidentiary and Other Issues

At the pretrial conference, the court shall determine whether there are any constitutional or evidentiary issues and, if so, schedule an omnibus hearing pursuant to Rule 12. If there is no pretrial conference, constitutional or evidentiary issues shall be raised by written motion of the child's counsel or prosecuting attorney, and the court shall schedule an omnibus hearing. The written motion must specifically set forth the issues raised.

(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.)

Comment--Rule 11

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

Rule 12. Omnibus Hearing

12.01 Scheduling of Omnibus Hearing

The court shall hold an omnibus hearing pursuant to Minn. R. Crim. P. 11 any time before trial to determine issues raised pursuant to Rule 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.)

12.02 Scheduling of Trial

If a demand for speedy trial is made, the omnibus hearing shall not extend the time for trial unless the court finds good cause for continuance of the trial date.

(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.)

Comment--Rule 12

When the same judge is assigned to determine the admissibility of evidence in a suppression hearing and the guilt of the juvenile in the same proceeding, the juvenile's basic

right to a fair trial by an impartial tribunal with a determination of guilt based on admissible evidence may be compromised. E.g., In re J.P.L., 359 N.W.2d 622 (Minn. Ct. App. 1984). Continuances of trial beyond the time established by Minn. R. Juv. Del. P. 13.02 are not recommended. However, the child's right to a fair trial will justify a short continuance where the child seeks reassignment of the judge pursuant to Minn. R. Juv. Del. P. 22.

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

Rule 13. Trials

13.01 Purpose and Application

A trial is a hearing held to determine whether the child is guilty or not guilty of the offenses alleged in the charging document. This rule applies to all delinquency, and juvenile petty and juvenile traffic trials. Extended jurisdiction juvenile trials are governed by Rule 19.

(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.)

13.02 Commencement of Trial

Subdivision 1. For a Child in Detention. A trial shall be commenced within thirty (30) days from the date of the demand for a speedy trial unless good cause is shown why the trial should not be commenced within that time.

Subd. 2. For a Child Not in Detention. A trial shall be commenced within sixty (60) days from the date of a demand for a speedy trial unless good cause is shown why the trial should not be held within that time.

Subd. 3. Release. If the child is detained and the trial has not commenced within thirty (30) days of the demand and a continuance has not been granted, the child shall be released subject to such nonmonetary release conditions as may be required by the court and the trial shall commence within sixty (60) days of the original demand for a speedy trial.

Subd. 4. Dismissal. Unless there is good cause shown for the delay, the charging document shall be dismissed without prejudice if the trial has not commenced within the time set forth above and the court has not granted a continuance.

Subd. 5. 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 before a new judge shall be commenced within fifteen (15) days unless good cause is shown and the court grants a continuance.

(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.)

13.03 Trial

Subdivision 1. Initial Procedure. At the beginning of the trial, if the court has not previously determined the following information at a prior hearing, the court shall:

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

Subd. 2. Order of Trial. The order of the trial shall be as follows:

- (A) the prosecuting attorney may make an opening statement, confining the statement to the facts that it expects to prove;

(B) the child's counsel may make an opening statement, after the prosecutor's opening statement or may reserve the opening statement until immediately before offering the defense evidence. The statement shall be confined to a statement of the defense and the facts expected to be proved;

(C) the prosecuting attorney shall offer evidence in support of the charging document;

(D) the child's counsel may offer evidence in defense of the child;

(E) the child's counsel and the prosecuting attorney shall have the right to cross-examine witnesses;

(F) 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 rebuttal evidence. In the interests of justice the court may permit either the prosecuting attorney or the child's counsel to offer evidence upon the original case;

(G) at the conclusion of the evidence, the prosecuting attorney may make a closing argument; and

(H) the child's counsel may make a closing argument.

13.04 Evidence

The court shall admit only such evidence as would be admissible in a criminal trial.

13.05 Use of Depositions at Trial

Subdivision 1. Unavailability of Witness. At a trial or hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if:

(A) the witness is dead or unable to be present or to testify at the trial or hearing because of the witness's existing physical or mental illness, infirmity; or

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

(C) there is a stipulation by counsel; or

(D) for any other reason accepted by the court.

A deposition may not be used if it appears that the absence of the witness was procured or caused by the person offering the deposition, unless part of the deposition has previously been offered by another party.

Subd. 2. Inconsistent Testimony. Any deposition may be used by the child's counsel or the prosecuting attorney for the purpose of contradicting or impeaching the testimony of the deponent when they appear as a witness.

Subd. 3. Substantive Evidence. A deposition may be used as substantive evidence so far as otherwise admissible under the rules of evidence, if the witness refuses to testify despite an order of the court to do so or if the witness gives testimony at the trial or hearing which is inconsistent with the deposition.

(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.)

13.06 Standard of Proof

The allegations in the charging document must be proved beyond a reasonable doubt.

13.07 Joint Trials

Subdivision 1. Generally. When two or more children are jointly charged with any offense, they may be tried separately or jointly in the discretion of the court. Where the offense is a felony, the court shall consider the nature of the offense charged, the impact on the victim, the potential prejudice to each child, and the interests of justice before ordering

a joint trial. A child in a joint trial shall be found guilty or not guilty in the same manner as a child tried separately.

Subd. 2. Severance Because of Improper Joinder. Where a child was improperly joined in a proceeding, the court shall order severance upon motion of the prosecuting attorney or the child's counsel. Improper joinder is not a ground for dismissal.

Subd. 3. Severance Because of Another Child's Out-of-Court Statement. Where one child's out-of-court statement refers to, but is not admissible against another child and those children may otherwise be tried jointly, the child against whom the statement is not admissible may move for severance. If the prosecuting attorney intends to offer the statement as evidence in its case in chief, the court shall require the prosecuting attorney to elect one of the following options:

(A) a joint trial at which the statement is not received in evidence;

(B) a joint trial at which the statement is received in evidence only after all references to the child making the motion have been deleted, if admission of the statement with the deletions will not prejudice that child; or

(C) severance.

Subd. 4. Severance During Trial. If the court determines severance is necessary to achieve a fair determination of the guilt or innocence of one or more of the children in a joint trial, the court shall order severance upon a finding of manifest necessity or with the consent of the child to be tried separately.

(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.)

13.08 Joinder and Severance of Offenses

Subdivision 1. Joinder of Offenses. When the child's conduct constitutes more than one offense, each such offense may be charged in the same charging document in a separate count. The court, upon the prosecuting attorney's motion, may order joinder of offenses if the offenses could have been but were not joined in a single charging document. In extended jurisdiction juvenile cases, the child has the same right as an adult to sever offenses for separate trial on each offense.

Subd. 2. Severance of Offenses. On motion of the prosecuting attorney or the child's counsel, the court shall sever offenses or charges if:

(a) the offenses or charges are not related;

(b) before trial, the court determines severance is appropriate to promote a fair determination of the child's guilt or innocence of each offense or charge; or

(c) during trial, with the child's consent or upon a finding of manifest necessity, the court determines severance is necessary to achieve a fair determination of the child's guilt or innocence of each offense or charge. Misjoinder of offenses is not a ground for dismissal.

(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.)

13.09 Findings

Within seven (7) days of the conclusion of the trial, the court shall find that the allegations in the charging document have or have not been proved beyond a reasonable doubt. The order finding that the allegations of the charging document have been proved shall also state the child's name and date of birth; and the date and county where the offense was committed. The court shall dismiss the charging document if the allegations have not been proved. Findings may be made on the record, but must be followed up in writing within the seven (7) days. For good cause, the court may extend the time for filing written findings for an additional seven (7) days.

13.10 Further Proceedings

If the court makes a finding that the allegations of the charging document have been proved, the court shall hold dispositional proceedings pursuant to Rule 15.

(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.)

Comment--Rule 13

For children held in detention, Minn. R. Juv. Del. P. 13.02 subd 1 requires that a trial be commenced within thirty (30) days from the date of the speedy trial demand unless good cause is shown why the trial should not be held within that time. If the trial has not commenced within the thirty (30) days and a continuance has not been granted upon a showing of good cause, the child shall be released subject to nonmonetary release conditions that the court may require. The trial must then commence within 60 days of the date of the demand for a speedy trial and not 60 days from the child's release.

For children not held in detention, Minn. R. Juv. Del. P. 13.02 subd 2 provides that a trial shall be commenced within sixty (60) days from the date of a demand for a speedy trial unless good cause is shown why the trial should not be held within that time. The trial may be postponed for good cause beyond the time limit upon request of the prosecuting attorney or the child's counsel or upon the court's initiative. Good cause for the delay does not include court calendar congestion unless exceptional circumstances exist. See McIntosh v. Davis, 441 N.W.2d 115 (Minn. 1989). A delay caused by witness unavailability is permitted when the delay is "neither lengthy nor unfairly prejudicial." In re Welfare of G.D., 473 N.W.2d 878 (Minn. Ct. App. 1991); see also State v. Terry, 295 N.W.2d 95 (Minn. 1980).

If the trial is not commenced within sixty (60) days from the date of the demand for a speedy trial and a continuance has not been granted for good cause, the charging document shall be dismissed. It is within the trial court's discretion whether it is dismissed with prejudice. See Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972); State v. Kasper, 411 N.W.2d 182 (Minn. 1987); State v. Friberg, 435 N.W.2d 509 (Minn. 1989).

Minn. R. Juv. Del. P. 13.07 is modeled after Minn. R. Crim. P. 17.03 subds 2 and 3. Minn. R. Juv. Del. P. 13.08 is modeled after Minn. R. Crim. P. 17.03 subds 1, 3 and 4. Joint trials should be discouraged where one or more of the children is without counsel.

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

Rule 14. Continuance for Dismissal

14.01 Agreements Permitted

Subdivision 1. Generally. After consideration of the victim's views and subject to the court's approval, the prosecuting attorney and the child's counsel may agree that the juvenile proceeding will be suspended for a specified period without a finding that the allegations of the charging document have been proved after which it will be dismissed as provided in Rule 14.07 on condition that the child not commit a delinquency or juvenile petty or juvenile traffic offense during the period of the continuance. The agreement shall be on the record or in writing and signed by the prosecuting attorney, the child, and the child's counsel, if any. The agreement shall contain a waiver by the child of the right to a speedy trial under Rule 13.02, subdivisions 1 and 2. The agreement may include stipulations concerning the existence of specified facts or the admissibility into evidence of specified testimony, evidence, or depositions if the suspension of prosecution is terminated and there is a trial on the allegations.

Subd. 2. Additional Conditions. Subject to the court's approval after consideration of the victim's views and upon a showing of substantial likelihood that the allegations could be proved and that the benefits to society from rehabilitation outweigh any harm to society from suspending the juvenile proceeding, the agreement may specify one or more of the following additional conditions to be observed by the child during the period of suspension:

(A) that the child not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the allegations are based;

(B) that the child participate in a supervised rehabilitation program, which may include treatment, counseling, training, and education;

(C) that the child make restitution in a specified manner for harm or loss caused by the offense alleged;

(D) that the child perform specified community service; and

(E) that the child pay court costs.

Subd. 3. Limitations on Agreements. The agreement may not specify a period of suspension longer than the juvenile court has jurisdiction over the child nor any condition other than that which could be imposed upon probation after a finding that the offenses alleged have been proved.

(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.)

14.02 Court Approval; Filing of Agreement; Release

All agreements made under Rule 14.01 of this rule must be approved by the court on the record or in writing. Promptly after any written agreement is made and approved by the court, the prosecuting attorney shall file the agreement together with a statement that pursuant to the agreement the juvenile proceeding is suspended for a period specified in the statement. Upon court approval of the agreement, the child shall be released from any custody under Rule 5.

(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.)

14.03 Modification of Agreement

Subject to Rules 14.01 and 14.02 and with the court's approval on the record or in writing, the parties, by mutual consent, may modify the terms of the agreement at any time before its termination.

(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.)

14.04 Termination of Agreement; Resumption of Proceedings

Subdivision 1. Upon Notice of Child or Child's Counsel. The agreement is terminated and the juvenile proceeding may resume as if there had been no agreement if the child's counsel serves upon the prosecuting attorney and files a notice with the court that the agreement is terminated.

Subd. 2. Upon Order of Court. The court may order the agreement terminated and the juvenile proceeding resumed if, upon motion of the prosecuting attorney stating facts supporting the motion and upon hearing, the court finds that:

(A) the child or child's counsel misrepresented material facts affecting the agreement, if the motion is made within six months after the date of the agreement; or

(B) the child has committed a material violation of the agreement, if the motion is made not later than one month after the expiration of the period of suspension specified in the agreement.

(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.)

14.05 Emergency Order

The court by warrant may direct any officer authorized by law to bring the child forthwith before the court for the hearing of the motion if the court finds from affidavit or testimony that:

(A) there is probable cause to believe the child committed a material violation of the agreement; and

(B) there is a substantial likelihood that the child otherwise will not attend the hearing.

In any case, the court may issue a summons instead of a warrant to secure the appearance of the child at the hearing.

14.06 Release Status Upon Resumption of Delinquency, Juvenile Petty or Juvenile Traffic Proceedings

If the juvenile proceeding resumes under Rule 14.04, the child shall return to the release status in effect before the juvenile proceeding was suspended unless the court imposes additional or different conditions of release under Rule 5.

(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.)

14.07 Termination of Agreement; Dismissal

If no motion by the prosecuting attorney to terminate the agreement is pending, the agreement is terminated and the charging document shall be dismissed by order of the court one month after expiration of the period of suspension specified by the agreement. If such a motion is then pending, the agreement is terminated and the charging document shall be dismissed by order of the court upon entry of a final order denying the motion. Following a dismissal under this subdivision no further juvenile proceedings may be brought against the child for the offense involved.

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

14.08 Termination and Dismissal Upon Showing of Rehabilitation

The court may order the agreement terminated, dismiss the juvenile proceedings, and bar further juvenile proceedings on the offense involved if, upon motion of a party stating facts supporting the motion and opportunity to be heard, the court finds that the child has committed no later offenses as specified in the agreement and appears to be rehabilitated.

14.09 Modification or Termination and Dismissal Upon Child's Motion

If, upon motion of the child's counsel and hearing, the court finds that the prosecuting attorney obtained the child's consent to the agreement as a result of a material misrepresentation by a person covered by the prosecuting attorney's obligation under Rule 10.04, the court may:

(A) order appropriate modification of the terms resulting from the misrepresentation; or

(B) if the court determines that the interests of justice require, order the agreement terminated, dismiss the juvenile proceeding, and bar further juvenile proceedings on the offense involved.

(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.)

14.10 Court Authority to Dismiss

Nothing in this rule shall limit the inherent power of the court to continue a case for dismissal even in the absence of an agreement by the prosecutor and child's counsel. In the event the court exercises this power:

(A) The action of the court must be on the record or in writing;

(B) Unless waived by the child, the court must guarantee the child's right to a speedy trial under Rule 13.02, subdivisions 1 and 2;

(C) The continuance shall be on conditions provided in Rule 14.01, subdivisions 1 and 2, and shall be subject to limitations stated in Rule 14.01, subdivision 3;

(D) The terms of the continuance may be modified on the record or in writing, by the court, with notice to all parties; and

(E) Proceedings following the continuance shall be governed by Rules 14.04-14.08.

(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.)

Comment--Rule 14

Pursuant to Minn. R. Juv. Del. P. 1.01, references to "child's counsel" include the child who is proceeding pro se.

The Minnesota Supreme Court's Juvenile Rules Advisory Committee discovered that many juvenile court practitioners did not appreciate the limited benefits of withholding adjudication (now designated "continuance without adjudication") and were inadvertently misrepresenting its benefits to juveniles. See Comment to Minn. R. Juv. Del. P. 15. Many practitioners were, in effect, treating withholding of adjudication as a continuance for dismissal or pretrial diversion, similar to Minn. R. Crim. P. 27.05. In order to avoid future misuse of the continuance without adjudication and allow juvenile court practitioners the benefits of continuance for dismissal, Minn. R. Crim. P. 27.05 was incorporated into the juvenile rules. Because there is no finding that the allegations of the charging document have been proved in a continuance for dismissal, the offense should not count towards a juvenile's future criminal history score under the sentencing guidelines.

All agreements under this rule, including written agreements, must be approved by the court in writing or on the record.

A continuance for dismissal or continuance without adjudication under Minn. R. Juv. Del. P. 15.05 subd 4 are not the only options available for dealing with an alleged juvenile offender without formal process. Every county attorney is required to have a pretrial diversion program established for certain juveniles subject to juvenile court jurisdiction, as an alternative to formal adjudication. See Minnesota Statutes 2002, section 388.24. 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.

Minn. R. Juv. Del. P. 14 specifies the procedure to be followed when the child, child's counsel and prosecuting attorney agree to a continuance for dismissal. Rule 14.10 further provides that the court has the inherent authority to order a continuance for dismissal of its own volition without the agreement of the parties. In re Welfare of J.B.A., 581 N.W.2d 37 (Minn. Ct. App. 1998).

Rule 15. Delinquency Disposition

15.01 Generally

Subdivision 1. Findings on Charges. All references in this rule to findings that allegations in the charging document have been proved include findings pursuant to a plea of guilty by the child under Rule 8.04 and findings after trial pursuant to Rule 13.09.

Subd. 2. Application. This rule applies to delinquency dispositions. Rule 17 governs dispositions for juvenile petty offenses and juvenile traffic offenses. Rule 19 provides for sentence and disposition in extended jurisdiction juvenile cases.

(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.)

15.02 Timing

Subdivision 1. Hearing. After the court finds that charges in the charging document have been proved, the court may conduct a disposition hearing immediately or continue the matter for a disposition hearing at a later time.

Subd. 2. Order. The court shall enter a dispositional order pursuant to Rule 15.05:

(A) within forty-five (45) days from the finding that the charges have been proved for a child not held in detention; or

(B) within fifteen (15) days from the finding that the charges have been proved for a child held in detention.

Subd. 3. Delay. For good cause, the court may extend the time period to enter a dispositional order for one additional period of thirty (30) days for a child not held in detention or fifteen (15) days for a child held in detention. Except in extraordinary circumstances, if the court fails to enter a dispositional order for a child held in detention within the time limits prescribed by this rule, the child shall be released from detention. If a dispositional order for a child is not entered within the time limits prescribed by this rule, the court may dismiss the case.

Subd. 4. Transfer of File. If the matter is to be transferred to the child's county of residence for disposition, the court shall direct the court administrator to transfer the file to the child's home county within five (5) days of the finding that the offense(s) charged have been proved. Venue transfers in juvenile court are governed by Minnesota Statutes, section 260B.105. For convenience of the participants, the court which accepts a plea may determine the disposition for the court which will supervise the child's probation, if the transferring court has conferred with the receiving court and there is agreement regarding the disposition.

(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.)

15.03 Predisposition Reports

Subdivision 1. Investigations and Evaluations. The court may order an investigation of the personal and family history and environment of the child, and medical, psychological or chemical dependency evaluations of the child:

(A) at any time after the charges in the charging document have been proved; or

(B) with the consent of the child, child's counsel, if any, and the parent(s), legal guardian or legal custodian of the child, before the charges in the charging document have been proved.

Subd. 2. Placement. With the consent of the child at any time or without consent of the child after the delinquency charges of a charging document pursuant to Minnesota Statutes, section 260B.007, subdivision 6, paragraph (a), clause (1) or (2), have been proved, the court may place the child with the consent of the Commissioner of Corrections in an institution maintained by the Commissioner of Corrections for the detention, diagnosis, custody and treatment of persons adjudicated to be delinquent in order that the investigation and evaluations may be conducted pursuant to Rule 15.03, subdivision 1.

Subd. 3. Advisory. The court shall advise the child, the child's counsel, the prosecuting attorney and the child's parent(s), legal guardian or legal custodian and their counsel present in court that a predisposition investigation is being ordered, the nature of the evaluations to be included and the date when the reports resulting from the investigation are to be filed with the court.

Subd. 4. Filing and Inspection of Reports. The person making the report shall file the report three (3) days prior to the time scheduled for the disposition hearing and the reports shall be available for inspection and copying by the child, the child's counsel, the

prosecuting attorney and counsel for the parent(s), legal guardian or legal custodian of the child. The court administrator shall not otherwise disclose the report except by court order.

(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 September 1, 2005.)

15.04 Hearing

Subdivision 1. Procedure. Disposition hearings shall be separate from the hearing at which the charges are proved and may be held immediately following that hearing. Disposition hearings shall be conducted in a manner designed to facilitate opportunity for all participants to be heard. The child and the child's counsel, if any, shall appear at all disposition hearings. The child's parents and their counsel, if any, may also participate in the hearing. The child has the right of allocution at the disposition hearing, prior to any disposition being imposed.

Subd. 2. Evidence. The court may receive any information, except privileged communication, that is relevant to the disposition of the case including reliable hearsay and opinions. Anyone with the right to participate in the disposition hearing pursuant to Rule 2 may call witnesses, subject to cross-examination, regarding an appropriate disposition and may cross-examine any persons who have prepared a written report relating to the disposition.

(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.)

15.05 Dispositional Order

Subdivision 1. Adjudication and Disposition. On each of the charges found by the court to be proved, the court shall either:

(A) adjudicate the child delinquent pursuant to Minnesota Statutes, section 260B.198, subdivision 1; or

(B) continue the case without adjudicating the child delinquent and order a disposition pursuant to Minnesota Statutes, section 260B.198, subdivision 1, paragraph (a) or (b).

The adjudication or continuance without adjudication shall occur at the same time and in the same court order as the disposition.

Subd. 2. Considerations; Findings.

(A) The dispositional order made by the court shall contain written findings of fact to support the disposition ordered and shall set forth in writing the following information:

(1) why public safety and the best interests of the child are served by the disposition ordered;

(2) what alternative dispositions were recommended to the court and why such recommendations were not ordered; and

(3) if the disposition changes the place of custody of the child:

(a) the reasons why public safety and the best interest of the child are not served by preserving the child's present custody; and

(b) suitability of the placement, taking into account the program of the placement facility and assessment of the child's actual needs.

(B) When making a disposition, the court shall consider whether a particular disposition will serve established principles of dispositions, including but not limited to:

(1) **Necessity.** It is arbitrary and unjust to impose a disposition that is not necessary to restore law abiding conduct. Considerations bearing on need are:

(a) **Public Safety.** The risk to public safety, taking into account:

(i) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the Minnesota Sentencing Guidelines, the use of a firearm, and the impact on any victim;

(ii) the culpability of the child in committing the alleged offense, including the level of the child's participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Minnesota Sentencing Guidelines;

(iii) the child's prior record of delinquency;

(iv) the child's programming history, including the child's past willingness to participate meaningfully in available programming; and

(b) **Proportionality.** The principle that the disposition be proportional, that is, the least restrictive action consistent with the child's circumstances.

(2) **Best Interests.** A disposition must serve the best interests of the child, but this does not supersede the requirement that the disposition be necessary. The promise of benefits in a disposition, or even the suggestion that a particular disposition is best for the child, does not permit a disposition that is not necessary.

(3) **Out-of-Home Placement.** Public policy mandates that the best interests of the child are normally served by parental custody. Where an out-of-home placement is being considered, the placement should be suitable to the child's needs. A placement that is not suited to the actual needs of the child cannot serve the child's best interests.

(4) **Sanctions.** Sanctions, such as post-adjudication placement in a secure facility, are appropriate where such measures are necessary to promote public safety and reduce juvenile delinquency, provided that the sanctions are fair and just, recognize the unique characteristics and needs of the child and give the child access to opportunities for personal and social growth. In determining whether to order secure placement, the court shall consider the necessity of protecting the public, protecting program residents and staff, and preventing juveniles with histories of absconding from leaving treatment programs. Other factors that may impact on what sanctions are necessary include: any prior adjudication for a felony offense against a person, prior failures to appear in court, or prior incidents of running away from home.

(5) **Local Dispositional Criteria.** The disposition should reflect the criteria used for determining delinquency dispositions in the local judicial district.

Subd. 3. Duration. A dispositional order transferring legal custody of the child pursuant to Minnesota Statutes, section 260B.198, subdivision 1, paragraph (c), shall be for a specified length of time. The court may extend the duration of a placement but only by instituting a modification proceeding pursuant to Rule 15.08. Orders for probation shall be for an indeterminate length of time unless otherwise specified by the court and shall be reviewed by the court at least annually.

Subd. 4. Continuance without Adjudication.

(A) *Generally.* When it is in the best interests of the child and the protection of the public to do so, the court may continue the case without adjudicating the child. The court may not grant a continuance without adjudication where the child has been designated an extended jurisdiction juvenile.

(B) *Child Not in Detention.* If the child is not being held in detention, the court may continue the case without adjudication for a period not to exceed ninety (90) days from the date of disposition. The court may extend the continuance for an additional successive period not to exceed ninety (90) days.

(C) *Child in Detention.* If the child is held or is to be held in detention, the court may continue the case without adjudication and enter an order to hold the child in detention for a period not to exceed fifteen (15) days from the date of disposition. If the child is in detention, this continuance must be for the purpose of completing any consideration, or any investigation or examination ordered pursuant to Rule 15.03, subdivision 1. The court may extend this continuance and enter an order to hold the child in detention for an additional successive period not to exceed fifteen (15) days.

(D) *Dispositions During Continuance.* During any continuance without adjudication of delinquency, the court may enter a disposition order pursuant to Minnesota Statutes, section 260B.198, subdivision 1, paragraph (a) or (b).

(E) *Adjudication after Continuance.* Adjudicating a child for an offense after initially granting a continuance without adjudication is a probation revocation and must be accomplished pursuant to Rule 15.07.

(F) *Termination of Jurisdiction.* A probation revocation proceeding to adjudicate the child on any allegation initially continued without adjudication must be commenced within the period prescribed by Rule 15.05, subdivision 4(B) or (C), or juvenile court jurisdiction over the charges terminates.

(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.)

15.06 Informal Review

The court shall review all disposition orders, except commitments to the Commissioner of Corrections, at least every six (6) months.

If, upon review, the court finds there is good cause to believe a modification of the disposition is warranted under Rule 15.08, subdivision 8, the court may commence a modification proceeding pursuant to Rule 15.08.

(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.)

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.

The dispositional order shall comply with Rule 15.05, subdivisions 2 and 3.

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; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008.)

15.08 Other Modifications

Subdivision 1. Generally. Rule 15.08 governs the procedure to be followed when any party, including the court, seeks modification of a disposition.

Subd. 2. Modification by Agreement. A disposition may be modified by agreement of all the parties, either in writing or on the record. All agreements to modify a disposition must be approved by the court, and the court may order the parties to appear at a hearing to examine the merits of the modification and verify the voluntariness of the agreement on the record.

Subd. 3. Motion for Modification. All modification proceedings, shall be commenced by the filing of a motion or petition to modify the disposition. The motion for modification shall be in writing and shall be served and filed along with accompanying affidavits, if any, in accordance with Rule 27. The motion or its attachments shall state the proposed modification and the facts and circumstances supporting such a modification.

Subd. 4. Written Request for Modification. If a child is not represented by counsel, the child or the child's parent may submit to the court a written request for modification and send a copy of the written request to the prosecuting attorney.

Subd. 5. Good Cause. Within ten (10) days of filing a motion or written request, the court shall determine from the written request or motion and accompanying affidavits, if any, whether there is good cause to believe that a modification of the disposition is warranted under Rule 15.08, subdivision 8. If the court finds that good cause exists the court shall schedule a modification hearing within ten (10) days of such finding and issue a notice in lieu of summons or a summons in accordance with Rule 15.08, subdivision 6(A). If the court finds that good cause does not exist, the court shall issue an order denying the motion or written request for modification.

Subd. 6. Summons and Warrant.

(A) *Summons.* Notice in lieu of summons or a summons to the modification hearing shall be served upon the child, the child's counsel, the prosecuting attorney, the parent(s), legal guardian or legal custodian of the child, and any agency or department with legal custody of or supervisory responsibility over the child, pursuant to Rule 25. The summons shall be personally served upon the child.

(B) *Warrant.* The court may issue a warrant for immediate custody of a delinquent child or a child alleged to be delinquent if the court finds that there is probable cause to believe that the child has violated the terms of probation or a court order and:

- (1) the child failed to appear after having been personally served with a summons or subpoena, or 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; or
- (2) the child or others are in danger of imminent harm; or
- (3) the child has left the custody of the detaining authority without permission of the court.

Subd. 7. Hearing.

(A) *Timing.* Except in extraordinary circumstances, the hearing shall be held within twenty (20) days of the date of filing of the modification request.

(B) *Hearing.* The modification hearing shall be conducted in accordance with Rule 15.04. The moving party bears the burden of proving that modification is warranted under Rule 15.08, subdivision 8 by clear and convincing evidence.

Subd. 8. Grounds for Modification. The court may order modification of the disposition after a hearing upon a showing that there has been a substantial change of circumstances such that the original disposition is:

(A) insufficient to restore the child to lawful conduct; or

(B) inconsistent with the child's actual rehabilitative needs.

The modification order shall comply with Rule 15.05, subdivisions 2 and 3.

(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.)

Comment--Rule 15

The disposition for a child who has been designated an extended jurisdiction juvenile is also governed by Minn. R. Juv. Del. P. 19.10. Dispositional choices are enumerated in Minnesota Statutes 2002, section 260B.198, subdivisions 1 and 2. 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 2002, section 260B.198, subdivision 4.

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 had 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 2002, section 260B.171, subdivision 2, paragraph (a).

Minnesota Statutes 2002, section 260B.198, subdivision 1, 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 2002, section 260B.001, subdivision 2; Minnesota Statutes 2002, section 260B.198, subdivision 1; *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. Feb. 17, 1988); 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 2002, section 260B.001, subdivision 2. 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 2002, section 260B.198, subdivision 1. 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 Minnesota Laws 1994, chapter 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 2002, section 260B.198, subdivision 1, paragraph (c), shall be for a specified length of time. *See Minnesota Statutes 2002, section 260B.198, subdivision 9.*

The duration of a disposition that transfers custody of the child to the Commissioner of Corrections pursuant to Minnesota Statutes 2002, section 260B.198, subdivision 1, paragraph (d), 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 1994, section 260.185, subdivision 3. Continuance without adjudication is now authorized by Minnesota Statutes 2002, section 260B.198, subdivision 7. 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 assigned 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, subdivision 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. Sonsteng, et al. 12 Minnesota Practice at 215 (1997).* Continuance without adjudication may prevent the operation of some statutes which still require that the child be

adjudicated delinquent. *See, e.g., Minnesota Statutes 2002, section 609.117, subdivision 1, clause (3), (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 2002, section 388.24. 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 2004, sections 244.195, subdivision 2, and 401.025, subdivision 1. Minn. R. Juv. Del. P. 15.07 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 2004, section 260B.176, subdivision 2.

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 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.

Minnesota Statutes 2002, section 260B.154, addresses the court's authority to issue a warrant for immediate custody for the child. Minnesota Statutes, section 260B.175, subdivision 1, paragraph (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.

Rule 16. Post-Trial Motions

16.01 Post-Trial Motions

Subdivision 1. Grounds. The court, on written motion of the child's counsel, may grant a new trial on any of the following grounds:

- (A) if required in the interests of justice;

(B) irregularity in the proceedings of the court or in any court order or abuse of discretion by the court, if the child was deprived of a fair trial;

(C) misconduct of the prosecuting attorney;

(D) accident or surprise which could not have been prevented by ordinary prudence;

(E) material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the trial;

(F) errors of law occurring at the trial and objected to at the time or, if no objection is required, assigned in the motion; or

(G) the finding that the allegations of the charging document are proved is not justified by the evidence or is contrary to law.

Subd. 2. Basis of Motion. A motion for a new trial shall be made and heard on the files, exhibits and minutes of the court. Pertinent facts that would not be a part of the minutes may be shown by affidavit except as otherwise provided by these rules. A full or partial transcript of the court reporter's notes of the testimony taken at the trial or other verbatim recording thereof may be used on the hearing of the motion.

Subd. 3. Time for Motion.

(A) *Generally.* Notice of a motion for a new trial shall be served within fifteen (15) days after the finding that the allegations of the charging document are proved. The motion shall be heard within thirty (30) days after the finding that the allegations of the charging document are proved unless the time for the hearing is extended by the court for good cause shown within the thirty (30) day period.

(B) *New Evidence.* Notice of a motion for a new trial based on new evidence shall be served and filed within fifteen (15) days of the filing of the court's order for adjudication and disposition. The motion shall be heard within fifteen (15) days of the filing of the notice of motion for new trial. Upon a showing that new evidence exists, the court shall order that a new trial be held within thirty (30) days, unless the court extends this time period for good cause shown within the thirty (30) days.

Subd. 4. Time for Serving Affidavits. When a motion for new trial is based on affidavits, they shall be served with the notice of motion. The prosecuting attorney shall have ten (10) days after such service in which to serve responsive affidavits. 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.

16.02 Motion to Vacate the Finding That the Allegations of the Charging Document Are Proved

The court, on motion of the child's counsel, shall vacate the finding that the allegations of the charging document are proved and dismiss the charging document if it fails to charge an offense or if the court was without jurisdiction of the offense charged. The motion shall be made within fifteen (15) days of the finding that the allegations of the charging document are proved or within such time as the court may fix during the fifteen (15) day period. If the motion is granted, the court shall make written findings specifying its reasons for vacating the finding that the allegations of the charging document are proved and dismissing the charging document.

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

16.03 Joinder of Motions

Any motion to vacate the finding that the allegations of the charging document are proved shall be joined with a motion for a new trial.

16.04 New Trial on Court's Own Motion

The court, on its own motion, may order a new trial upon any of the grounds specified in Rule 16.01, subdivision 1 within fifteen (15) days after the finding that the allegations of the charging document are proved and with the consent of the child.

(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.)

16.05 Order

Orders issued pursuant to this rule shall be in writing.

(Added effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008.)

Comment--Rule 16

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

Minn. R. Juv. Del. P. 16.01 subd 3 provides that notice of a motion for a new trial shall be served within fifteen (15) days after the finding that the allegations of the charging document are proved, except for a motion for new trial based on the grounds of new evidence. Minnesota Statutes 2002, section 260B.411, provides for a different time for filing a motion for new trial which is premised on the discovery of new evidence. There, a child must bring a motion for new trial based on new evidence within fifteen (15) days of the filing of the court's order for adjudication and disposition. Id. Motions for new trial brought on other grounds must be brought within fifteen (15) days after the finding that the allegations of the charging document are proved as provided by this rule. Minn. R. Juv. Del. P. 16.01 subd 3.

In re Welfare of D.N. held that a juvenile must move for a new trial to raise an appealable issue on evidentiary rulings. In re Welfare of D.N., 523 N.W.2d 11, 13 (Minn. Ct. App. 1994), review denied (Minn. Nov. 29, 1994). It should be noted that D.N. was a child in need of protection or services and not a delinquent. The procedures for delinquent children are more closely aligned with the rules of adult criminal court.

Rule 17. Juvenile Petty Offender and Juvenile Traffic Offender**17.01 Scope, Application and General Purpose**

Rule 17 applies to children alleged to be juvenile petty offenders as defined by Minnesota Statutes, section 260B.007, subdivision 16, or juvenile traffic offenders as defined by Minnesota Statutes, section 260B.225. The purpose of Rule 17 is to provide a uniform and streamlined procedure for juvenile petty and juvenile traffic offenders which is sensitive to the fact that neither has the right to counsel at public expense, except as provided in Rule 3.02, subd. 5. Except as otherwise provided in this rule, the general rules of juvenile delinquency procedure apply to juvenile petty and juvenile traffic matters.

Subdivision 1. Juvenile Petty Offender. A juvenile petty offender is a child who has committed a juvenile petty offense as defined by Minnesota Statutes, section 260B.007, subdivision 16.

The prosecuting attorney may designate a child a juvenile petty offender despite the child's history of misdemeanor-level offenses.

Subd. 2. Juvenile Traffic Offender. A juvenile traffic offender is any child alleged to have committed a traffic offense except those children under the jurisdiction of adult court as provided in Minnesota Statutes, section 260B.225.

A traffic offense is any violation of a state or local traffic law, ordinance, or regulation, or a federal, state or local water traffic law.

(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.)

17.02 Right to Counsel

Subdivision 1. Generally. In any proceeding in which a child is charged as a juvenile petty offender or a juvenile traffic offender, the child or the child's parent may retain private counsel, but the child does not have a right to counsel at public expense, except:

(A) when the child may be subject to out-of-home placement as provided in Minnesota Statutes, section 260B.235, subdivision 6; or

(B) as otherwise provided pursuant to Rule 3.02, subdivisions 3, 6 and 7.

Subd. 2. Waiver. Any waiver of counsel must be knowing, intelligent, and voluntary. A waiver of counsel shall be in writing or made orally on the record.

Subd. 3. For Appeal. A child adjudicated a juvenile petty offender or juvenile traffic offender does not have the right to counsel at public expense for the purposes of appeal except at the discretion of the Office of the State Public Defender as set out in Rule 21.02, subdivision 2.

Subd. 4. Parent, Legal Guardian or Legal Custodian as Counsel. A parent, legal guardian or legal custodian may not represent the child unless licensed as an attorney.

(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.)

17.03 Warrants

The issuance of warrants under this Rule is governed by Rule 4.

(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.)

17.04 The Charging Document and Notice of Arraignment

A child shall be charged as a juvenile petty offender or juvenile traffic offender pursuant to Rule 6 with proper notice given pursuant to Rule 25. The time for an arraignment shall be the same as that for a delinquency proceeding.

(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.)

17.05 Arraignment

Subdivision 1. Generally. An arraignment is a hearing in which a child shall enter a plea of guilty or not guilty in the manner provided in Rule 17.06.

Subd. 2. Timing. Upon the filing of a charging document, the court administrator shall promptly fix a time for arraignment and send notices pursuant to Rule 25. The time for an arraignment shall be the same as that for a delinquency proceeding, that is:

(A) *Child in Custody.* The child in custody may be arraigned at a detention hearing and shall be arraigned no later than five (5) days after the detention hearing. The child has the right to have a copy of the charging document for three (3) days before being arraigned.

(B) *Child Not in Custody.* The child not in custody shall be arraigned no later than thirty (30) days after the filing of the charging document. The child has the right to have a copy of the charging document for three (3) days before being arraigned.

Subd. 3. Hearing Procedure. Children alleged to be juvenile petty offenders or juvenile traffic offenders may be arraigned as a group and shall be arraigned individually and confidentially upon request. At the start of the arraignment, the court shall inform the child(ren) of the following rights and possible dispositions:

(A) the right to remain silent;

(B) the right to counsel at any point throughout the proceedings, including the limited right to appointment of counsel at public expense;

(C) the right to plead not guilty and have a trial in which the child is presumed innocent unless and until the prosecuting attorney proves the allegations beyond a reasonable doubt;

(D) the right of the child to testify on the child's own behalf;

(E) the right to call witnesses using the court's subpoena powers;

(F) *For a Juvenile Petty Offender*:

(1) the dispositions that may be imposed pursuant to Minnesota Statutes, section 260B.235, subdivisions 4, 5, and 6, if the child pleads guilty or, after a trial, the court finds that the allegations of the charging document have been proven beyond a reasonable doubt; and

(2) if the offense is a second misdemeanor-level petty offense, the possibility that any same or similar offense will be charged as a misdemeanor in a delinquency petition;

(G) *For a Juvenile Traffic Offender*. The dispositions that may be imposed pursuant to Minnesota Statutes, section 260B.225, subdivision 9, if the child pleads guilty or, after a trial, the court finds that the allegations of the charging document have been proven beyond a reasonable doubt.

Subd. 4. Reading of Allegations of Charging Document. The court shall read the allegations of the charging document to the child and determine that the child understands them, and, if not, provide an explanation.

Subd. 5. Motions. The court shall hear and make findings on any motions regarding the sufficiency of the charging document, including its adequacy in stating probable cause of the charges made and the jurisdiction of the court, without requiring the child to plead guilty or not guilty to the charges in the charging document. A challenge of probable cause shall not delay the setting of trial proceedings in cases where the child has demanded a speedy trial.

Subd. 6. Response to Charging Document. After considering the wishes of the parties to proceed later or at once, the court may continue the arraignment without requiring the child to plead guilty or not guilty to the charges stated in the 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.)

17.06 Pleas

Subdivision 1. Plea of Guilty. Before the court accepts a plea of guilty, the court shall determine under the totality of the circumstances whether the child understands all applicable rights. The court shall on the record, or by written plea petition if the child is represented by counsel, determine:

(A) whether the child understands:

(1) the nature of the offense alleged;

(2) the right to the appointment of counsel if the child is subject to out-of-home placement as provided in Minnesota Statutes, section 260B.235, subdivision 6;

(3) the right to trial;

(4) the presumption of innocence until the prosecuting attorney proves the charges beyond a reasonable doubt;

(5) the right to remain silent;

(6) the right to testify on the child's own behalf;

(7) the right to confront witnesses against oneself;

(8) the right to subpoena witnesses;

(9) that the child's conduct constitutes the offense to which the child pled guilty;

(B) whether the child makes any claim of innocence; and

(C) whether the plea is made freely, under no threats or promises other than those the parties have disclosed to the court.

Subd. 2. Plea of Not Guilty. Upon a plea of not guilty, the matter shall be set for trial and the court shall advise the child of the discovery procedures as set forth in Rule 17.07.

Subd. 3. Withdrawal of Plea. The child may, on the record or by written motion filed with the court, request to withdraw a plea of guilty. The court may allow the child to withdraw a guilty plea:

(A) before disposition, for any just reason;

(B) at any time, if out-of-home placement is proposed based upon a plea or adjudication obtained without the assistance of counsel; or

(C) after disposition, upon showing that withdrawal is necessary to correct a manifest injustice.

Subd. 4. Plea to a Lesser Offense or a Different Offense. With the consent of the prosecuting attorney and approval of the court, the child shall be permitted to enter:

(A) a plea of guilty to a lesser included offense or to an offense of a lesser degree; or

(B) a plea of guilty to a different offense than that alleged in the charging document.

A plea of guilty to a lesser included offense or to an offense of a lesser degree may be entered without an amendment of the charging document. If a plea to a different offense is accepted, the charging document must be amended on the record or a new charging document must be filed with the court.

Subd. 5. Acceptance or Nonacceptance of Plea of Guilty and Future Proceedings. The court shall make a finding within fifteen (15) days of the plea of guilty:

(A) that the plea has been accepted and the allegations in the charging document have been proved; or

(B) that the plea has not been accepted.

If the court accepts a plea of guilty and makes a finding that the allegations in the charging document have been proved, the court shall schedule further proceedings pursuant to Rule 17.09.

(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.)

17.07 Discovery

At the court's discretion, discovery may be conducted in the manner provided for delinquency proceedings pursuant to Rule 10. Otherwise discovery shall proceed as follows: The prosecuting attorney shall, as soon as possible, provide the child with copies of statements and police reports. At least ten (10) days before trial, the parties shall exchange the names of witnesses they intend to have testify at trial as well as exhibit lists.

(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.)

17.08 Pretrial and Omnibus Hearing

Upon request of either party, the court shall hold a pretrial and/or an omnibus hearing in the manner provided for delinquency proceedings pursuant to Rules 11 and 12.

(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.)

17.09 Adjudication and Disposition

Subdivision 1. Predisposition Reports. Before finding that the allegations of the charging document have been proved, the court may order an investigation of the personal and family history and environment of the child and outpatient psychological or chemical dependency evaluations of the child. The information and recommendations contained in the predisposition report(s) shall be made known to the child, child's parent(s), legal guardian or legal custodian before the disposition hearing.

Subd. 2. Adjudication and Disposition. Within forty-five (45) days from the finding that the allegations of the charging document are proved, the court shall:

(A) *For a Juvenile Petty Offender.* Adjudicate the child a juvenile petty offender and order a disposition pursuant to Minnesota Statutes, section 260B.235, subdivisions 4, 5, and 6.

(B) *For a Juvenile Traffic Offender.* Adjudicate the child a juvenile traffic offender and order a disposition pursuant to Minnesota Statutes, section 260B.225, subdivision 9.

The order may be in writing or on the record. If the order is on the record, the child may request written findings, and the court shall make and file written findings within seven (7) days of the request. The court administrator shall serve the written findings as provided in Rule 28.

Subd. 3. Probation Revocation. Probation revocation proceedings shall be conducted in the same manner as delinquency probation violation proceedings pursuant to Rule 15.07 except for the following:

(A) *Warrant.* The court may only issue a warrant for immediate custody of a juvenile petty or juvenile traffic offender if the court finds that there is probable cause to believe that: 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.

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

(1) that, at all stages of the proceedings, the child has the right to be represented by counsel but does not have the right to counsel at public expense, unless the child is subject to out-of-home placement;

(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, 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;

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

(C) *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 order a disposition pursuant to Minnesota Statutes, section 260B.235, subdivisions 4, 5, and 6, for a juvenile petty offender or a disposition pursuant to Minnesota Statutes, section 260B.225, subdivision 9 for a juvenile traffic offender.

Subd. 4. Other Modifications. Other modification proceedings shall be conducted in the same manner as delinquency modification proceedings pursuant to Rule 15.08 except that the court may not order a delinquency disposition. For a juvenile petty offender, the court may order a disposition pursuant to Minnesota Statutes, section 260B.235, subdivisions 4, 5, and 6 and for a juvenile traffic offender, the court may order a disposition pursuant to Minnesota Statutes, section 260B.225, subdivision 9. The modification order may be in writing or on the record. If the order is on the record, the child may request written findings, and the court shall make and file written findings within seven (7) days of the request.

(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 January 1, 2008.)

17.10 Transfer to Adult Court of Juvenile Traffic Matter

Subdivision 1. On Motion of Court or Prosecuting Attorney. The court, after a hearing and on its own motion or on motion of the prosecuting attorney, may transfer a juvenile traffic offender case to adult court if it makes a written order to transfer which finds that the welfare of the child or public safety would be better served under the laws relating to adult traffic matters.

Subd. 2. Method of Transfer. The court shall transfer the case by forwarding all documents in the court file to adult court together with the order to transfer.

Subd. 3. Effect of Transfer. Upon transfer, jurisdiction of the juvenile court is deemed not to have attached and the adult shall proceed with the case as if it had never been in 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.)

17.11 Child Incompetent to Proceed

If a child is believed to be incompetent to proceed, the court may proceed according to Rule 20, direct that civil commitment proceedings be initiated, direct that Child in Need of Protection or Services (CHIPS) proceedings be initiated or dismiss the case.

(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.)

17.12 to 17.19 [Repealed and Renumbered effective September 1, 2003]

Comment--Rule 17

In 1995, the legislature expanded the definition of "juvenile petty offense." Pursuant to Minnesota Statutes 1995 Supplement, section 260.015, subdivision 21, a juvenile petty offense included the following:

- (a) a juvenile alcohol offense;*
- (b) a juvenile controlled substance offense;*
- (c) a violation of Minnesota Statutes, section 609.685;*
- (d) a violation of a local ordinance, which by its terms prohibits conduct by a child under the age of 18 years which would be lawful conduct if committed by an adult;*

(e) an offense, other than a violation of Minnesota Statutes, section 609.224, 609.324, 609.563, 609.576, or 617.23, that would be a misdemeanor if committed by an adult if:

(1) the child has not been found to be a juvenile petty offender on more than two prior occasions for a misdemeanor-level offense;

(2) the child has not previously been found to be delinquent for a misdemeanor, gross misdemeanor, or felony offense; or

(3) the county attorney designates the child on the petition as a juvenile petty offender, notwithstanding the child's prior record of misdemeanor-level juvenile petty offenses. Minnesota Statutes 1995 Supplement, section 260.015, subdivision 21.

This definition of juvenile petty offense applied to crimes committed on or after July 1, 1995. Minnesota Laws 1995, chapter 226, article 3, section 65.

In 1996, the legislature again revised the definition of "juvenile petty offense." Pursuant to Minnesota Laws 1996, chapter 408, article 6, section 1, a juvenile petty offense included:

(a) a juvenile alcohol offense;

(b) a juvenile controlled substance offense;

(c) a violation of Minnesota Statutes, section 609.685;

(d) a violation of local ordinance, which by its terms prohibits conduct by a child under the age of 18 years which would be lawful conduct if committed by an adult; and

(e) an offense that would be a misdemeanor if committed by an adult, except:

(1) a misdemeanor-level violation of Minnesota Statutes, section 588.20, 609.224, 609.2242, 609.324, 609.563, 609.576, 609.66, or 617.23;

(2) a major traffic offense or an adult court traffic offense, as described in Minnesota Statutes, section 260.193;

(3) a misdemeanor-level offense committed by a child whom the juvenile court previously has found to have committed a misdemeanor, gross misdemeanor, or felony offense; or

(4) a misdemeanor-level offense committed by a child whom the juvenile court has found to have committed a misdemeanor-level juvenile petty offense on two or more prior occasions, unless the county attorney designates the child on the petition as a juvenile petty offender notwithstanding this prior record. As used in this clause, "misdemeanor-level juvenile petty offense" included a misdemeanor-level offense that would have been a juvenile petty offense if it had been committed on or after July 1, 1995. Minnesota Laws 1996, chapter 408, article 6, section 1.

This definition of juvenile petty offense applied to crimes committed on or after August 1, 1996. Minnesota Laws 1996, chapter 408, article 6, section 13. Minn. R. Juv. Del. P. 17.01 subd 1 reflected the definition of "juvenile petty offense" set forth pursuant to Minnesota Laws 1996, chapter 408, article 6, section 1. However, because this definition often changed, Rule 17.01, subd. 1 now refers to the applicable statute. See Minnesota Statutes 2002, section 260B.007, subdivision 16.

The legislature reorganized the law relating to juvenile delinquency and child protection in 1999. Minnesota Laws 1999, chapter 139. This recodification is found in Minnesota Statutes, sections 260B.001 to 260B.446, for juvenile delinquency.

Minnesota Statutes 2002, section 260B.225, subdivision 2, provides that the prosecutor may allege the child is delinquent based upon a traffic offense but the court must find as a further fact that the child is delinquent within the meaning and purpose of the laws relating to juvenile court. Such matter shall be initiated and shall proceed in the same manner as any other delinquency.

At the arraignment, the court may inform each child of his or her rights and the possible consequences by reading and having each child sign a sheet outlining those rights. A suggested form for this rights sheet is included in the appendix of forms, following these rules.

Minn. R. Juv. Del. P. 17.10 is based on Minnesota Statutes 2002, section 260B.225, subdivision 7, which provides that the juvenile court may transfer a juvenile traffic offender case to adult court after a hearing if the juvenile court finds that the welfare of the child or public safety would be better served under the laws relating to adult traffic matters.

The right to appeal is set forth in Minnesota Statutes 2002, section 260B.415, subdivision 1.

Rule 18. Certification of Delinquency Matters

18.01 Application

Subdivision 1. Generally. This rule is applicable when the prosecutor moves for certification and a child is alleged to have committed, after becoming fourteen (14) years of age, an offense that would be a felony if committed by an adult.

Subd. 2. First Degree Murder Accusation. The district court has original and exclusive jurisdiction in criminal proceedings concerning a child alleged to have committed murder in the first degree after becoming sixteen (16) years of age. Upon the filing of a complaint or indictment charging a sixteen (16) or seventeen (17) year old child in adult proceedings with the offense of first degree murder, juvenile court jurisdiction terminates for all proceedings arising out of the same behavioral incident.

(Added 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.)

18.02 Initiation of Certification Proceedings of Delinquency Matters

Subdivision 1. Generally. Proceedings to certify delinquency matters pursuant to Minnesota Statutes, section 260B.125, may be initiated upon motion of the prosecuting attorney after a delinquency petition has been filed. The motion may be made at the first appearance of the child pursuant to Rule 5 or 7, or within ten (10) days of the first appearance or before jeopardy attaches, whichever of the latter two occurs first. The motion shall be in writing and comply with the provisions of Rule 27, and shall include a statement of the grounds supporting the certification.

Subd. 2. First Degree Murder Accusation. When the delinquency petition that is the basis for the motion for certification alleges that a child under age sixteen (16) committed the offense of murder in the first degree, the prosecuting attorney shall present the case to the grand jury for consideration of an indictment under Minnesota Statutes, chapter 628, within fourteen (14) days after the petition is filed.

(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.)

18.03 Notice of Certification

Notice of the initial appearance under Rule 18.05, subdivision 2 together with a copy of the motion for certification and a copy of the delinquency petition shall be served pursuant to Rule 25.

(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.)

18.04 Certification Study

Subdivision 1. Order. The court on its own motion or on the motion of the child's counsel or the prosecuting attorney, may order social, psychiatric, or psychological studies concerning the child who is the subject of the certification proceeding.

Subd. 2. Content of Reports. If the person preparing the report includes a recommendation on the court's actions: (a) the report shall address each of the public safety considerations of Rule 18.06, subdivision 3; and (b) the report shall address all options of the trial court under Rule 18.07, namely: (i) certification; (ii) retention of jurisdiction for extended jurisdiction juvenile proceedings; and (iii) retention of juvenile court jurisdiction in non-presumptive certification cases.

Subd. 3. Costs. Preparation costs and court appearance expenses for person(s) appointed by the court to conduct studies shall be paid at public expense.

Subd. 4. Filing and Access to Reports. The person(s) making a study shall file a written report with the court and provide copies to the prosecuting attorney and the child's counsel four (4) days, excluding Saturdays, Sundays, and legal holidays, prior to the time scheduled for the hearing. The court administrator shall not otherwise disclose the report except by court order.

Subd. 5. Admissibility. Any matters disclosed by the child to the examiner during the course of the study may not be used as evidence or the source of evidence against the child in any subsequent 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 September 1, 2005.)

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 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.)

18.06 Certification Determination

Subdivision 1. Presumption of Certification. Pursuant to Minnesota Statutes, section 260B.125, subdivision 3, it is presumed that a child will be certified for action under the laws and court procedures controlling adult criminal violations if:

(A) the child was sixteen (16) or seventeen (17) years old at the time of the offense;

(B) the delinquency petition alleges that the child committed an offense that would 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

(C) probable cause has been determined pursuant to Rule 18.05, subdivision 3.

The presumption of certification is overcome if the child demonstrates by clear and convincing evidence that retaining the proceedings in juvenile court serves public safety.

Subd. 2. Non-presumptive Certification. If there is no presumption of certification as defined by subdivision 1, the court may order certification only if the prosecuting attorney has demonstrated by clear and convincing evidence that retaining the proceeding in juvenile court does not serve public safety.

Subd. 3. Public Safety. In determining whether the public safety is served by certifying the matter, or in designating the proceeding an extended jurisdiction juvenile proceeding, the court shall consider the following factors:

(A) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the Minnesota Sentencing Guidelines, the use of a firearm, and the impact on any victim;

(B) the culpability of the child in committing the alleged offense, including the level of the child's participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Minnesota Sentencing Guidelines;

(C) the child's prior record of delinquency;

(D) the child's programming history, including the child's past willingness to participate meaningfully in available programming;

(E) the adequacy of the punishment or programming available in the juvenile justice system; and

(F) the dispositional options available for the child.

In considering these factors, the court shall give greater weight to the seriousness of the alleged offense and the child's prior record of delinquency than to the other factors listed in this subdivision.

Subd. 4. Prior Certification. The court shall order certification in any felony case if the prosecutor shows that the child was previously prosecuted and convicted in adult proceedings that were certified pursuant to Minnesota Statutes, section 260B.125, subdivision 5.

Subd. 5. Extended Juvenile Court Jurisdiction.

(A) *Presumptive Certification.* If the juvenile court does not order certification in a presumptive certification case, the court shall designate the proceeding an extended jurisdiction juvenile prosecution.

(B) *Non-presumptive Certification.* If the court does not order certification in a non-presumptive certification case, the court may consider designating the proceeding an extended jurisdiction juvenile prosecution. Designation as an extended jurisdiction juvenile prosecution may only occur if the prosecuting attorney has shown by clear and convincing evidence that the designation would serve public safety, taking into account the factors specified in Rule 18.06, subdivision 3. Absent this showing the case shall proceed as a delinquency proceeding in 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 September 1, 2005.)

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 Minn. R. Crim. P. 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 Minn. R. Crim. P. 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.)

18.09 Withdrawal of Waiver of Certification Hearing

Subdivision 1. General Procedure. A child may bring a motion to withdraw the waiver of certification hearing and stipulation to certification order:

(A) within fifteen (15) days of the filing of the order for certification, upon showing that it is fair and just to do so; or

(B) at any time prior to trial, upon showing that withdrawal is necessary to correct a manifest injustice.

The motion shall be made in the juvenile court that entered the certification order. A motion shall also be filed for a stay of proceedings in the adult court to which the case was certified.

Subd. 2. Basis for Motion. The motion shall state with particularity one of the following bases for granting withdrawal of waiver:

- (A) the waiver was not knowingly, voluntarily, and intelligently made;
- (B) the child alleges ineffective assistance of counsel; or
- (C) withdrawal of waiver is appropriate in the interests of justice.

Subd. 3. Timing and Effect of Hearing. A hearing shall be held within fifteen (15) days of the filing of the motion. Following the hearing, if the court grants the motion to withdraw the waiver of certification hearing: 1) the court shall vacate the order for certification, and proceedings will resume in juvenile court pursuant to Rule 18; and 2) the court shall review the order for custody or conditions of release. If the court denies the motion to withdraw the waiver for certification hearing, the certification order shall remain in effect, and proceedings will resume in adult court.

(Added 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.)

Comment--Rule 18

Pursuant to Minnesota Statutes 2002, section 260B.125, subdivision 6, on a proper motion, the court may hold a certification hearing for an adult charged with a juvenile offense if:

(1) the adult was alleged to have committed an offense before his or her 18th birthday; and

*(2) a petition was timely filed under Minnesota Statutes 2002, sections 260B.141 and 628.26. The court may not certify the matter if the adult demonstrates that the delay was purposefully caused by the state in order to gain an unfair advantage. Minnesota Statutes 2002, section 260B.125, subdivision 6; see also *In re Welfare of A.N.J.*, 521 N.W.2d 889, 891 (Minn. Ct. App. 1994). Juvenile court retains jurisdiction to hear a certification motion filed after the child's 19th birthday provided a delinquency petition has been timely filed and the delay was not the result of an improper state purpose.*

Much of the text of Minn. R. Juv. Del. P. 18.05 subd 1(A) is taken from Minnesota Statutes 2002, section 260B.163.

*The sanction for delay in Minn. R. Juv. Del. P. 18.05 subd 1(B) and 18.07 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).*

On continuation questions under Minn. R. Juv. Del. P. 18.05 subd 1(B), the victim should have input but does not have the right of a party to appear and object.

Most of the waiver language in Minn. R. Juv. Del. P. 18.05 subd 1(C) is taken from the 1983 version of Minn. R. Juv. Del. P. 15.03.

Minn. R. Juv. Del. P. 18.05 subd 2(B) requires a determination on appearances of necessary persons. Under Minnesota Statutes 2002, section 260B.163, subdivision 7, the custodial parent or guardian of the child who is the subject of the certification proceedings must accompany the child at each hearing, 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 2002, section 260B.154.

Much of the content of Minn. R. Juv. Del. P. 18.05 subd 3 is modeled after Minn. R. Crim. P. 11.03 and 18.07 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. 18.05 subd 3 and 18.07 subd 2(A)(2) eliminate 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 the result of grand jury proceedings conducted after 1994 statutory amendments on the question of whether a juvenile is to be accused of first degree murder in adult proceedings. See *Minnesota Statutes* 2002, section 260B.007, subdivision 6. Minn. R. Juv. Del. P. 18.05 subd 4(B) is consistent with case law. Because the certification question is dispositional in nature, strict application of the rules of evidence is thought to be inappropriate. Minn. R. Juv. Del. P. 18.05 does not address the consequences of the child's testimony at a hearing. See *Simmons v. United States*, 390 U.S. 377 (1968) and *State v. Christenson*, 371 N.W.2d 228 (Minn. Ct. App. 1985). Cf. *Harris v. New York*, 401 U.S. 222 (1971).

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

Following presentation of evidence by the party with the burden of proof under Minn. R. Juv. Del. P. 18.05 subd 4(C) or (D), the adverse party may move the court for directed relief on the grounds that the burden of proof has not been met by the evidence presented.

The determination under Minn. R. Juv. Del. P. 18.06 subd 1 whether an offense would result in a presumptive commitment to prison under the Minnesota Sentencing Guidelines should be analyzed pursuant to those guidelines. The public safety factors listed in Rule 18.06 subd 3 mirror those set forth in *Minnesota Statutes*, section 260B.125, subdivision 4, 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).

Under *Minnesota Statutes* 2002, sections 260B.101, subdivision 2, 260B.007, subdivision 6, paragraph (b), and 260B.125, subdivision 10, the accusation of first degree murder by a 16 or 17 year old child takes the case out of the delinquency jurisdiction of the juvenile court. If this accusation is first made by complaint, and is followed by an indictment that does not accuse the child of first degree murder but of some other crime, the proceedings come within the exclusive jurisdiction of the juvenile court, but subject to action of the juvenile court on any motion for certification of the proceedings to adult court. In these circumstances, the juvenile court would deal with an accusation by indictment in the same fashion as proceedings might otherwise occur on a juvenile court petition. Once adult court proceedings begin on an indictment for first degree murder, regardless of the ultimate conviction, the proceedings remain within adult court jurisdiction. Indictments may be received by any district court judge including one sitting in juvenile court.

Under Minn. R. Crim. P. 17.01, first degree murder cases are prosecuted by an indictment, but the proceedings can begin by complaint. *State v. Behl*, 564 N.W.2d 560 (Minn. 1997). As a result, the prosecuting attorney can initiate a first degree murder accusation in adult court proceedings.

Minn. R. Juv. Del. P. 18.02 subd 2 repeats the procedural requirement stated in *Minnesota Statutes* 2002, section 260B.125, subdivision 9.

Rule 18 previously contained a provision that allowed jail credit for time spent in custody in connection with the offense or behavioral incident on which further proceedings are to occur. See Minn. R. Juv. Del. P. 18.06 subd 1(D) (repealed 2003). That provision was deleted because jail credit is awarded at the time of sentencing in adult court, and is thus governed by the *Minnesota Rules of Criminal Procedure*, not the *Minnesota Rules of Juvenile Procedure*. See Minn. R. Crim. P. 27.03 subd 4(B).

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

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.)

19.02 Notice of the Extended Jurisdiction Juvenile Proceeding

A notice of the initial appearance under Rule 19.04, subdivision 2, together with a copy of the petition and designation, or a copy of the motion and petition, shall be served pursuant to Rule 25.

(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.)

19.03 Extended Jurisdiction Juvenile Study

Subdivision 1. Order. The court on its own motion or on the motion of the child's counsel or the prosecuting attorney, may order social, psychiatric, or psychological studies concerning the child who is the subject of the extended jurisdiction juvenile proceeding.

Subd. 2. Content of Reports. If study reports include a recommendation on the court's actions, the report shall address each of the public safety considerations of Rule 19.05.

Subd. 3. Costs. Preparation costs and court appearance expenses for the person(s) appointed by the court to conduct studies shall be paid at public expense.

Subd. 4. Filing and Access to Reports. The person(s) making a study shall file a written report with the court and provide copies to the prosecuting attorney and the child's counsel four (4) days, excluding Saturdays, Sundays, and legal holidays, prior to the time scheduled for the hearing. The court administrator shall not otherwise disclose the report except by court order.

Subd. 5. Admissibility of Study. Any matters disclosed by the child to the examiner during the course of the study may not be used as evidence or the source of evidence against the child in any subsequent 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 September 1, 2005.)

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.)

19.05 Public Safety Determination

In determining whether public safety would be served, the court shall take into account the following factors:

(A) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the Minnesota Sentencing Guidelines, the use of a firearm, and the impact on the victim;

(B) the culpability of the child in committing the alleged offense, including the level of the child's participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Minnesota Sentencing Guidelines;

(C) the child's prior record of delinquency;

(D) the child's programming history, including the child's past willingness to participate meaningfully in available programming;

(E) the adequacy of the punishment or programming available in the juvenile justice system; and

(F) the dispositional options available for the child.

In considering these factors, the court shall give greater weight to the seriousness of the alleged offense and the child's prior record of delinquency than to the other factors listed in this subdivision.

(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.)

19.06 Extended Jurisdiction Juvenile Prosecution Determination

Subdivision 1. Extended Jurisdiction Juvenile Prosecution Required. The court shall designate the proceeding an extended jurisdiction juvenile prosecution:

(A) following a motion for certification in a presumptive certification case pursuant to Minnesota Statutes, section 260B.125, subdivision 3:

(1) when the court finds, after a contested hearing pursuant to Rule 18.05, that the child has shown by clear and convincing evidence that retaining the proceeding in juvenile court serves public safety pursuant to Rule 18.06, subdivision 3; or

(2) when the parties agree that extended jurisdiction juvenile prosecution is appropriate; or

(B) following designation by the prosecuting attorney and findings by the court pursuant to Rule 19.04, subdivision 2(D).

Subd. 2. Extended Jurisdiction Juvenile Prosecution Discretionary. The court may designate the proceeding an extended jurisdiction juvenile prosecution:

(A) following a motion for certification in a non-presumptive certification case:

(1) when the court finds, after a contested certification hearing, that the prosecutor has not demonstrated by clear and convincing evidence that retaining the proceeding in juvenile court does not serve public safety pursuant to Rule 18.06, subdivision 3, and the court determines that extended jurisdiction juvenile prosecution is appropriate; or

(2) when the parties agree that extended jurisdiction juvenile prosecution is appropriate and the child waives the right to a contested hearing; or

(B) following a motion for extended jurisdiction juvenile proceeding:

(1) when the court finds, after a contested extended jurisdiction juvenile hearing conducted pursuant to Rule 19.04, that designating the proceeding an extended jurisdiction juvenile prosecution serves public safety pursuant to Rule 19.05; or

(2) when the parties agree that extended jurisdiction juvenile prosecution is appropriate and the child waives the right to a contested hearing.

(Added 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.)

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 file 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);
 - (c) why the court found that retaining the proceeding in juvenile court serves public safety pursuant to Rule 19.05.

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; amended effective January 1, 2007.)

19.08 Withdrawal of Waiver of Extended Jurisdiction Juvenile Hearing

Subdivision 1. General Procedure. A child may bring a motion to withdraw the waiver of extended jurisdiction juvenile hearing and stipulation to extended jurisdiction juvenile prosecution order:

- (A) within fifteen (15) days of the filing of the order, upon showing that it is fair and just to do so; or
- (B) at any time prior to trial, upon showing that withdrawal is necessary to correct a manifest injustice.

The motion shall be made in the juvenile court that entered the extended jurisdiction juvenile prosecution order.

Subd. 2. Basis for Motion. The motion shall state with particularity one of the following bases for granting withdrawal of the waiver:

- (A) the waiver was not knowingly, voluntarily, or intelligently made;
- (B) the child alleges ineffective assistance of counsel; or
- (C) withdrawal is appropriate in the interests of justice.

Subd. 3. Timing and Effect of Hearing. A hearing shall be held within fifteen (15) days of the filing of the motion. Following the hearing, if the court grants the motion to withdraw the waiver of extended jurisdiction juvenile hearing, the court shall vacate the order for extended jurisdiction juvenile prosecution, and proceedings will resume pursuant to Rule 19.04. If the court denies the motion to withdraw the waiver for extended jurisdiction juvenile hearing, the order for extended jurisdiction juvenile prosecution shall remain in effect, and proceedings will resume pursuant to Rule 19.09.

(Added 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.)

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 Minn. R. Crim. P. 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 designation as an extended jurisdiction juvenile prosecution, 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 Minn. R. Crim. P. 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; amended effective January 1, 2007.)

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;
 - (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 signature of the sentencing judge.

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 Minn. R. Crim. P. 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 Minn. R. Crim. P. 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. Del. 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 grand 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 2002, section 260B.007, subdivision 6.

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 2002, section 260B.125, subdivision 4, and eliminate the need for non-offense related 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 2002, section 260B.163, subdivision 7, 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 2002, section 260B.154.

Pursuant to Minnesota Statutes 2002, section 260B.245, 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 2002, sections 609.115 and 631.20. 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 holding in *State v. Garcia*, 683 N.W.2d 294 (Minn. 2004) and *Asfaha v. State*, 665 N.W.2d 523 (Minn. 2003) found Minnesota Statutes 2002, section 260B.130, subdivision 5, 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, subdivision 4, paragraph (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.

Rule 20. Child Incompetent to Proceed and Defense of Mental Illness or Mental Deficiency

20.01 Proceeding when Child is Believed to be Incompetent

Subdivision 1. Incompetency to Proceed Defined. A child is incompetent and shall not be permitted to enter a plea, be tried, or receive a disposition for any offense when the child lacks sufficient ability to:

(A) consult with a reasonable degree of rational understanding with the child's counsel; or

(B) understand the proceedings or participate in the defense due to mental illness or mental deficiency.

Subd. 2. Counsel. Any child subject to competency proceedings shall be represented by counsel.

Subd. 3. Proceedings. The prosecuting attorney, the child's counsel or the court shall bring a motion to determine the competency of the child if there is reason to doubt the competency of the child during the pending proceedings.

The motion shall set forth the facts constituting the basis for the motion but the child's counsel shall not divulge communications in violation of the attorney-client privilege. The bringing of the motion by the child's counsel does not waive the attorney-client privilege. Any such motion may be brought over the objection of the child. Upon such motion, the court shall suspend the proceedings and shall proceed as follows:

(A) *Felony or Gross Misdemeanor.* If the offense is a felony or gross misdemeanor, the court shall determine whether there is sufficient probable cause to believe the child committed the offense charged before proceeding pursuant to this rule. If there is sufficient showing of probable cause, the court shall proceed according to this rule. If the court finds insufficient probable cause to believe the child committed the offense charged, the charging document against the child shall be dismissed.

(B) *Other Matters.* If the offense is a misdemeanor, juvenile petty matter or juvenile traffic offense, the court having trial jurisdiction shall proceed according to this rule, or dismiss the case in the interests of justice.

(C) *Examination.* If there is probable cause, the court shall proceed as follows. The Court shall suspend the proceedings and appoint at least one examiner as defined in the Minnesota Commitment Act, Minnesota Statutes, chapter 253B, to examine the child and report to the court on the child's mental condition.

The court may not order confinement for the examination if the child is otherwise entitled to release and if the examination can be done adequately on an outpatient basis. The court may require the completion of an outpatient examination as a condition of release.

The court may order confinement for an inpatient examination for a specified period not to exceed sixty (60) days if the examination cannot be adequately done on an outpatient basis or if the child is not entitled to be released.

The court shall permit examination of the child or observation of such examination by a qualified psychiatrist, clinical psychologist or qualified physician retained and requested by the child's counsel or prosecuting attorney.

The court shall further direct the mental-health professionals to notify promptly the prosecuting attorney, the child's counsel, and the court if such mental-health professionals conclude, upon examination, that the child presents an imminent risk of serious danger to another person, is imminently suicidal, or otherwise needs emergency intervention.

(D) *Report of Examination.* Within sixty (60) days, the examiner shall send a written report to the judge who ordered such examination, the prosecuting attorney and the child's counsel. The report contents shall not be otherwise disclosed until the hearing on the child's competency. The report shall include:

- (1) A diagnosis of the mental condition of the child;
- (2) If the child is mentally ill or mentally deficient, an opinion as to:
 - (a) whether the child can understand the proceedings and participate in the defense;
 - (b) whether the child presents an imminent risk of serious danger to another person, is imminently suicidal, or otherwise needs emergency intervention;
 - (c) whether the child requires any treatment to attain competency and if so, the appropriate treatment alternatives by order of choice, the extent to which the child can be treated as an outpatient and the reasons for rejecting such treatment if institutionalization is recommended; and
 - (d) whether, with treatment, there is a substantial probability that the child will attain competency and if so, when the child is expected to attain competency and the availability of inpatient and outpatient treatment agencies or facilities in the local geographical area;

(3) A statement of the factual basis upon which the diagnosis and opinion are based; and

(4) If the examination could not be conducted because the child is unwilling to participate, a statement to that effect with an opinion, if possible, as to whether the child's unwillingness was the result of mental illness or deficiency.

Subd. 4. Hearing and Determination of Competency.

(A) *Hearing and Notice.* Upon receipt of the report and notice to the parties, the court shall hold a hearing within ten (10) days on the issue of the child's competency to proceed.

(B) *Going Forward with Evidence.* If the child's counsel moved for the examination, the child's counsel shall go forward first with evidence at the hearing. If the prosecuting attorney or the court on its own initiative, moved for the examination, the prosecuting attorney shall go forward with evidence unless the court otherwise directs.

(C) *Report and Evidence.* The examination report and other evidence as to the child's mental condition may be admitted at the hearing. The person who prepared the report or any individual designated by that person as a source of information for preparation of the report, other than the child or the child's counsel, is considered the court's witness and may be called and cross-examined as such by either party.

(D) *Child's Counsel as Witness.* The child's counsel may testify as to personal observations of and conversations with the child to the extent that attorney-client privilege is not violated, and continue to represent the child. The prosecuting attorney may examine the child's counsel testifying to such matter.

The court may inquire of the child's counsel concerning the attorney-client relationship and the child's ability to communicate effectively with the child's counsel. However, the court may not require the child's counsel to divulge communications in violation of the attorney-client privilege. The prosecuting attorney may not cross-examine the child's counsel responding to the court's inquiry.

(E) *Decision and Sufficiency of Evidence.* If the court determines that the child is competent by the greater weight of evidence, the court shall enter a written order finding competency. Otherwise, the court shall enter a written order finding incompetency.

Subd. 5. Effect of Finding on Issue of Competency to Proceed.

(A) *Finding of Competency.* If the court determines that the child is competent to proceed, the proceedings against the child shall resume.

(B) *Finding of Incompetency.* If the offense is a misdemeanor, petty matter, or juvenile traffic offense, and the court determines that the child is incompetent to proceed, the matter shall be dismissed. If the offense is a gross misdemeanor, and the court determines that the child is incompetent to proceed, the court has the discretion to dismiss or suspend the proceedings against the child except as provided by Rule 20.01, subdivision 7. If the offense is a felony, and the court determines that the child is incompetent to proceed, the proceedings against the child shall be further suspended except as provided by Rule 20.01, subdivision 7.

(1) If the court determines that the child is mentally ill or deficient so as to be incapable of understanding the proceedings or participation in the defense, the court shall order any existing civil commitment continued. If the child is not under commitment, the court may direct civil commitment proceedings be initiated, and the child confined in accordance with the provisions of the Minnesota Commitment Act, Minnesota Statutes, chapter 253B.

(2) If it is determined that commitment proceedings are inappropriate and a petition has been filed alleging the child is in need of protection or services (CHIPS), the

court shall order such jurisdiction be continued. If the child is not under CHIPS jurisdiction, the court may order the child held for up to seventy-two (72) hours and direct CHIPS proceedings to be initiated.

(3) If it is determined that neither commitment proceedings nor CHIPS proceedings are appropriate, the child shall be released to the child's parent(s), legal guardian or legal custodian under conditions deemed appropriate to the court.

Subd. 6. Continuing Supervision by the Court. In felony and gross misdemeanor cases in which proceedings have been suspended, the person charged with the child's supervision, such as the head of the institution to which the child is committed, shall report to the trial court on the child's mental condition and competency to proceed at least every six (6) months unless otherwise ordered. Copies of the reports shall also be sent to the prosecuting attorney and to the child's counsel.

Unless the charging document against the child has been dismissed as provided by Rule 20.01, subdivision 7, the trial court, child's counsel and the prosecuting attorney shall be notified of any proposed institutional transfer, partial institutionalization status, and any proposed termination, discharge, or provisional discharge of the juvenile protection case. The prosecuting attorney shall have the right to participate as a party in any proceedings concerning such proposed changes in the child's commitment or status.

Subd. 7. Dismissal of Proceedings.

(A) Delinquency and extended jurisdiction juvenile proceedings shall be dismissed upon the earlier of the following:

(1) the child's nineteenth (19th) birthday in the case of a delinquency, or twenty-first (21st) birthday if a designation or motion for extended jurisdiction juvenile proceedings is pending;

(2) for all cases except murder, the expiration of one (1) year from the date of the finding of the child's incompetency to proceed unless the prosecuting attorney, before the expiration of the one (1) year period, files a written notice of intention to prosecute the child when the child has been restored to competency. Such a notice shall extend the suspension of proceeding for one (1) year from the date of filing subject to Rule 20.01, subdivision 7(A).

(B) For all cases pending certification except murder, proceedings shall be dismissed upon the expiration of three (3) years from the date of the finding of the child's incompetency unless the prosecuting attorney, before the expiration of the three (3) year period, files a written notice of intention to prosecute the child when the child has been restored to competency. Murder charges shall not be dismissed based upon a finding of incompetency.

Subd. 8. Determination of Legal Issues Not Requiring Child's Participation. The fact that the child is incompetent to proceed shall not preclude the child's counsel from making any legal objection or defense that can be fairly determined without the personal participation of such child.

Subd. 9. Admissibility of Child's Statements. When a child is examined under this rule, any statement made by the child for the purpose of the examination and any evidence derived from the examination shall be admissible in evidence only at the proceedings to determine whether the child is competent to proceed.

(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 September 1, 2005; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008.)

20.02 Defense of Mental Illness or Mental Deficiency at the Time of the Offense**Subdivision 1. When Raised.**

(A) If the child intends to raise mental illness or mental deficiency as a defense, the child's counsel shall advise the court and prosecuting attorney in writing at the omnibus hearing or no less than ten (10) days before the trial, whichever is earlier. The notice shall provide the court and prosecuting attorney with a statement of particulars showing the nature of the mental illness or mental deficiency expected to be proved and the names and addresses of witnesses expected to prove it.

(B) The court, upon good cause shown and in its discretion, may waive these requirements and permit the introduction of the defense, or may continue the hearing for the purpose of an examination in accordance with the procedures in this rule.

(C) A continuance granted for an examination will toll the speedy trial rule and the limitation on detention pending adjudication and disposition.

Subd. 2. Examination of the Child. If the defense of mental illness or mental deficiency is raised, the court shall order an examination as described in Rule 20.01, subdivision 3(C). The court may order that the examination for competency under Rules 20.01 and 20.02 be conducted simultaneously.

Subd. 3. Refusal of the Child to be Examined. If the child does not participate in the examination so that the examiner is unable to make an adequate report to the court, the court may:

(A) prohibit the child from introducing evidence of the child's mental illness or mental deficiency;

(B) strike any such evidence previously introduced;

(C) permit any other party to comment on and to introduce evidence of the child's refusal to cooperate to the trier of the facts; and

(D) make any such other ruling as it deems just.

Subd. 4. Disclosure of Reports and Records of Child's Mental Illness or Mental Deficiency Examinations.

(A) *Order for Disclosure.* If a child raises the defense of mental illness or mental deficiency, the trial court, on motion of the prosecuting attorney and notice to the child's counsel may order the child to furnish either to the court or to the prosecuting attorney copies of all medical reports and hospital and medical records previously or thereafter made concerning the mental illness or mental deficiency of the child and relevant to the issue of the defense of mental illness or mental deficiency. If the copies of the reports and records are furnished to the court, the court shall inspect them to determine their relevancy. If the court determines they are relevant, they shall be delivered to the prosecuting attorney. Otherwise, they shall be returned to the child. If the child is unable to comply with the court order, a subpoena duces tecum may be issued.

(B) *Use of Reports and Records.* If an order for disclosure of reports and records under this subdivision is entered and copies are furnished to the prosecuting attorney, the reports and records and any evidence obtained from them may be admitted in evidence only upon the issue of the defense of mental illness or mental deficiency.

Subd. 5. Report of Examination. At the conclusion of the examination, a written report of the examination shall be forwarded to the judge who ordered the examination, the prosecuting attorney and to the child's counsel. The court administrator shall not otherwise disclose the report except by court order. The report of the examination shall contain:

(A) A diagnosis of the child's mental illness or mental deficiency as requested by the court;

(B) If so directed by the court, an opinion as to whether, because of mental illness or deficiency, the child at the time of the commission of the offense charged was laboring under such a defect of reason as not to know the nature of the act constituting the offense with which child is charged or that it was wrong;

(C) Any opinion requested by the court that is based on the examiner's diagnosis;

(D) A statement of the factual basis upon which the diagnosis and any opinion are based; and

(E) If the examination cannot be conducted by reason of the child's unwillingness to participate, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the child was the result of mental illness or deficiency.

Subd. 6. Admissibility of Evidence at Trial. No evidence derived from the examination shall be received against the child unless the child has previously made his or her mental illness or mental deficiency an issue in the case. If the child's mental illness or mental deficiency is an issue, any party may call the person who examined the child at the direction of the court to testify as a witness at the trial. The report or portions thereof may be received in evidence to impeach the testimony of the person making it.

Subd. 7. Trial. When a child is examined under Rule 20.01 or 20.02, the admissibility at trial of any statements made by the child for the purposes of the examination and any evidence obtained as a result of such statements shall be determined by the following rules:

(A) *Notice by Child of Sole Defense of Mental Illness or Mental Deficiency.* If a child notifies the court and prosecuting attorney under Rule 20.02, subdivision 1 of an intention to rely solely on the defense of mental illness or deficiency, any statements made by the child for the purpose of the mental examination and evidence obtained as a result of the statements shall be admissible at the trial upon that issue.

(B) *Separate Trial of Defenses.* If a child notifies the court and prosecuting attorney under Rule 20.02, subdivision 1 of an intention to rely on the defense of mental illness or deficiency together with a defense of not guilty, there shall be a separation of the two defenses with a sequential order of proof before the court in a continuous trial in which the defense of not guilty shall be heard and determined first, and then the defense of the child's mental illness or deficiency.

(C) *Effect of Separate Trial.* If the child relies on the two defenses, the statements made by the child for the purpose of the mental examination and any evidence obtained as a result of such statements shall be admissible against the child only at that stage of the trial relating to the defense of mental illness or mental deficiency.

(D) *Procedure Upon Separated Trial of Defenses.*

(1) Court Trial for Child Alleged to be Delinquent or Charged with a Juvenile Petty or Juvenile Traffic Offense. Upon the trial of the defense of not guilty the court shall determine whether the elements of the offense charged have been proved beyond a reasonable doubt. If the court determines that the elements of the offense have not been proved beyond a reasonable doubt, the court shall enter findings and order a dismissal pursuant to Rule 13.09. If the court determines that the elements of the offense have been proved beyond a reasonable doubt and the child is relying on the sole defense of mental illness or mental deficiency, the defense of mental illness or mental deficiency shall then be tried and determined by the court. The child shall have the burden of proving the defense of mental illness or mental deficiency by a preponderance of the evidence. Based upon that determination the court shall make a finding of:

- (a) not guilty by reason of mental illness; or
- (b) not guilty by reason of mental deficiency; or
- (c) guilty.

The court shall enter findings pursuant to Rule 13.09.

(2) Extended Jurisdiction Juvenile Proceedings. A court trial in an extended jurisdiction juvenile proceeding shall be conducted pursuant to Rule 20.02, subdivision 7(D)(1). A jury trial in an extended jurisdiction juvenile proceeding shall be conducted pursuant to Minnesota Rules of Criminal Procedure 20.02, subdivision 6(4).

Subd. 8. Procedure After Hearing.

(A) *Mental Illness or Mental Deficiency Not Proven.* After a finding of guilty and the defense of mental illness or deficiency not proven, the court shall schedule and conduct a disposition hearing. The issues of the child's mental illness or deficiency shall be considered by the court at disposition.

(B) *Mental Illness or Mental Deficiency Proven.* When a child is found not guilty by reason of mental illness or mental deficiency,

(1) the court shall order any existing civil commitment continued. If the child is not under commitment, the court may order the child held at a shelter or treatment facility for up to seventy-two (72) hours and shall direct civil commitment proceedings be initiated;

(2) if it is determined that the child does not meet the criteria for civil commitment jurisdiction and the child is under CHIPS jurisdiction, the court shall order such jurisdiction be continued. If the child is not under CHIPS jurisdiction, the court may order the child held for up to seventy-two (72) hours in an appropriate facility and shall direct CHIPS proceedings be initiated.

(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.)

Comment -- Rule 20

Minn. R. Juv. Del. P. 20 is based upon Minn. R. Crim. P. 20.

Under Minn. R. Juv. Del. P. 20.01 subd 3(C), the court shall permit examination of the child or observation of such examination by a qualified medical personnel retained and requested by the child's counsel or prosecuting attorney. The court has the authority to order payment of reasonable and necessary costs of evaluation of the child at public expense pursuant to Minnesota Statutes 2002, section 260B.331, subdivision 1. Furthermore, under Minnesota Statutes 2002, section 260.042, the court shall make an orientation and educational program available for juveniles and their families in accordance with the program established, if any, by the Minnesota Supreme Court.

"A determination of competency, even in the context of juvenile adjudicatory proceedings, is a fundamental right. Because of this and because dispositions in juvenile proceedings, including rehabilitative dispositions, may involve both punishment and a substantial loss of liberty, the level of competence required to permit a child's participation in juvenile court proceedings can be no less than the competence demanded for trial or sentencing of an adult." In re Welfare of D.D.N., 582 N.W.2d 278, 281 (Minn. Ct. App. 1998) (citation omitted). The court has a continuing obligation to inquire into a juvenile's competency to stand trial when substantial information exists, or the child's observed demeanor raises doubts as to competency. In re Welfare of S.W.T., 277 N.W.2d 507, 512 (Minn. 1979). C.f. Drope v. Missouri, 420 U.S. 162, 179 (1975); Pate v. Robinson, 383 U.S. 375, 385 (1966); State v. Jensen, 278 Minn. 212, 215, 153 N.W.2d 339 (Minn. 1967).

A juvenile delinquency proceeding is not a criminal proceeding. See Minnesota Statutes 2002, section 260B.225, (stating a violation of a state or local law or ordinance by a child before becoming 18 is not a crime). Although the right to counsel has been recognized for juveniles in In re Gault, 387 U.S. 1, 41 (1967), the corollary right to self-representation has not been established in the juvenile context. The Committee recognized that children subject to competency proceedings may be vulnerable; therefore,

it would not be appropriate to allow a child to waive counsel prior to a court determining that the child is competent.

Rule 21. Appeals

21.01 Generally

This rule governs the procedure for appeals from juvenile traffic and juvenile petty, delinquency, extended jurisdiction juvenile, and certification proceedings in district court. Except as provided by these rules, Minnesota Rules of Civil Appellate Procedure shall govern appeals from juvenile court proceedings. These rules do not limit a child's right to seek extraordinary writs. In order to expedite its decision or for other good cause shown, the court of appeals may suspend any of these rules, except the time for filing a notice of appeal. The court of appeals shall expedite all appeals from juvenile court proceedings pursuant to Rule 21.07.

A party may petition to the Supreme Court of Minnesota for review pursuant to Minn. R. Civ. App. P. 117 or 118.

(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.)

21.02 Proceedings in Forma Pauperis

Subdivision 1. Generally. An indigent child wanting to appeal, cross-appeal, or defend an appeal taken by the prosecuting attorney shall make application to the office of the state public defender.

Upon the administrative determination by the state public defender's office that the applicant is financially and otherwise eligible for representation, the state public defender is automatically appointed for that purpose without order of the trial court. Any applicant who contests a decision of the state public defender's office regarding eligibility may apply to the Minnesota Supreme Court for relief.

If the parents of a child are financially able to contribute to some or all of the costs of representation, they may be ordered to pay the State of Minnesota all or a portion of those costs.

Subd. 2. Exception for Juvenile Petty Offenders and Juvenile Traffic Offenders. The state public defender may, in its discretion, agree to represent a juvenile traffic offender or a juvenile petty offender who wants to appeal, cross-appeal, or defend an appeal taken by the prosecuting attorney if, after an administrative determination by the state public defender's office, the child is found financially eligible for representation.

(Amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008.)

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 Minn. R. Crim. P. 28.02, subdivision 3. A motion for a new trial is not necessary in order to appeal.

The trial 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 trial 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 appellate court may review any other matter as the interests of justice require. In addition to all powers of review presently existing, the appellate

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, paragraph (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;
- (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 Minn. R. Crim. P. 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 after service of the notice of filing of the appealable order upon the child's counsel by the court administrator as provided in Rule 28.

(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 Minn. R. Civ. App. P. 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 appeal 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 Minn. R. Civ. App. P. 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 Minn. R. Crim. P. 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 trial 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.* Minn. R. Crim. P. 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 trial court shall make written findings on each of the above factors. The trial 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 trial 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; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008.)

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 appellate 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 Minn. R. Crim. P. 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 twenty (20) 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 Minn. R. Civ. App. P. 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 twenty (20) 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, Minn. R. Crim. P. 6.02, subds 1 and 2. The trial 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; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008.)

21.05 Appeal by Parent(s), Legal Guardian or Legal Custodian of the Child

A parent, legal guardian, or legal custodian who participated separately pursuant to Rule 2.04, subdivision 3 may appeal from a disposition.

A parent, legal guardian, or legal custodian who is indigent may apply to the office of the state public defender for legal representation.

Parents' right to appeal is limited to cases where they have a liberty or property interest involved and their interest is adverse to that of the child.

The procedure for appeals by a parent, legal guardian, or legal custodian shall be governed by Rule 21.03, subdivision 2.

(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, 2005.)

21.06 Certified Questions to the Court of Appeals

After adjudication or sentencing, or before hearing on a motion to dismiss, the trial court may report any question of law which is important and doubtful to the court of appeals, if the child requests or consents. Upon report of the question all further district court proceedings shall be stayed. Other cases pending in the trial court which involve or depend on the same question shall also be stayed if a stay is requested or consented to by the juvenile involved.

The aggrieved party shall file a brief with the court of appeals and serve it on all parties within fifteen (15) days of the trial court's report of the question. Other parties shall have eight (8) days to file responsive briefs. The court of appeals shall expedite its decision on certified questions.

21.07 Time for Issuance of Decision

All decisions regarding appeals of certification determinations pursuant to Rule 18.07 or extended jurisdiction juvenile determinations pursuant to Rule 19.07 shall be issued within sixty (60) days of the date the case is deemed submitted pursuant to the Rules of Civil Appellate Procedure. The court of appeals shall issue its decision in all other appeals within ninety (90) days of the date the case is deemed submitted pursuant to the Rules of Civil Appellate Procedure.

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

Comment--Rule 21

An appeal may be taken by petitioning the Supreme Court of Minnesota for review pursuant to Minn. R. Civ. App. P. 117 or by petitioning for accelerated review pursuant to Minn. R. Civ. App. P. 118.

The scope of review shall be pursuant to Minn. R. Civ. App. P. 103.04.

Minn. R. Juv. Del. P. 21.03 subd 1(A) (7) and (10) includes the right to appeal a stayed sentence and the execution of a stayed sentence. See Minn. R. Crim. P. 27.04 subd 3(5) and 28.05 subd 2. An order continuing the matter without adjudication and imposing a disposition pursuant to Minnesota Statutes 2002, section 260B.198, subdivision 1, paragraph (a) or (b), is an appealable final order as is a subsequent order adjudicating the child and imposing a disposition pursuant to Minnesota Statutes 2002, section 260B.198, subdivision 1.

A child's representation by the public defender is governed by Minnesota Statutes, chapter 611. The public defender is not required to appeal from misdemeanor dispositions or adjudications, but may do so at its discretion.

The parents or the child may be required to contribute to some or all of the costs of representation. See Minn. R. Juv. Del. P. 3.06 subd 2. See also Minnesota Statutes 2002, section 260B.331, subdivision 5.

Minn. R. Juv. Del. P. 21.03 subd 2(C)(1) refers to "necessary transcripts" because in some cases only a partial transcript will be required. Minn. R. Civ. App. P. 110.02 shall govern partial transcripts.

Whether or not the order for certification should be stayed is discretionary with the court. Certification orders are governed by Minn. R. Juv. Del. P. 18.07. If a stay is granted, the child will be detained in a juvenile facility if detention is necessary. If the stay of the certification order is not granted and detention is necessary, the child will more likely be detained in an adult facility pending the appeal.

Minn. R. Juv. Del. P. 21.04 subd 1(D), which allows prosecutors to appeal orders dismissing a charging document for lack of probable cause when dismissed solely on a question of law, is based on In re Welfare of C.P.W., 601 N.W.2d 204, 207 (Minn. Ct. App. 1999).

Rule 22. Substitution of Judge

22.01 Before or During Trial

If by reason of death, sickness or other disability, the judge before whom pretrial proceedings or a jury trial has commenced is unable to proceed, any other judge sitting in or assigned to the court, upon certification of familiarity with the record of the proceedings or trial, may proceed with and finish the proceedings or trial.

22.02 After Verdict or Finding of Guilt

If by reason of absence, death, sickness, or other disability, the judge before whom the child has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that those duties cannot be performed because of not presiding at the trial, such judge may grant a new trial.

22.03 Notice to Remove

Subdivision 1. Service and Filing. The child's counsel or the prosecuting attorney may serve on the other parties and file with the court administrator a notice to remove the judge assigned to a trial or hearing. The notice shall be served and filed within seven (7) days after the child's counsel or the prosecuting attorney receives written notice, or oral notice in court on the record, of which judge is to preside at the trial or hearing but, in any event, not later than the commencement of the trial or the hearing.

Subd. 2. Removal of Presiding Judge. No notice shall be effective against a judge who has already presided at the trial, probable cause hearing, or other evidentiary hearing of which the party had notice, except where a party shows cause why a judge should be removed. After a party has once disqualified a presiding judge as a matter of right, that party may disqualify the substitute judge only upon an affirmative showing of cause.

(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 July 1, 2004.)

22.04 Assignment of New Judge

Upon the removal, disqualification, disability, recusal or unavailability of a judge under this rule, the chief judge of the judicial district shall assign any other judge within the district to hear the matter. If there is no other judge of the district who is qualified to hear the matter, the chief judge of the district shall notify the chief justice. The chief justice shall then assign a judge of another district to preside over the matter.

Comment--Rule 22

This rule is modeled after Minn. R. Crim. P. 26.03 subd 13. The rule permits the child's counsel or prosecuting attorney to serve and file a notice to remove a judge as a matter of right without cause. Only one such removal as a matter of right is permitted to a party. Other removals must be for cause.

The right to a fair trial before an impartial tribunal is a fundamental due process requirement. See, e.g., Estes v. Texas, 381 U.S. 532, 85 S.Ct. 1628, 14 L.Ed.2d. 543 (1965). The Supreme Court in In re Murchison, 349 U.S. 133, 75 S.Ct. 623 (1955), explained the importance of an impartial tribunal: "Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness... [T]o perform its high function in the best way, 'justice must satisfy the appearance of justice.'" 349 U.S. at 136 citing Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954). Moreover, the fact finder must make a determination based only on the evidence in the record in order to ensure effective appellate review. See, e.g., Patterson v. Colorado, 205 U.S. 454 (1907).

The appearance, if not the actuality, of neutral and unbiased fact-finding may be compromised if the judge has actual knowledge of the social history or prior court history of the child. See, e.g., In re Gladys R., 1 Cal.3d 855, 464 P.2d 127, 83 Cal. Rptr. 671 (1970) (reversible error for juvenile court to review social study report before jurisdictional hearing). The problem is especially acute in delinquency proceedings because juveniles, with the exception of extended jurisdiction juveniles, do not have the right to a jury trial. McKiever v. Pennsylvania, 403 U.S. 528, 91 S.Ct. 1976, 29 L.Ed. 647 (1970). Whenever a judge

knows information that is not admissible at trial but is prejudicial to a child, the impartiality of the tribunal is open to question. A.B.A. Juvenile Justice Standards Relating to Adjudication, Standard 4.1 at 54. The problem of impartiality is particularly troublesome in juvenile court proceedings because the same judge typically handles the same case at different stages. For example, at a detention hearing, a judge may be exposed to a youth's social history file and prior record of police contacts and delinquency adjudications, all of which bear on the issue of appropriate pretrial placement. When the same judge is subsequently called upon to determine the admissibility of evidence in a suppression hearing and the guilt of the juvenile in the same proceeding, the juvenile's basic right to a fair trial by an impartial tribunal with a determination of guilt based on admissible evidence may be compromised. E.g., In re Welfare of J.P.L., 359 N.W.2d 622 (Minn. Ct. App. 1984).

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

Rule 23. Referee

23.01 Authorization to Hear Cases

A referee may hear matters as authorized by statute.

23.02 Objection to Assignment of Referee

The child's counsel or the prosecuting attorney may object to a referee presiding at a hearing. This objection shall be in writing and filed with the court within three (3) days after being informed that the matter is to be heard by a referee or the right to object is waived. The court may permit the filing of a written objection at any time. After the filing of an objection, a judge shall hear any motion and preside at any hearing.

(Amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight July 1, 2004.)

23.03 Notice to Remove a Particular Referee

The child's counsel or the prosecuting attorney may serve on the other party and file with the court administrator a notice to remove a particular referee assigned to a trial or hearing in the same manner as a judge may be removed under Rule 22. After a party has once disqualified a referee as a matter of right, that party may disqualify the substitute judge or referee only upon an affirmative showing of cause.

(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.)

23.04 Transmittal of Findings

Upon the conclusion of a hearing, the referee shall transmit to the judge findings and recommendations in writing. Notice of the findings of the referee together with a statement relative to the right to a review before a judge shall be given either orally on the record, or in writing to the child, the child's counsel, the child's parent(s), legal guardian or legal custodian and their counsel, the prosecuting attorney and to any other person that the court may direct.

23.05 Review

Subdivision 1. Generally. A matter which has been decided by a referee may be reviewed in whole or in part by a judge.

Subd. 2. Filing. A motion for a review by a judge must be filed with the court within ten (10) days after the referee's findings and recommendations have been provided to the child, child's counsel, prosecuting attorney, child's parents, legal guardian or legal custodian and their counsel pursuant to Rule 28.

Subd. 3. Right of Review Upon Filing of Timely Motion.

(A) *Right of Child.* The child is entitled to a review by a judge in any matter upon which a referee has made findings or recommendations.

(B) *Right of Prosecuting Attorney.* The prosecuting attorney is entitled to a review by a judge from any pre-trial findings or recommendations of a referee. The prosecuting attorney is not entitled to a review on any pretrial findings by a judge after jeopardy has attached.

(C) *Right of Parent(s), Legal Guardian or Legal Custodian.* The child's parent(s), legal guardian or legal custodian are entitled to a review by a judge of a referee's findings or recommendations made after the allegations of a charging document have been proved.

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

Subd. 5. Procedure. A review by a judge may be of the verbatim record or de novo in whole or in part.

(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.)

23.06 Order of the Court

The findings and recommendations of the referee become the order of the court when confirmed by the judge subject to review pursuant to Rule 23.05.

(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.)

Comment--Rule 23

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

Rule 24. Guardian Ad Litem

24.01 Appointment

(A) Except as provided in Rule 24.01 (B) the court shall appoint a guardian ad litem, to act in place of a parent, legal guardian or legal custodian to protect the best interests of the child when it appears, at any stage of the proceedings, that the child is without a parent, legal guardian or legal custodian. If the parent, legal guardian or legal custodian is unavailable, incompetent, indifferent to, hostile to, or has interests in conflict with the child's best interests, a guardian ad litem shall be appointed.

(B) The court may determine not to appoint a guardian ad litem when:

- (1) counsel has been appointed or is otherwise retained for the child, and
- (2) the court finds that the best interests of the child are otherwise protected.

(C) The court may appoint a guardian ad litem on its own motion or on the motion of the child's counsel or the prosecuting attorney when the court determines that an appointment is in the best interests of the child.

(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 guardians ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

Rule 24.02 General Responsibilities of Guardians Ad Litem

In every juvenile delinquency court case in which a guardian ad litem is appointed, the guardian ad litem shall:

(1) conduct an independent investigation to determine the facts relevant to the situation of the child and the family, which must include, unless specifically excluded by the court: reviewing relevant documents; meeting with and observing the child in the home setting and considering the child's wishes, as appropriate; and interviewing parents, caregivers, and others relevant to the case;

(2) advocate for the child's best interests by participating in appropriate aspects of the case and advocating for appropriate community services when necessary;

(3) maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child;

(4) monitor the child's best interests throughout the judicial proceeding; and

(5) present written reports on the child's best interests that include conclusions and recommendations and the facts upon which they are based.

(Added effective for guardians ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

24.03 Guardian Ad Litem Not Counsel For Child

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

Rule 25. Notice

25.01 Summons, Notice in Lieu of Summons, Oral Notice on the Record, Service by Facsimile Transmission and Notice by Telephone

Subdivision 1. Summons. A summons is a document personally served on a person directing that person to appear before the court at a specified time and place. If the person summoned fails to appear, the court may issue an arrest warrant or, for the child, a warrant for immediate custody.

Subd. 2. Notice in Lieu of Summons. A notice in lieu of summons is a document mailed by the court administrator to a person who is directed to appear in court at a specified time and place. If a person appears pursuant to the mailed notice, the person waives the right to personal service of the summons. If the person fails to appear, the court shall not issue a warrant until personal service is made or attempted unless grounds exist under Rule 4.03.

Subd. 3. Oral Notice on the Record. The court may schedule further proceedings by oral notice to all persons present. Oral notice on the record shall be sufficient notice to all persons present. Any person not present who is entitled to notice, shall receive written notice.

Subd. 4. Detention Hearings: Service by Facsimile Transmission or Notice by Telephone Permitted.

(A) Service By Facsimile Transmission.

(1) Notice to Defense Counsel; Defense Counsel Access to Child and Reports. If a child is detained pending a detention hearing in a place of detention other than home detention or at home on electronic home monitoring, the court administrator shall give the Office of the Public Defender or the child's attorney, if privately retained, notice that the child is in custody, and notice of the detention hearing. The court administrator shall also provide to the Office of the Public Defender or the child's attorney copies of the reports filed with the court by the detaining officer and the supervisor of the place of detention. Defense counsel shall have immediate and continuing access to the child. The notice in lieu of summons and copies of the reports may be provided by facsimile transmission or hand delivery if mailed notice would not be effective given the time remaining before the detention hearing.

(2) Notice to Prosecuting Attorney. If mailed notice in lieu of summons would not be effective given the time remaining before the detention hearing, notice in lieu of summons may be provided by facsimile transmission or hand delivery.

(B) Notice By Telephone. If the child, child's attorney, prosecuting attorney, child's parent(s), legal guardian(s) or legal custodian(s) or spouse of the child has not received notice of the time and place of the detention hearing and effective service by mail or facsimile

transmission or hand delivery of the notice in lieu of summons is not possible, the court administrator may provide notice of the time and place of the detention hearing by telephone call.

(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.)

25.02 Content

Any summons or notice in lieu of summons shall include:

(A) a copy of the charging document, court order, motion, affidavit or other legal documents, filed with the court which require a court appearance;

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

(C) a brief statement describing the purpose of the hearing;

(D) a brief statement of rights of the child and parents;

(E) notice to the child and parent that a failure to appear in court could result in a warrant; and

(F) such other matters as the court may direct.

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

25.03 Procedure for Notification

Subdivision 1. First Notice by Mail. After a charging document has been filed, the court administrator shall schedule a hearing as required by these rules. A notice in lieu of summons shall be served by first class mail on the following:

(A) child and parent(s) or person(s) with custody of the child; and

(B) child's counsel, prosecuting attorney, spouse of child and their counsel.

The court may waive notice to the parent(s), legal guardian, legal custodian, or spouse of the child if it would be in the child's best interest to proceed without their presence.

Subd. 2. Personal Service. If the child and/or parent(s) fail to appear in response to one or more notices in lieu of summons served by mail, a summons may be served personally in the manner provided by Minnesota law. The summons shall advise the person served that a failure to appear may result in the court issuing a warrant for arrest.

Subd. 3. Warrant for Arrest or Immediate Custody. A warrant for arrest or immediate custody may be issued by the court for a child or parent(s) who fail to appear in response to a summons which has been personally served or where reasonable efforts at personal service have been made.

Subd. 4. Timing. A summons shall be personally served at least five (5) days before the hearing. A notice in lieu of summons shall be mailed at least eight (8) days before the hearing. These times may be waived by a person or by the court for good cause shown.

Subd. 5. Proof of Service.

(A) *Personal Service.* On or before the date set for appearance, the person who served a summons by personal service shall file a written statement with the court showing:

(1) that the summons was served;

(2) the person on whom the summons was served; and

(3) the date, time, and place of service.

(B) *Service by Mail.* On or before the date set for appearance, the person who served notice in lieu of summons by mail shall file a written statement with the court showing:

(1) the name of the person to whom the summons or notice was mailed;

(2) the date the summons or notice was mailed; and

(3) whether the summons or notice was sent by certified mail.

(C) *Notice of Detention Hearing: Service by Facsimile Transmission.* The person providing notice of a detention hearing by facsimile transmission shall file a written statement with the court showing:

(1) the name, address and facsimile number of the person to whom the notice was sent by facsimile transmission;

(2) the time and date the facsimile transmission was sent or the efforts to do so; and

(3) the reason why notice was not sent by First Class Mail.

(D) *Notice of Detention Hearing: Telephone Call.* The person providing notice of a detention hearing by telephone call shall file a written statement with the court showing:

(1) the name, address and telephone number of the person who was contacted with notice of the detention hearing;

(2) the date and time of the telephone call or the efforts to do so; and

(3) the reason why notice in lieu of summons was not sent by First Class Mail and, in the case of the child's attorney or the prosecuting attorney, why the notice in lieu of summons was not sent by facsimile transmission.

(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.)

25.04 Waiver

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

Comment--Rule 25

Pursuant to Minnesota Statutes 1994, section 260.141, subdivision 1, notices of juvenile court proceedings were to be made by personal service or if made pursuant to Minn. R. Civ. P. 4.02, by mail with an acknowledgement returned to the court. That was not the practice throughout the state. This rule is written to reflect the common practice of simply mailing the notice (called a notice in lieu of summons) and charging document by first class mail. If those served do not appear in response to the notice, the court can proceed with personal service of a summons and follow up with a warrant if there is still a failure to appear. Appearance rates are generally high with just a mailed notice and the costs of process are significantly increased by mailed service with acknowledgment or by personal service. The legislature has since amended Minnesota Statutes, section 260.141, subdivision 1, to comport with this rule. Minnesota Laws 1996, chapter 408, article 6, sections 3 and 12; see Minnesota Statutes 2002, section 260B.152, subdivision 1.

This rule allows for notice of a detention hearing to be provided by facsimile transmission or telephone call when, given the time remaining before the detention hearing, mailed notice in lieu of summons would not be effective. Notice by facsimile transmission or telephone is not permitted for any other type of hearing.

*Historically, there have been some informal service methods for service of the prosecuting attorney and the public defender by each other and by the court, which were instituted for efficiency and cost-effectiveness. However, where the rules require a specific method of service, these informal methods of service may not be used. See *City of Albert Lea v. Harrer*, 381 N.W.2d 499 (Minn. Ct. App. 1986) (stating "[t]he clerk and the city attorney cannot agree to ignore the rules").*

In the appendix of these rules are samples of a notice in lieu of summons and a summons.

Rule 26. Subpoenas**26.01 Motion or Request for Subpoenas**

On the court's own motion or at the request of the child's counsel or the prosecuting attorney, the clerk shall issue subpoenas requiring the attendance and testimony of witnesses and the production of records, documents or other tangible objects at any hearing.

Counsel for the parent(s), legal guardian and legal custodian of the child have the right to request the issuance of subpoenas requiring the attendance and testimony of witnesses and the production of records, documents or other tangible objects at any hearing after the allegations of the charging document have been proved.

26.02 Expense

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

If a subpoena is issued at the request of the child's counsel or counsel for the parent(s), legal guardian, or legal custodian, and the child or parent(s) of the child are unable to pay the fees and mileage of witnesses, these costs shall be paid at public expense, upon approval by the court, in whole or in part, depending on the ability of the child and the parent(s) of the child to pay. All other fees shall be paid by the requesting person unless otherwise ordered by the court.

Comment--Rule 26

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

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.

Rule 27. Motions**27.01 Motions to be Signed**

Every motion shall be in writing, state with particularity the grounds, be signed by the person making the motion and filed with the court unless it is made in court and on the record.

27.02 Service of Motions

Subdivision 1. When Required. Every written motion along with any supporting affidavits shall be served on the child, the child's counsel, the prosecuting attorney and the parent(s), legal guardian or legal custodian of the child.

Subd. 2. How Made. The moving party shall serve the other parties. If the other parties are represented by counsel, the moving party shall serve the other parties' counsel unless the court orders otherwise. Service of motions may be made by personal service or by mail. Service by mail shall be complete upon mailing to the last known address of the person to be served.

Subd. 3. Time. Any motion required by this rule to be served, along with any supporting affidavits, shall be served at least three (3) days before it is to be heard unless the court for good cause shown permits a motion to be made and served less than three (3) days before it is to be heard.

Rule 28. Notice of Orders or Judgments

Within five (5) days of filing of a written order or decision or entry of a judgment, the court administrator shall serve a copy of the written order on the child, the child's counsel, prosecuting attorney, probation officer, the parent(s), the legal guardian or legal custodian of the child and their counsel. The order shall be accompanied by a notice of filing, which shall include notice of the right to appeal a final order pursuant to Rule 21. The State Court

Administrator shall develop a "notice of filing" form, which shall be used by court administrators.

(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 January 1, 2008.)

Rule 29. Recording

29.01 Procedure

A verbatim recording of all hearings shall be made by a stenographic reporter or by an electronic reporter. If the recording is made by an electronic reporter, any requested transcripts shall be prepared by personnel assigned by the court.

29.02 Availability of Transcripts

Subdivision 1. Child's Counsel and Prosecuting Attorney. Transcripts of hearings for further use in the hearing or subsequent hearings, appeal, habeas corpus action or for other use as the court may approve, shall be made available to the child's counsel or the prosecuting attorney upon written request to the court reporter.

Subd. 2. Counsel for Parent(s), Legal Guardian or Legal Custodian. Transcripts of hearings for use at dispositional hearings, for appeal from disposition hearings, or for other use as the court approves, shall be made available to counsel for the parent(s), legal guardian or legal custodian of the child when they participate pursuant to Rule 2.04, subdivision 3. Applications for transcripts shall be made to the court in writing or on the record.

(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.)

29.03 Expense

If the person requesting a transcript is unable to pay the preparation cost, the person may apply to the court for an order directing the preparation and delivery of the transcript to the person requesting it, at public expense. Depending on the ability of the person to pay, the court may order partial reimbursement for the cost of transcript.

Comment--Rule 29

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

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.

Rule 30. Records

30.01 Generally

Subdivision 1. Records Defined. Juvenile court records include:

- (A) all documents filed with the court;
- (B) all documents maintained by the court;
- (C) all reporter's notes and tapes, electronic recordings and transcripts of hearings and trials; and
- (D) as relates to delinquency matters, all documents maintained by juvenile probation officers, county home schools and county detention agencies.

Subd. 2. Duration of Maintaining Records. The juvenile court shall maintain records as required by Minnesota Statute.

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 the 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 guardians 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.)

Comment--Rule 30

Legal records as defined in Minnesota Statutes 2002, section 260B.171, subdivision 1, are the petition, summons, notice, findings, orders, decrees, judgments and motions and such other matters as the court deems necessary and proper. Minnesota Statutes 2002, section 260B.171, subdivision 4, provides exceptions to public access of "legal records," arising under Minnesota Statutes 2002, section 260B.163, subdivision 1, delinquency proceedings alleging or proving a felony level violation by a juvenile at least 16 years old at the time of violation, along with the following exclusions: (1) Minnesota Statutes 2002, section 245A.04, subdivision 3, paragraph (d), which directs the court to provide juvenile court records to the Commissioner of Human Services; and (2) Minnesota Statutes 2002, sections 611A.03, 611A.04, 611A.06, and 629.73, which provide for the rights of victims in delinquency proceedings, juvenile traffic proceedings involving driving under the influence of alcohol or drugs and proceedings involving any other act committed by a juvenile that would be a crime as defined in Minnesota Statutes 2002, section 609.02, if committed by an adult.

The juvenile court shall maintain records pertaining to juvenile delinquency adjudications until the juvenile reaches 28 years of age. Records pertaining to convictions of extended jurisdiction juveniles shall be maintained for as long as they would be maintained if the offender had been an adult.

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

"Prosecuting attorney" as used in this rule also includes adult court prosecuting attorneys.

Pursuant to Minnesota Statutes 2002, section 260B.171, subdivision 2, the juvenile court shall forward data for juvenile delinquents adjudicated delinquent for felony- or gross misdemeanor-level offenses. The court shall also forward data to the BCA on persons convicted as extended jurisdiction juveniles.

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

If a juvenile is enrolled in school, the juvenile's probation officer shall transmit a copy of the court's disposition order if the juvenile is adjudicated delinquent for committing an act on school property or if the juvenile is adjudicated delinquent for one of the offenses enumerated in Minnesota Statutes 2002, section 260B.171, subdivision 3, paragraph (a). When the probation officer transmits a disposition order to a school, the probation officer shall notify the parent, legal guardian or legal custodian that this information has been sent to the juvenile's school.

Rule 31. Timing

31.01 Computation

Unless otherwise provided by statute or specific Minnesota Rules of Juvenile Procedure, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or legal holiday. When a period of time prescribed or allowed is three days or less, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in 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, Columbus Day, Veterans Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or Congress of the United States or by the State.

(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.)

31.02 Additional Time After Service by Mail

Whenever a person has the right or is required to do an act within a prescribed period after the service of a notice or other paper and the notice or other paper is served by mail, three (3) days shall be added to the prescribed period.

JUVENILE DELINQUENCY FORMS

Effective September 1, 2003
With amendments received through August 1, 2008

TABLE OF FORMS

Introductory Statement

Form

1. [Deleted]
2. Notice of the Rights of Victims in Juvenile Court
3. Notice in Lieu of Summons
4. Summons
5. Prosecutor's Request for Disclosure
6. Prosecutor's Notice of Evidence and Identification Procedures
7. Petition to Proceed Pro Se in Juvenile Delinquency Proceeding
8. Statement of Rights: Juvenile Delinquency Proceedings
9. Statement of Rights: Juvenile Petty Offender Proceedings
10. Statement of Rights: Juvenile Traffic Offender Proceedings
11. Statement of Rights: Juvenile Probation Revocation
12. Waiver of Right to Contested Hearing in an Extended Jurisdiction Juvenile Case
13. Waiver of Right to Contested Hearing in a Non-Presumptive Certification Case
14. Waiver of Right to Contested Hearing in a Presumptive Certification Case
15. Petition to Enter Plea of Guilty in an Extended Jurisdiction Juvenile Case
16. Petition to Enter Plea of Guilty in a Juvenile Delinquency Matter
17. EJJ Adult Stayed Sentence

Introductory Statement

The following forms are provided as an aid to practitioners and the court in the juvenile justice system. The forms are not mandatory, but shall be accepted by the court if offered by any party or counsel for their designated purpose. The Advisory Committee on Juvenile Delinquency Rules strongly recommends that Forms 12 through 16 be used in all felony level or enhanceable cases. A sample petition may be found on the Minnesota Judicial Branch Web site.

Form 2. Notice of the Rights of Victims in Juvenile Court**NOTICE OF THE RIGHTS OF VICTIMS IN JUVENILE COURT****1. Right to Participation**

Minnesota law (Minn. Stat. § 260B.163, subd. 1 (2002) and § 611A.01, et seq. (2002)) prohibits the public from attending juvenile hearings in most cases. However, a person who has a direct interest in the case, such as a crime victim, has the following rights to participate:

- a. The right to have input in a pretrial diversion program decision;
- b. The right to object to the proposed disposition and a plea agreement;
- c. The right to request the prosecutor make a demand for a speedy trial;
- d. The right to be present in court at the time of the disposition hearing (sentencing); and
- e. The right to submit an impact statement to the judge orally or in writing, at the time of disposition (sentencing) hearing.

2. Right to Notification

You have a right to be notified of certain information such as the following:

- a. The contents of any plea agreement;
- b. The schedule changes in court proceedings if you have been subpoenaed or requested to testify;
- c. The information regarding the detention hearing of an arrested or detained juvenile;
- d. The final disposition of the case;
- e. The transfer of the juvenile to a less secure correctional facility;
- f. The release of the juvenile from a custodial institution; and
- g. The escape and apprehension of the juvenile from a custodial institution.

3. Right to Protection

As a victim and/or witness, you have certain rights to protection such as the following:

- a. The right to a safe and secure waiting area during the court process, if available;
- b. The right to ask a law enforcement agency to withhold public access to data revealing your identity;
- c. The right not to give your home or business address in open court; and
- d. The right not to be retaliated against by employers if you are called to testify as a victim or witness.

4. Right to Financial Assistance

You may be eligible for financial assistance from the state through the Crime Victims' Reparations Board if you have suffered economic loss as a result of a violent crime. Also, you may ask the court to order the juvenile to pay restitution under Minn. Stat. § 611A.04. If the juvenile fails to pay restitution as ordered, you have the right to ask the juvenile's probation officer to request a probation review hearing.

5. Additional Rights

In cases involving sex offenses, you have the right to be notified whether the offender has any sexually transmitted diseases, and may also have the right to ask that the offender submit to HIV-testing.

TERMS USED IN JUVENILE COURT PROCEEDINGS**DETENTION**

A juvenile can be detained in foster care, at a shelter care facility, at a secure detention facility, at a detoxification, chemical dependency or psychiatric facility, at an adult jail, or in the juvenile's home subject to electronic home monitoring. Most juveniles must appear before the court within 36 hours of being taken into custody for a detention hearing.

ARRAIGNMENT

At the arraignment hearing, the juvenile will appear in court and be asked to plead guilty or not guilty to the charges. Juveniles are entitled to representation by an attorney. A plea of guilty leads to a disposition (sentencing) hearing. If a juvenile pleads not guilty, there will be a trial.

PRETRIAL HEARING

In some cases, the judge orders a pretrial hearing to decide issues of law and allow the parties the opportunity to settle the case before trial.

TRIAL

A juvenile has the same legal protections during trial as an adult charged with a crime. Most juvenile trials are held before a judge who will decide whether the juvenile is guilty or not guilty. If the petition has been proved, there will be a disposition hearing.

DISPOSITION

The disposition may include restitution, fines, community service, probation, out-of-home placement, counseling or treatment, and/or victim/offender mediation. The court will take into consideration the seriousness of the offense, the child's prior history of offenses, and available programs and services.

Form 3. Notice in Lieu of Summons**STATE OF MINNESOTA****DISTRICT COURT - JUVENILE DIVISION****COUNTY OF _____****_____ JUDICIAL DISTRICT**

In the Matter of the Welfare of:

NOTICE IN LIEU OF SUMMONS_____
Child

Court File No. _____

TO: The above-named child and to the child's parent(s), legal guardian(s), legal custodian(s) or person having custody and control of child:

ADDRESS:

PLEASE take notice that a petition has been filed with this Court alleging that the child is a:

- ☐ juvenile traffic offender
- ☐ juvenile petty offender
- ☐ juvenile delinquent

and the Court has directed that a hearing be held in this matter at the _____ Courthouse, Courtroom _____, in _____, Minnesota on _____ at _____ before a District Court Judge or Referee.

YOU ARE entitled to have a summons requiring your appearance served upon you. The Court has directed that this notice be mailed to you instead of issuing a summons. However, if you do not appear at the hearing, a summons will be issued.

Attached is a copy of the:

- ☐ charging document
- ☐ court order
- ☐ motion
- ☐ affidavit
- ☐ other: _____

ALSO attached is a statement describing the purpose of the hearing, the possible consequences of the hearing and an explanation of the child's basic rights, including the right of the child's parent(s), legal guardian(s), or legal custodian(s) to participate. **PLEASE READ ATTACHED ITEMS CAREFULLY.**

DATE: _____	BY THE COURT: _____
BY: _____ Deputy	_____ Court Administrator

Served by Regular Mail:	
DATE: _____	BY: _____

Form 4. Summons**STATE OF MINNESOTA****DISTRICT COURT - JUVENILE DIVISION****COUNTY OF _____****JUDICIAL DISTRICT _____**

In the matter of the Welfare of:

SUMMONS_____
Child

Court File No. _____

TO: The above-named child and to the child's parent(s), legal guardian(s), legal custodian(s) or person having custody and control of child:**ADDRESS:****PLEASE** take notice that a petition has been filed with this Court alleging that the child is a:

- ☐ juvenile traffic offender
☐ juvenile petty offender
☐ juvenile delinquent

and the Court has directed that a hearing be held in this matter at the _____ Courthouse, Courtroom _____, in _____, Minnesota on _____ at _____ before a District Court Judge or Referee.

Attached is a copy of the:

- ☐ charging document ☐ affidavit
☐ court order ☐ other _____
☐ motion

ALSO attached is a statement describing the purpose of the hearing, the possible consequences of the hearing and an explanation of the child's basic rights, including the right of the child's parent(s), legal guardian(s), or legal custodian(s) to participate. **PLEASE READ ATTACHED ITEMS CAREFULLY.****TAKE NOTICE THAT** if you fail to appear in response to this Summons, the Court may: (1) issue a warrant for your arrest; and (2) conduct a hearing without your presence and grant appropriate relief. Further information concerning the date and consequences of later hearings, if any, may be obtained for the Court by a request in writing.

DATE: _____	BY THE COURT: _____
BY: _____ Deputy	_____ Court Administrator

- ☐ Served by Certified Mail
☐ Served Personally

DATE: _____ BY: _____

Form 5. Prosecutor's Request for Disclosure**STATE OF MINNESOTA****DISTRICT COURT - JUVENILE DIVISION****COUNTY OF _____****_____ JUDICIAL DISTRICT**

In the Matter of the Welfare of:

**PROSECUTOR'S REQUEST
FOR DISCLOSURE**_____
Child

Court File No. _____

Pursuant to Rule 10.05 of the Minnesota Rules of Juvenile Procedure, the County Attorney requests the child to make disclosure of the following items, which the child intends to introduce into evidence at the trial, certification, or extended jurisdiction juvenile hearing:

- (1) documents and tangible objects;
- (2) reports of examinations and tests;
- (3) notice of defenses;
- (4) names, addresses, and record of criminal convictions or delinquency adjudications of child's witnesses;
- (5) statements of child's witnesses;
- (6) details of and witnesses to the defense of alibi; and
- (7) record of child's prior proven or admitted delinquency offenses.

This request for disclosure incorporates by reference the language of Rule 10.05 and shall be deemed to be a request for disclosure of all information to which the County Attorney is entitled under the provisions of that Rule.

Date: _____

County Attorney

Form 6. Prosecutor Notice of Evidence and Identification Procedures**STATE OF MINNESOTA****DISTRICT COURT - JUVENILE DIVISION****COUNTY OF _____****_____ JUDICIAL DISTRICT**

In the Matter of the Welfare of:

**PROSECUTOR NOTICE OF EVIDENCE
AND IDENTIFICATION PROCEDURES**_____
Child

Court File No. _____

TO: THE ABOVE-NAMED CHILD AND COUNSEL FOR CHILD:

Pursuant to Rule 10.02 of the Minnesota Rules of Juvenile Procedure, you are advised that in the above-captioned case, the Prosecutor has:

- ☐ Evidence obtained as a result of a search, search and seizure, wiretapping, or other forms of electronic or mechanical eavesdropping;
- ☐ Confessions, admissions or statements in the nature of confessions made by the child;
- ☐ Evidence discovered as a result of confessions, admissions or statements in the nature of confessions made by the child;
- ☐ Identification procedures used during the investigation were:
 - ☐ Line-ups
 - ☐ Observations of the respondent
 - ☐ Exhibition of photographs
 - ☐ Other _____
 - ☐ None of above is known to the prosecution at this time; you will be notified if any is discovered.

Date: _____

County Attorney

(11/02)

Form 7. Petition to Proceed as Pro Se in Juvenile Delinquency Proceeding**STATE OF MINNESOTA****DISTRICT COURT - JUVENILE DIVISION****COUNTY OF _____****JUDICIAL DISTRICT _____**

In the Matter of the Welfare of:

**PETITION TO PROCEED PRO SE IN
JUVENILE DELINQUENCY PROCEEDING**

Child _____

Court File No. _____

My full name is _____, and I am the child in the above-entitled action. I request the Court allow me to represent myself and state as follows:

1. I am ___ years old. My date of birth is ___. The last grade I attended in school is ___.
2. I have received and read the charging document in this matter.
3. I understand the charge(s) made against me in this case.
4. I understand that I have been charged with the offense(s) of:

_____ committed on or about _____ in _____ County, Minnesota.

5. I have discussed my desire to represent myself with an attorney whose name is _____.
6. I (have) (have not) been a patient in a mental hospital.
7. I (have) (have not) talked with or been treated by a psychiatrist or other person for a nervous or mental condition.
8. I (have) (have not) been ill recently.
9. I (have) (have not) recently taken pills or medicine.
10. I understand that I have the right to have an attorney represent me in these proceedings. I understand that if the Court grants my petition to represent myself, I will be responsible for preparing my case for trial and trying my case. I understand that I will be bound by the same rules as an attorney. I understand that if I fail to do something in a timely manner or make a mistake because of my unfamiliarity with the law, I will be bound by those decisions and must deal with them myself.
11. In making my decisions regarding the conduct of this case, I have the right to consult with standby counsel if one is assigned to this case.
12. I understand the Court will schedule a probable cause hearing if one has not already been held. At the probable cause hearing, I can request that the petition or indictment filed against me be dismissed for lack of probable cause. The preparation for, conduct of, and decisions made relating to that hearing will be my sole responsibility.
13. I understand that I am entitled to a court trial. I further understand that I will conduct all phases of the trial, including but not limited to writing and filing motions, making arguments to the Court, cross-examination of the witnesses for the prosecution, direct examination of my witnesses, making objections, opening statement and closing argument.
14. I understand I am entitled to require any witnesses I think are favorable to me to appear and testify at my trial by use of a subpoena.
15. I understand that a person who has a prior delinquency record can be given a longer out-of-home placement. The maximum statutory penalty the Court could impose if I am adjudicated delinquent is commitment to the Commissioner of Corrections until my 19th birthday. The maximum statutory penalty the court could impose if I am certified to adult court or prosecuted as an extended jurisdiction juvenile is commitment to the Commissioner of Corrections for a term as determined by the Minnesota Sentencing Guidelines.

16. I understand the Court may appoint a public defender to act as standby counsel in this case. However, I am under no obligation to seek advice from standby counsel. I understand that the role of standby counsel is as follows:
- a. Standby counsel will be physically present in the courtroom during all proceedings in my case.
 - b. Standby counsel will respond to requests for advice from me. Standby counsel will not initiate such discussion.
 - c. Support staff of the public defender, such as investigators, secretaries, law clerks, and legal service advisors will not be available to me.
 - d. If I need investigative services, expert services, waivers of fees, research, secretarial services, or any other assistance, I must ask the Court for the relief or assistance I need. Such request is made pursuant to Minnesota Statutes, section 611.21.
 - e. If I desire to conduct legal research, I will be expected to do it myself.
 - f. Standby counsel will not be prepared to try my case on the trial date unless ordered to prepare to do so by the Court.
 - g. Standby counsel will be present for all court appearances to consult with me if I request. Standby counsel will be seated either at the back of the courtroom or at counsel table, based on my wishes and the Court's order. In an effort to support my constitutional right to self-representation, standby counsel will not initiate motions, objections, arguments to the Court, or any other aspect of representation unless I have given approval to that specific aspect of representation.
 - h. If I wish to give up my right to represent myself, I know the Court will not automatically grant my request. The Court will consider the following in granting or denying that request: the stage of the proceedings, whether standby counsel is prepared to take over, the length of the continuance necessary for standby counsel to assume representation, the prejudice to either party, and any other relevant considerations.
 - i. If the Court grants my request to represent myself and orders standby counsel, the trial date may be continued if requested by the standby counsel.
 - j. If the Court orders standby counsel to represent me after the trial has started and jeopardy has attached, the Court may grant a mistrial if requested by my new attorney and reset the trial date. It is solely up to the Court whether to grant a mistrial.
17. I have read the above two pages, discussed them with counsel, and I understand the rights and responsibilities I have in representing myself. In consideration of those rights and responsibilities, I want to give up my right to be represented by an attorney and will represent myself.

Date: _____

Child

(11/02)

Form 8. Statement of Rights: Juvenile Delinquency Proceedings**STATEMENT OF RIGHTS****JUVENILE DELINQUENCY PROCEEDINGS**

You have been charged with a delinquent act by a document filed in Juvenile Court. You are presumed innocent of the charge(s) unless and until the state is able to prove guilt beyond a reasonable doubt. You have the following rights:

1. The right to understand the charge(s) against you.
2. The right to be represented by an attorney. If you cannot afford an attorney, the judge will appoint an attorney for you at public expense. The judge may order you or your parent(s), legal guardian(s), or legal custodian(s) to pay some or all of the attorney expense depending on the ability to pay. You may not be represented in court by anyone who is not an attorney, even if that person is your parent.
3. The right to plead guilty, plead not guilty, or remain silent. If you remain silent, the judge will enter a not guilty plea for you and the case will go to trial.
4. If you plead not guilty, you have additional rights including:
 - a. The right to a trial before a judge;
 - b. The right to require the state to prove beyond a reasonable doubt that you committed the offense(s);
 - c. The right to cross-examine witnesses called by the state;
 - d. The right to subpoena witnesses and present evidence on your own behalf; and
 - e. The right not to testify or to give an explanation of your actions.
5. If you plead guilty, you give up the rights listed in paragraph 4. The judge will ask you what you did. The judge cannot accept your guilty plea unless you admit doing something that is against the law.
6. Your guilty plea must be made freely and voluntarily, without threats or promises by anyone, with the exception of any plea agreement.
7. If you plead guilty or the judge finds you guilty, the judge may:
 - a. Counsel you and your parent(s), legal guardian(s) or legal custodian(s);
 - b. Place you on probation in your own home under conditions established by the court;
 - c. Transfer your legal custody under court supervision and place you out of your home;
 - d. Transfer your legal custody by commitment to the Commissioner of Corrections;
 - e. Order restitution for any damage done to person(s) and/or property;
 - f. Order special treatment or care for your physical or mental health;
 - g. Recommend to the Commissioner of Public Safety that your driver's license be canceled;
 - h. Order community work service and/or a fine up to \$700.00;
 - i. Require you to attend school until age 18 or completion of graduation requirements;
 - j. Consider imposition of additional consequences if you committed a "crime of violence" and/or if a gun or dangerous weapon was involved;
 - k. Require you to submit a DNA sample if you have been charged with a felony; and/or
 - l. Require you to have a psychosexual evaluation, register as a predatory offender, and submit a DNA sample if you have been charged with a sexual offense or predatory offense.

8. If you plead guilty or the judge finds you guilty of a felony after your 14th birthday, this case may be used as a basis for additional jail or prison time if you are sentenced for another felony as an adult before your 25th birthday.

9. If you plead guilty or the judge finds you guilty of an offense, this case may be used as a basis to transfer any future felony-level case to adult court or treat it as an extended jurisdiction juvenile prosecution.

10. Your parent(s), legal guardian(s), or legal custodian(s) may not participate in the hearing until you either plead guilty or the judge finds you guilty of the offense. At that time your parent(s), legal guardian(s), or legal custodian(s) has the right to present information to the judge and may be represented by an attorney.

IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS, ASK YOUR ATTORNEY BEFORE THE HEARING OR ASK THE JUDGE DURING YOUR HEARING.

DATE: _____

(Signature of Child)

DATE: _____

(Signature of Parent, Legal Guardian, or Legal
Custodian)

(11/02)

Form 9. Statement of Rights: Juvenile Petty Offender Proceedings**STATEMENT OF RIGHTS****JUVENILE PETTY OFFENDER PROCEEDINGS**

You have been charged with a petty offense by a document filed in Juvenile Court. You are presumed innocent of the charge(s) unless and until the state is able to prove guilt beyond a reasonable doubt. You have the following rights:

1. The right to understand the charge(s) against you.
2. The right to be represented by an attorney that you hire. You do not have a right to appointment of a public defender or other counsel at public expense. If you wish to be represented by an attorney, you or your parent(s), legal guardian(s), or legal custodian(s) must hire one and pay the cost. You may not be represented in court by anyone who is not an attorney, even if that person is your parent.
3. The right to plead guilty, plead not guilty, or remain silent. If you remain silent, the judge will enter a not guilty plea for you and the case will go to trial.
4. If you plead not guilty, you have additional rights including:
 - a. The right to a trial before a judge;
 - b. The right to require the state to prove beyond a reasonable doubt that you committed the offense(s);
 - c. The right to cross-examine witnesses called by the state;
 - d. The right to subpoena witnesses and present evidence on your own behalf; and
 - e. The right not to testify or to give an explanation of your actions.
5. If you plead guilty, you give up the rights listed in paragraph 4. The judge will ask you what you did. The judge cannot accept your plea unless you admit doing something that is an offense.
6. Your guilty plea must be made freely and voluntarily, without threats or promises by anyone, with the exception of any plea agreement.
7. If you plead guilty or the judge finds you guilty of an offense, the judge may:
 - a. Require you to pay a fine of up to \$100;
 - b. Require you to take part in a community service project;
 - c. Require you to participate in a drug awareness program;
 - d. Place you on probation for up to six months;
 - e. Order you to undergo a chemical dependency evaluation and participate in an outpatient treatment program;
 - f. Order restitution for any damage to person(s) and/or property; and/or
 - g. Order you to perform other activities or participate in other outpatient treatment programs deemed appropriate by the judge.
8. If you plead guilty or the judge finds you guilty of a second or subsequent juvenile alcohol or controlled substance offense, in addition to the above penalties, the judge may:
 - a. Send your driver's license or driving permit to the Commissioner of Public Safety who shall revoke it for one year or until your 18th birthday, whichever is longer.
 - b. Suspend your driver's license or driving permit for up to 90 days, but allow you to travel to work.
 - c. If you do not have a driver's license or driving permit, the judge may order denial of your driving privileges for one year or until your 18th birthday, whichever is longer.

9. If you plead guilty to, or the judge finds you committed a third juvenile alcohol or controlled substance offense, and a chemical dependency evaluation recommends inpatient treatment, you have a right to appointment of a public defender or other counsel at public expense.
10. Your parent(s), legal guardian(s), or legal custodian(s) may not participate in the hearing until you have either pled guilty or the judge finds you guilty of the offense. At that time, your parent(s), legal guardian(s), or legal custodian(s) has the right to present information to the judge and may be represented by an attorney.

IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS, ASK YOUR ATTORNEY BEFORE THE HEARING. IF YOU DO NOT HAVE AN ATTORNEY, ASK THE JUDGE DURING YOUR HEARING.

DATE: _____

(Signature of Child)

DATE: _____

(Signature of Parent, Legal Guardian, or Legal Custodian)

(11/02)

Form 10. Statement of Rights: Juvenile Traffic Offender Proceedings**STATEMENT OF RIGHTS****JUVENILE TRAFFIC OFFENDER PROCEEDINGS**

You have been charged as a juvenile traffic offender by a document filed in Juvenile Court. You are presumed innocent of the charge(s) unless and until the state is able to prove guilt beyond a reasonable doubt. You have the following rights:

1. The right to understand the charge(s) against you.
2. The right to be represented by an attorney that you hire. You do not have a right to appointment of a public defender or other counsel at public expense. If you wish to be represented by an attorney, you or your parent(s), legal guardian(s), or legal custodian(s) must hire one and pay the cost. You may not be represented in court by anyone who is not an attorney, even if that person is your parent.
3. The right to plead guilty, plead not guilty, or remain silent. If you remain silent, the judge will enter a not guilty plea for you and the case will go to trial.
4. If you plead not guilty, you have additional rights including:
 - a. The right to a trial before a judge;
 - b. The right to require the state to prove beyond a reasonable doubt that you committed the offense(s);
 - c. The right to cross-examine witnesses called by the state;
 - d. The right to subpoena witnesses and present evidence on your own behalf; and
 - e. The right not to testify or to give an explanation of your actions.
5. If you plead guilty, you give up the rights listed in paragraph 4. The judge will ask you what you did. The judge cannot accept your plea unless you admit doing something that is an offense.
6. Your guilty plea must be made freely and voluntarily, without threats or promises by anyone, with the exception of any plea agreement.
7. If you plead guilty or the judge finds you guilty of an offense, the judge may:
 - a. Reprimand you and counsel you and your parent(s), legal guardian(s) or legal custodian(s);
 - b. Continue the case for a reasonable period under such conditions governing your use and operation of motor vehicles or watercraft as the court may set;
 - c. Require you to attend a driver improvement course;
 - d. Recommend that the Commissioner of Public Safety suspend your driver's license;
 - e. If you are found to have committed two moving highway traffic violations or to have contributed to a highway accident involving death, injury, or physical damage in excess of \$100, the judge may recommend that the Commissioner of Public Safety cancel your driver's license until you are 18;
 - f. Place you on probation in your own home under conditions set by the judge including reasonable rules relating to the operation and use of motor vehicles or watercraft;
 - g. Order restitution for any damage to person(s) and/or property;
 - h. Order community work service or a fine up to \$700; and/or
 - i. Order a chemical assessment for alcohol-related driving offenses and charge \$75.00 for the assessment.
8. Your parent(s), legal guardian(s) or legal custodian(s) may not participate in the hearing until you have either pled guilty or the judge finds you guilty of the offense. At that time, your parent(s), legal guardian(s) or legal custodian(s) has the right to present information to the judge and may be represented by an attorney.

IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS, ASK YOUR ATTORNEY BEFORE THE HEARING. IF YOU DO NOT HAVE AN ATTORNEY, ASK THE JUDGE DURING YOUR HEARING.

DATE: _____

(Signature of Child)

DATE: _____

(Signature of Parent, Legal Guardian, or Legal
Custodian)

(11/02)

Form 11. Statement of Rights: Juvenile Probation Revocation**STATEMENT OF RIGHTS
JUVENILE PROBATION REVOCATION**

A probation revocation is a hearing before a judge to decide if a juvenile violated a term or condition of probation, and if so, whether the judge should change the disposition.

You will be asked to admit or deny the allegations of the probation violation. You have the following rights:

1. You have the right to have an attorney represent you. You may have the right to an attorney appointed at public expense.

2. If you deny the allegations of the probation violation, you have a right to a hearing before a judge. The hearing must be held within seven days if you are removed from your home. If you are allowed to remain in your home pending the probation revocation hearing, the hearing must be held within a reasonable time. If you admit the probation violation, you give up your right to a probation revocation hearing.

3. Before the hearing, you are entitled to receive all the evidence of the probation violation that will be used against you, including probation revocation reports and all records relating to the proceedings.

4. At the probation revocation hearing, both you and the prosecuting attorney have the right to offer evidence, make arguments, subpoena witnesses, and call and cross-examine witnesses. You may testify in your own defense or remain silent throughout the hearing. You may present mitigating circumstances or other reasons why the probation violation, if proved, should not result in a change in the disposition order.

5. The probation violation must be proved by clear and convincing evidence. You have the right to appeal the decision of the court after a revocation hearing.

DATE: _____

(Signature of Child)

DATE: _____

(Signature of Parent, Legal Guardian, or Legal Custodian)

(11/02)

Form 12. Waiver of Right to Contested Hearing in an Extended Jurisdiction Juvenile Case**STATE OF MINNESOTA****DISTRICT COURT - JUVENILE DIVISION****COUNTY OF _____****JUDICIAL DISTRICT _____**

In the Matter of the Welfare of:

**WAIVER OF RIGHT
TO CONTESTED HEARING IN AN
EXTENDED JURISDICTION JUVENILE
CASE**_____
Child

Court File No. _____

I have been advised by my attorney and I understand the following rights:

1. My full name is _____ and I have been charged by Delinquency Petition in juvenile court with the offense(s) of: _____ which would be a felony if committed by an adult. This felony carries a presumptive sentence of _____ months in prison under the Minnesota Sentencing Guidelines and [range] applicable statutes.
2. The offense(s) is alleged to have occurred on _____ and I was at least 14 years old at the time, having a date of birth of _____.
3. For the purpose of this waiver only, I submit there is probable cause to believe I committed the offense(s).
4. I understand that I have a right to an attorney.
5. The prosecutor has brought a motion for extended jurisdiction juvenile prosecution, and I understand I have a right to a hearing before a judge.
6. At that hearing, the prosecutor must show by clear and convincing evidence that designating the proceeding as an extended jurisdiction juvenile prosecution serves public safety. I have discussed the public safety factors with my attorney.
7. I understand I could present witnesses and evidence at that hearing.
8. I understand I could cross-examine all witnesses who testify for the state.
9. I understand I could present arguments against the extended jurisdiction juvenile prosecution.
10. I understand that by waiving my right to a hearing I agree that my case can proceed to a jury trial on the above-named offense(s). If I am found guilty, I will be subject to the penalties of both juvenile and adult court, including a stayed sentence under Minnesota Sentencing Guidelines and criminal statutes.
11. I have discussed with my attorney and understand the potential maximum penalties under the Minnesota Sentencing Guidelines and criminal statutes. I have discussed and understand that if I violate the terms of the stayed adult sentence, I have a right to a hearing, but if the court finds the violation proven, I will be in the adult court system where a prison sentence could be imposed. We have discussed and I understand that there may be sentencing departures, either upward if the court finds aggravating circumstances, or downward if the court finds mitigating factors in the case.
 - ☐ No promise of any agreement has been made to me.
 - ☐ The following agreement has been reached in exchange for my waiver:

12. I understand I have a right to discuss my case with my parent(s), legal guardian(s), or legal custodian(s), and I have either done so or waive my right to do so.
13. I understand the court will find I represent a danger to the public safety if kept solely within the juvenile system and will order an extended jurisdiction juvenile prosecution.
14. If a psychological evaluation has been completed, I understand I may request additional psychological evaluations and explore alternative treatment programs to find a suitable juvenile disposition option and demonstrate to the court that I do not represent a danger to the public safety if I remain in the juvenile system.
15. Based upon all of this information and investigation, I am choosing to waive or give up my right to have an extended jurisdiction juvenile hearing.
16. No threats have been made to coerce me into waiving these rights. No promises have been made to me except as set forth in paragraph 11.
17. I am waiving or giving up my rights freely and voluntarily. I have had sufficient time to discuss my rights and options with my attorney.

DATE: _____	_____
	Child
DATE: _____	_____
	Child's Attorney

(11/02)

Form 13. Waiver of Right to Contested Hearing in a Non-Presumptive Certification CaseSTATE OF MINNESOTA
COUNTY OF _____DISTRICT COURT - JUVENILE DIVISION
_____ JUDICIAL DISTRICT

In the Matter of the Welfare of:

**WAIVER OF RIGHT TO CONTESTED
HEARING IN A NON-PRESUMPTIVE
CERTIFICATION CASE**_____
Child

Court File No. _____

I have been advised by my attorney and I understand the following rights:

1. My full name is _____ and I have been charged by Delinquency Petition in juvenile court with the offense(s) of: _____ which would be a felony if committed by an adult. This felony carries a presumptive sentence of _____ [range] months in prison under the Minnesota Sentencing Guidelines and applicable statutes.
2. The offense(s) is alleged to have occurred on _____ and I was at least 14 years old at the time, having a date of birth of _____.
3. For the purpose of this waiver only, I submit there is probable cause to believe I committed the offense(s).
4. I understand that I have a right to an attorney.
5. The prosecutor has brought a motion for certification, and I understand I have a right to a hearing before a judge.
6. At that hearing, it is the prosecutor's burden to demonstrate to the judge by clear and convincing evidence that retaining my case in juvenile court does not serve public safety. I have discussed the public safety factors with my attorney.
7. I understand I could present witnesses and evidence at that hearing.
8. I understand I could cross-examine all witnesses who testify for the state.
9. I understand I could present arguments against certification.
10. I understand that by waiving my right to a hearing I agree that my case can proceed to adult court for a jury trial on the above-named offense(s) and be subject to the penalties under Minnesota Sentencing Guidelines and criminal statutes.
11. I have discussed with my attorney and understand the potential maximum penalties under the Minnesota Sentencing Guidelines and criminal statutes. We have discussed and I understand that there may be sentencing departures, either upward if the court finds aggravating circumstances, or downward if the court finds mitigating factors in the case.
 - ☐ No promise of any agreement has been made to me.
 - ☐ The following agreement has been reached in exchange for my waiver:

12. I understand I have a right to discuss my case with my parent(s), legal guardian(s), or legal custodian(s), and I have either done so or waive my right to do so.
13. I understand the court will find that I represent a danger to the public safety if kept within the juvenile system and will order certification for trial as an adult.
14. If a psychological evaluation has been completed, I understand I may request additional psychological evaluations and explore alternative treatment programs to find a suitable juvenile disposition option and demonstrate to the court that I do not represent a danger to the public safety if my case is kept in the juvenile system.

15. Based upon all of this information and investigation, I am choosing to waive or give up my right to have a contested certification hearing.
16. No threats have been made to coerce me into waiving these rights. No promises have been made to me except as set forth in paragraph 11.
17. I am waiving or giving up my rights freely and voluntarily. I have had sufficient time to discuss my rights and options with my attorney.

DATE: _____	_____
	Child
DATE: _____	_____
	Child's Attorney

(11/02)

Form 14. Waiver of Right to Contested Hearing in a Presumptive Certification Case
STATE OF MINNESOTA DISTRICT COURT - JUVENILE DIVISION
COUNTY OF _____ JUDICIAL DISTRICT

In the Matter of the Welfare of:

**WAIVER OF RIGHT
 TO CONTESTED HEARING IN A
 PRESUMPTIVE CERTIFICATION
 CASE**

 Child

Court File No. _____

I have been advised by my attorney and I understand the following rights:

1. My full name is _____ and I have been charged by Delinquency Petition in juvenile court with the offense(s) of: _____ which would be a felony if committed by an adult. This felony carries a presumptive sentence of _____ [range] months in prison under the Minnesota Sentencing Guidelines and applicable statutes.
2. The offense(s) is alleged to have occurred on _____ and I was 16 or 17 years old at the time, having a date of birth of _____.
3. For the purpose of this waiver only, I submit there is probable cause to believe I committed the offense(s).
4. I understand that I have a right to an attorney.
5. The prosecutor has brought a motion for certification, and I understand I have a right to a hearing before a judge.
6. At that hearing, it is my burden to show the judge by clear and convincing evidence that retaining my case in juvenile court serves public safety. I have discussed the public safety factors with my attorney.
7. I understand I could present witnesses and evidence at that hearing.
8. I understand I could cross-examine all witnesses who testify for the state.
9. I understand I could present arguments against certification. I further understand that if I prevailed at the certification hearing, the court must order that my case proceed as an extended jurisdiction juvenile prosecution.
10. I understand that by waiving my right to a hearing I agree that my case can proceed to adult court for a jury trial on the above-named offense(s) and be subject to the penalties under Minnesota Sentencing Guidelines and criminal statutes.
11. I have discussed with my attorney and understand the potential maximum penalties under the Minnesota Sentencing Guidelines and criminal statutes. I have discussed and understand that the charged offenses presume an executed prison sentence. We have discussed and I understand that there may be sentencing departures, either upward if the court finds aggravating circumstances, or downward if the court finds mitigating factors in the case.
 - ☐ No promise of any agreement has been made to me.
 - ☐ The following agreement has been reached in exchange for my waiver:

-
12. I understand I have a right to discuss my case with my parent(s), legal guardian(s), or legal custodian(s), and I have either done so or waive my right to do so.
 13. I understand the court will find that I represent a danger to the public safety if kept within the juvenile system and will order certification for trial as an adult.

14. If a psychological evaluation has been completed, I understand I may request additional psychological evaluations and explore alternative treatment programs to find a suitable juvenile disposition option and demonstrate to the court that I do not represent a danger to the public safety if returned to the extended jurisdictional juvenile system.
15. Based upon all of this information and investigation, I am choosing to waive or give up my right to have a contested certification hearing.
16. No threats have been made to coerce me into waiving these rights. No promises have been made to me except as set forth in paragraph 11.
17. I am waiving or giving up my rights freely and voluntarily. I have had sufficient time to discuss my rights and options with my attorney.

DATE: _____	_____
	Child
DATE: _____	_____
	Child's Attorney

(11/02)

Form 15. Petition to Enter Plea of Guilty in an Extended Jurisdiction Juvenile Case
STATE OF MINNESOTA **DISTRICT COURT - JUVENILE DIVISION**
COUNTY OF _____ **JUDICIAL DISTRICT _____**

In the Matter of the Welfare of:

**PETITION TO ENTER PLEA OF
 GUILTY IN EXTENDED JURISDICTION
 JUVENILE CASE**

Child

Court File No. _____

1. My full name is _____ and I have been charged by Delinquency Petition in juvenile court with the offense(s) of: _____ which would be a felony if committed by an adult. This felony carries a presumptive sentence of _____ [range] months in prison under the Minnesota Sentencing Guidelines and applicable statutes.
2. The offense(s) is alleged to have occurred on _____ and I was _____ years old at the time, having a date of birth of _____.
3. I understand the charge(s) against me in this case.
4. I understand that I have a right to an attorney.
5. I am represented by an attorney, and:
 - a. I feel that I have had sufficient time to discuss my case with my attorney.
 - b. I am satisfied that my attorney is fully informed as to the facts of this case.
 - c. My attorney has discussed possible defenses that I may have.
 - d. I am satisfied that my attorney has represented my interests and has fully advised me.
6. I understand I have the right to a jury trial, and at that trial I have the following rights:
 - a. The right to be presumed innocent unless and until proven guilty beyond a reasonable doubt.
 - b. The right to be present and cross-examine all witnesses brought by the prosecutor.
 - c. The right to subpoena and bring in my own witnesses.
 - d. The right to remain silent or testify in my own defense. I understand that if I choose to remain silent, my silence could not be used against me.
 - e. The right to a unanimous verdict by the jury.
7. I understand that if I enter a plea of guilty to an offense, I give up the rights listed above in #6.
8. I understand that the judge will not accept a plea from someone who says they are innocent. I am not saying that I am innocent of the charge(s) to which I am pleading guilty.
9. I am entering my plea of guilty freely and voluntarily.
 - ☐ No promise of any agreement has been made to me.
 - ☐ The following agreement has been reached in exchange for my plea:

-
10. If the court does not accept my guilty plea, I have a right to withdraw my plea and anything said in court cannot be used against me. However, if the court accepts my guilty plea, there will be a disposition in juvenile court and an adult prison sentence will be stayed.

11. I have discussed with my attorney and understand the potential maximum penalties under the Minnesota Sentencing Guidelines and criminal statutes. We have discussed and I understand that there may be sentencing departures, either upward if the court finds aggravating circumstances, or downward if the court finds mitigating factors in the case. I understand that if the court finds I have violated the terms of the stayed prison sentence, the court can send me to prison.
12. I understand I have a right to discuss my case with my parent(s), legal guardian(s), or legal custodian(s), and I have either done so or waive my right to do so.
13. I understand I could be on probation until my 21st birthday.
14. I understand that my plea may increase the penalties for future offenses, and this plea will be used to compute my adult criminal history score.
15. If I plead guilty and I am adjudicated for a "crime of violence," it may be illegal for me to possess any firearm.
16. If I plead guilty to a felony, I may be required to submit a DNA sample. For felony driving while impaired offenses and most sex offenses, a mandatory period of conditional release will follow the adult prison sentence if it is executed. Violating the terms of this conditional release may increase the time I serve in prison. In this case, the period of conditional release is _____ years.
17. If I plead guilty to a sexual offense or predatory offense, I may be required to have a psychosexual evaluation, register as a predatory offender, and submit a DNA sample.
18. I understand that if I am not a citizen of the United States, my guilty plea may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.
19. I understand that my probation or parole could be revoked because of the guilty plea to this offense.
20. I (have) (have not) been a patient in a mental hospital.
21. I (have) (have not) talked with or been treated by a psychiatrist or other person for a nervous or mental condition.
22. I (have) (have not) been ill recently.
23. I (have) (have not) recently taken pills or medicine.
24. Based upon all of this information, I am choosing to waive or give up my right to have a jury trial.
25. No threats have been made to coerce me into waiving these rights. No promises have been made to me except as set forth in paragraph 9.
26. I am waiving or giving up my rights freely and voluntarily. I have had sufficient time to discuss my rights and options with my attorney.

DATE: _____	_____
	Child
DATE: _____	_____
	Child's Attorney

Form 16. Petition to Enter Plea of Guilty in a Juvenile Delinquency Matter**STATE OF MINNESOTA****DISTRICT COURT - JUVENILE DIVISION****COUNTY OF _____****JUDICIAL DISTRICT _____**

In the Matter of the Welfare of:

**PETITION TO ENTER PLEA OF GUILTY IN
JUVENILE DELINQUENCY MATTER**_____
Child

Court File No. _____

1. My full name is _____. I am ____ years old, and my date of birth is _____. The last grade that I went through in school is _____ or I am currently attending the _____ grade in school.
2. I have received and read a copy of the charging document, and discussed it with my attorney.
3. I understand the charge(s) made against me in this case.
4. I understand that I have been charged with the offense(s) of:

committed on or about _____ in _____ County, Minnesota.

5. I am represented by an attorney, whose name is _____ and:
 - a. I feel that I have had sufficient time to discuss my case with my attorney.
 - b. I am satisfied that my attorney is fully informed as to the facts of this case.
 - c. My attorney has discussed possible defenses that I may have.
 - d. I am satisfied that my attorney has represented my interests and has fully advised me.
6. I understand I have the right to a trial before a judge, and at that trial I have the following rights:
 - a. The right to be presumed innocent unless and until the prosecutor proves me guilty beyond a reasonable doubt.
 - b. The right to be present and ask questions of all witnesses brought by the prosecutor.
 - c. The right to subpoena and bring in my own witnesses.
 - d. The right to testify on my behalf or remain silent. I understand if I choose to remain silent the court cannot use my silence against me.
7. I understand that if I plead guilty to an offense, I give up my right to a trial in this case, including the rights stated in #6.
8. I understand that the judge will not accept a plea from someone who says they are innocent. I am not saying that I am innocent of the charge(s) to which I am pleading guilty.
9. I am entering my plea of guilty freely and voluntarily.
 - ☐ No promise of any agreement has been made to me.
 - ☐ The following agreement has been reached in exchange for my plea:

10. If the court does not accept my guilty plea:
 - a. I have the right to withdraw my guilty plea and have a trial.
 - b. Anything I said in court about my plea cannot be used against me.
11. I understand that if the court accepts my guilty plea, there will be a disposition or sentencing.

12. I understand that the court could place me on probation until my 19th birthday. During that time, the court may change the disposition.
13. I understand that the court can:
 - a. Place me out of home;
 - b. Require me to participate in education and/or treatment programs;
 - c. Require me to do community work service and/or pay a fine;
 - d. Require me to pay restitution;
 - e. Order cancellation, revocation, or suspension of my driver's license; and/or
 - f. Require me to meet school graduation requirements.
14. If I violate the conditions of probation or commit a new offense, I could be arrested and placed in detention.
15. If the court adjudicates me for the offense I am admitting, I will have a juvenile court record.
16. I understand this offense could be used against me if I commit a future felony-level offense and the prosecutor in that case wishes to move for extended jurisdiction juvenile or certify me to adult court.
17. If I am admitting a felony offense today, and the offense was committed after my 14th birthday, I understand it will be used to compute my adult criminal history score.
18. If I plead guilty and I am adjudicated for a "crime of violence," it may be illegal for me to possess any firearm.
19. If I plead guilty to a felony, I may be required to submit a DNA sample.
20. If I plead guilty to a sexual offense or predatory offense, I may be required to have a psychosexual evaluation, register as a predatory offender, and submit a DNA sample.
21. I understand that if I am not a citizen of the United States, my guilty plea may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.
22. I understand that my probation or parole could be revoked because of the guilty plea to this offense.
23. I understand that my plea may result in increasing the level of a future offense to a gross misdemeanor or felony.
24. I (have) (have not) been a patient in a mental hospital.
25. I (have) (have not) talked with or been treated by a psychiatrist or other person for a nervous or mental condition.
26. I (have) (have not) been ill recently.
28. I (have) (have not) recently taken pills or medicine.
29. I have read this petition to plead guilty and I understand it. I am waiving or giving up my rights freely and voluntarily. I have had sufficient time to discuss my rights and options with my attorney.

DATE: _____	_____
	Child
DATE: _____	_____
	Child's Attorney

Form 17 – EJJ Adult Stayed Sentence

State of Minnesota		District Court	
County _____		Judicial District _____	Case Number _____
State of Minnesota vs. _____, Defendant.		CRIMINAL JUDGMENT / WARRANT OF COMMITMENT	
TERMS AND CONDITIONS OF SENTENCE		Date Pronounced: _____	
Charge Resulting in Plea or Finding of Guilt _____	Minn. Stat. § _____	Count _____	Level of Offense _____
Offense Date: _____		Non-Conviction Dispositions: Count Number(s): _____ ☐ Dismissed ☐ Acquitted	
☐ FELONY LEVEL SENTENCE ☐ Imposition of sentence is stayed for _____ years, _____ months, and _____ days; OR ☐ Commitment to the custody of the Commissioner of Corrections for _____ years, _____ months, and _____ days. The sentence consists of two parts: a minimum term of imprisonment equal to two-thirds (2/3) of the total executed sentence, and a maximum supervised release term equal to one-third (1/3) of the total executed sentence. ☐ Execution of this sentence is stayed for _____ years, _____ months. ☐ Execution of this sentence is stayed until the EJJ offender's 21 st birthday on the condition that the EJJ offender not violate the terms of the juvenile disposition and not commit a new offense. ☐ Defendant shall pay a fine of \$ _____, of which \$ _____ is stayed for _____ years, _____ months. ☐ Other _____			
☐ MISDEMEANOR ☐ GROSS MISDEMEANOR LEVEL SENTENCE ☐ Stay of imposition for _____ years, _____ months; OR ☐ Sentenced to jail for _____ days at this location: _____. In lieu of jail, may serve: _____. ☐ Execution of this sentence is stayed for _____ years, _____ months. ☐ Defendant shall pay a fine of \$ _____, of which \$ _____ is stayed for _____ years, _____ months. ☐ JAIL CREDIT: Credit for time spent in custody: _____ days. ☐ SENTENCE DEPARTURE: Sentence departs from the presumptive sentence under the Minnesota Sentencing Guidelines. Attach a departure report. Send a copy of this form and the attached departure report to the Minnesota Sentencing Guidelines Commission. ☐ PROBATION: The Defendant is placed on probation.			
FINANCIAL CONDITIONS The following financial conditions also apply to Case# _____ Count(s) _____. Fine Imposed \$ _____ Fine Stayed \$ _____ Restitution jointly and severally with: _____. ☐ Restitution \$ _____ ☐ Surcharge \$ _____ ☐ Law Library \$ _____ ☐ Court Costs \$ _____ ☐ Chem Fee \$ _____ ☐ Other: _____ \$ _____ ☐ Other: _____ \$ _____ TOTAL \$ _____		ADDITIONAL CONDITIONS ☐ _____ days in jail as a condition of a stayed sentence. In lieu of jail, defendant may: _____. ☐ Commit no felonies, gross misdemeanors or misdemeanors. ☐ No alcohol/illegal drug use. ☐ Enforce with random drug testing. ☐ Complete these evaluations/programs and follow recommendations: ☐ Domestic Abuse ☐ Chemical Dependency ☐ Sex Offender ☐ Psychological Evaluation/ Counseling ☐ Other: _____ ☐ Other: _____ ☐ _____ hours community service by _____. ☐ Other: _____ ☐ Other: _____ ☐ Other: _____	
COMMENTS:		Sentencing Judge: _____ Date: _____ I understand the terms and conditions of my sentence: Defendant: _____ Date: _____	

(Added effective November 14, 2003.)

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TEXT OF RULES**A. SCOPE AND PURPOSE****Rule 1. Scope and Purpose****1.01 Scope**

These rules govern the procedure for juvenile protection matters in the juvenile courts in Minnesota. Juvenile protection matters include all matters defined in Rule 2.01(14).

(Amended effective August 1, 2009.)

1.02 Purpose

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

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

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

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

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

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

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

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

(h) ensure a coordinated decision-making process;

(i) reduce unnecessary delays in court proceedings; and

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

1999 Advisory Committee Comment

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

The purpose statement reflects the policy set forth in the federal Adoption and Safe Families Act of 1997, 42 U.S.C. sections 601, 603, 622, 629, 653, 675, 670-679, and 1320, which emphasizes that the overriding objective in any juvenile protection matter is to timely provide a safe, permanent home for the child. The purpose statement also reflects the policy set forth in Minnesota Statutes, section 260C.001, subdivision 2, which provides, in pertinent part, as follows:

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

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

Rule 2. Definitions

2.01 Definitions

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

(1) "**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.

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

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

(4) "**Child custody proceeding**," as defined in the Indian Child Welfare Act, 25 U.S.C. section 1903(1), and Minnesota Statutes, section 260.755, subdivision 3, means and includes:

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

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

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

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

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

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

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

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

(6) "**Extended family member**," as defined in the Indian Child Welfare Act, 25 U.S.C. section 1903(2), shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen (18) and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

(7) "**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. "Foster care" includes, but is not limited to, placement in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities not excluded in this subdivision, child care institutions, and preadoptive homes. A child is in foster care under this definition regardless of whether the facility is licensed and payments are made for the cost of care. Nothing in this definition creates any authority to place a child in a home or facility that is required to be licensed which is not licensed. "Foster care" does not include placement in any of the following facilities: hospitals, inpatient chemical dependency treatment facilities, facilities that are primarily for delinquent children, any corrections facility or program within a particular corrections facility not meeting requirements for Title IV-E facilities as determined by the commissioner, facilities to which a child is committed under the provision of chapter 253B, forestry camps, or jails.

(8) **"Independent living plan"** is a plan for a child age sixteen (16) or older who is in placement as a result of a permanency disposition which includes the objectives set forth in Minnesota Statutes, section 260C.212, subdivision 1, paragraph (c), clause (8).

(9) **"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 (a) a member of an Indian tribe or (b) eligible for membership in an Indian tribe.

(10) **"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.

(11) **"Indian child's tribe,"** as defined in the Indian Child Welfare Act, 25 U.S.C. section 1903(5), and Minnesota Statutes, section 260.755, subdivision 9, means:

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

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

(12) **"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.

(13) **"Juvenile protection case records"** means all records of the juvenile court regarding a particular case or controversy, including all records filed with the court and the official transcript. Juvenile protection case records do not include reporter's notes and tapes, electronic recordings, and unofficial transcripts of hearings and trials. See also "records" defined in subdivision (24).

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

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

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

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

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

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

(f) 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; termination of parental rights matters; long-term foster care matters; foster care for a specified period of time matters; and guardianship and legal custody to human services matters.

(15) **"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.

(16) **"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, pursuant to Minnesota Statutes, section 260.755, subdivision 14, 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, but "parent" does not include an unmarried father whose paternity has not been acknowledged or established.

(17) **"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.

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

(19) **"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.

(20) **"Protective supervision,"** as referenced in Minnesota Statutes, section 260C.201, subdivision 1, paragraph (a), clause (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.

(21) **"Qualified expert witness,"** as defined in Minnesota Rules, part 9560.0221, subpart 3, item G, means:

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

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

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

(22) **"Reasonable efforts to prevent placement,"** as defined in Minnesota Statutes, section 260.012, paragraph (d), means:

(a) the agency has made reasonable efforts to prevent the placement of the child in foster care; or

(b) 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.

(23) **"Reasonable efforts to finalize a permanent plan for the child,"** as defined in Minnesota Statutes, section 260.012, paragraph (e), means due diligence by the responsible social services agency:

(a) to reunify the child with the parent or guardian from whom the child was removed;

(b) 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;

(c) to conduct a relative search as required under Minnesota Statutes, section 260C.212, subdivision 5; and

(d) 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, and consider permanent alternative homes for the child inside or outside of the state, 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.

(24) **"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 Records of the Judicial Branch. See also "juvenile protection case records" defined in subdivision (13).

(25) **"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(2).

(26) **"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.

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

(28) **"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.

(29) **"Trial home visit,"** as defined in Minnesota Statutes, section 260C.201, subdivision 1, paragraph (a), clause (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.

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

(31) **"Voluntary foster care"** means placement of a child in foster care based on a written agreement between the responsible social services agency or child-placing agency and the child's parent, guardian, or legal custodian. The voluntary foster care agreement gives the agency legal responsibility for the placement of the child. The voluntary foster care agreement is based on both the agency's and the parent's, guardian's, or legal custodian's assessment that placement is necessary and in the child's best interests. See Minnesota Statutes, sections 260C.212, subdivision 8, and 260D.02, subdivision 5.

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

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009.)

Rule 3. Applicability of Other Rules and Statutes

3.01 Rules of Civil Procedure

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

3.02 Rules of Evidence

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

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

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

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

- (1) any act of sexual penetration or contact performed with or on the child;
- (2) any act of sexual penetration or contact with or on another child observed by the child making the statement;
- (3) any act of physical abuse or neglect of the child by another; or
- (4) any act of physical abuse or neglect of another child observed by the child making the statement;

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

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

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

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

(Amended effective January 1, 2004.)

3.03 Indian Child Welfare Act

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

3.04 Rules of Guardian Ad Litem Procedure

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

3.05 Court Interpreter Statutes, Rules, and Court Policies

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

(Amended effective January 1, 2004.)

3.06 General Rules of Practice for the District Courts

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

(Added effective August 1, 2009.)

2008 Advisory Committee Comment

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

B. GENERAL OPERATING RULES

Rule 4. Time; Timeline

4.01 Computation of Time

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

4.02 Additional Time After Service by Mail or Other Means

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

(Amended effective January 1, 2004.)

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

(b) **Admit/Deny Hearing.** Pursuant to Rule 34.02, subdivision 1(a), 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(a), when the child is not removed from home by court order, an admit/deny hearing shall be held no sooner than three (3) days, and no later than twenty (20) days after the parties have been served with the summons and petition.

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

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

(c) **Scheduling Order.** Pursuant to Rule 6.02, the court shall issue a scheduling order at the admit/deny hearing held pursuant to Rule 34 or within fifteen (15) days of the admit/deny hearing.

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

(e) **Trial.** Pursuant to Rule 39.02, subdivision 1(a), when the statutory grounds set forth in the petition are denied, 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 admit/deny hearing, whichever is earlier, and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and whenever possible should be over consecutive days.

(f) **Findings/Adjudication.** Pursuant to Rule 39.05, subdivision 1, within fifteen (15) days of the conclusion of the testimony, during which time the court may require simultaneous written arguments to be filed and served, the court shall issue its findings and order regarding whether one or more statutory grounds set forth in the petition have been proved. The court may extend the period for issuing an order for an additional 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.

(g) **Disposition.** Pursuant to Rule 41.02, to the extent practicable, the court shall conduct a disposition hearing and enter a disposition order the same day it makes a finding that the statutory grounds set forth in the petition have been proved. In the event disposition is not ordered at the same time as the adjudication, the disposition order shall be issued

within ten (10) days of the date the court finds the statutory grounds set forth in the petition have been proved.

(h) **Review of Legal Custody.** When the disposition is transfer of legal custody to the responsible social services agency pursuant to Rule 41.06, the court shall conduct a review 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. Any party or the county attorney may request a review hearing before ninety (90) days.

(i) **Review of Protective Supervision.** When the disposition is protective supervision pursuant to Rule 41.06, subdivision 1, 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 - Notice of Timeline for Permanency Proceedings. In the case of a child who is alleged or found to be in need of protection or services and ordered into foster care or the home of a noncustodial parent, and where reasonable efforts for reunification are required, pursuant to Rule 42.01, subdivision 1, the court in its first order placing the child in foster care or the home of a noncustodial parent shall set the date or deadline for the admit/deny hearing commencing permanent placement determination proceedings 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. Pursuant to Rule 42.01, subdivision 5, not later than when the court sets the date or deadline for the admit/deny hearing commencing the permanent placement determination proceedings and the permanency progress review hearing, the court shall notify the parties and participants of the following requirements:

(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, pursuant to Rule 42.01, subdivision 5(a), 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. At the hearing required under this paragraph, the court may conduct a permanency progress review hearing for any sibling of the child, regardless of age, when the sibling is also in foster care or in the home of a noncustodial parent.

(b) **Requirement of Twelve (12) Month Hearing.** Pursuant to Rule 42.01, subdivision 5(b), the court shall commence permanent placement determination proceedings to determine the permanent status of the child, regardless of age, not later than twelve (12) months after the child is placed in foster care or in the home of a noncustodial parent.

Subd. 3. Permanent Placement Petition and Trial for Child Under Eight (8) Years of Age. 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 court determines at the permanency progress review hearing required under Rule 42.01, subdivision 1(b), that the parent or legal custodian has not maintained regular contact with the child as outlined in the visitation plan or is not complying with the case plan or out-of-home placement pursuant to Rule 42.04(a) a petition supporting the permanency plan shall be filed and served within thirty (30) days of the hearing under this paragraph. Pursuant to Rule 39.02, subdivision 1(b), a trial on the petition shall be commenced within thirty (30) days of the filing of a petition in the case of a transfer of legal custody or within ninety (90) days of the filing of the petition in the case of a petition for termination of parental rights, and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and whenever possible should be over consecutive days. Pursuant to Rule 39.05, subdivision 1, within fifteen (15) days of the conclusion of the testimony, during which time the court may require simultaneous written arguments to be filed and served, the court shall issue its findings and order regarding whether the statutory grounds set forth in the petition have or have not been proved. The court may extend the period for issuing an order for an additional fifteen (15) days if

the court finds that an extension of time is required in the interests of justice and the best interests of the child.

Subd. 4. Termination of Parental Rights and Other Permanent Placement Matters at Twelve (12) Months.

(a) **Admit/Deny Hearing.** Pursuant to Rule 34.02, subdivision 1(b), an admit/deny hearing shall be held not less than ten (10) days after service of the summons and petition upon the parties.

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

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

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

(c) **Trial.** Pursuant to Rule 39.02, subdivision 1(c), a trial regarding a termination of parental rights matter or other permanent placement matter shall commence within sixty (60) days of the first scheduled admit/deny hearing and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and whenever possible should be over consecutive days.

(d) **Findings/Adjudication.** Pursuant to Rule 39.05, subdivision 1, within fifteen (15) days of the conclusion of the testimony, during which time the court may require simultaneous written arguments to be filed and served, the court shall issue its findings and order regarding whether the statutory grounds set forth in the petition have or have not been proved. The court may extend the period for issuing an order for an additional fifteen (15) days if the court finds that an extension of time is required in the interests of justice and the best interests of the child.

(e) Post-Permanency Review Hearings.

(1) If the court orders termination of parental rights and adoption as the permanency plan, pursuant to Rule 42.08, subdivision 5, the court shall conduct a review hearing ninety (90) days from the date of the termination of parental rights order is filed, and at least every ninety (90) days thereafter, for the purpose of reviewing the progress towards finalization of the adoption.

(2) If the court orders transfer of permanent legal and physical custody to a relative, pursuant to Rule 42.07, subdivisions 3 and 7, the court may order further in-court review hearings at such intervals as it determines to be in the best interests of the child to ensure that the appropriate services are being delivered to the child and permanent legal physical custodian or that conditions ordered by the court relating to the care and custody of the child are met.

(3) If the court orders long-term foster care, pursuant to Rule 42.11, subdivision 4, the court shall 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.

(4) If the court orders foster care for a specified period of time, pursuant to Rule 42.12, subdivision 3, not later than twelve (12) months after the child was ordered into foster care for a specified period of time the matter shall be returned to court for a review of the appropriateness of continuing the child in foster care and of the responsible social service agency's reasonable efforts to finalize a permanent plan for the child.

(f) Review When Child Removed from Permanent Placement Within One (1) Year. Pursuant to Rule 42.15, subdivision 1, if a child is removed from a permanent placement disposition within one year after the placement was made:

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

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

Subd. 5. Hearing for Child on a Trial Home Visit. Pursuant to Rule 42.01, subdivision 2, when the child has been ordered on a trial home visit which continues at the time the court is required to commence permanent placement determination proceedings under Rule 42.01, within twelve (12) months of the date a child is placed in foster care the court shall hold a hearing pursuant to Rule 42.13 to determine the continued status of the child.

Subd. 6. Cases Where Reasonable Efforts For Reunification Are Not Required. Pursuant to Rule 42.01, subdivision 6, when the court finds that the petition states a prima facie case that one or more of the five (5) circumstances under Minnesota Statutes, section 260.012, paragraph (a), and Rule 30.09, subdivision 3, exist where reasonable efforts for reunification are not required, the court shall order that an admit/deny hearing under Rule 34 be conducted within thirty (30) days and a trial be conducted within ninety (90) days of its prima facie finding. Unless a permanency or termination of parental rights petition under Rule 33 has already been filed, the county attorney requesting the prima facie determination shall file a permanency or termination of parental rights petition that permits the completion of service by the court at least ten (10) days prior to the admit/deny hearing.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009.)

1999 Advisory Committee Comment (amended 2003, 2009)

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 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 Hearing</i>
<i>63</i>	<i>Trial</i>
<i>79</i>	<i>Findings/Adjudication</i>

79-88	<i>Disposition Hearing</i>
168-178	<i>Disposition Review Hearing</i>
180	<i>Permanency Progress Review Hearing</i>
258-268	<i>Disposition Review Hearing</i>
335	<i>Permanency Petition Filed</i>
348-358	<i>Disposition Review Hearing</i>
365	<i>Admit/Deny Hearing on Permanency Petition</i>
455+	<i>Post-Permanency Review Hearings (if appropriate)</i>

4.04 Sanctions for Violation

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

4.05 Application of Timing Provisions

The timing provisions set forth in this rule are subject to the continuance provisions of Rule 5 and any other timing provisions set forth in each specific rule.

(Amended effective August 1, 2009.)

Rule 5. Continuances

5.01 Findings

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

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

1999 Advisory Committee Comment

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

5.02 Notice of Continuance

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

5.03 Existing Orders; Interim Orders

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

Rule 6. Scheduling Order

6.01 Purpose

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

6.02 Order

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

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

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

(Amended effective August 1, 2009.)

1999 Advisory Committee Comment

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

6.03 Amendment

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

Rule 7. Referees and Judges

7.01 Referee Authorization to Hear Matter

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

7.02 Objection to Referee Presiding Over Matter

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

7.03 Removal of Particular Referee

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

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

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

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

1999 Advisory Committee Comment

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

7.04 Transmittal of Referee's Findings and Recommended Order

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

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

7.05 Review of Referee's Findings and Recommended Order

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

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

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

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

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

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

1999 Advisory Committee Comment

If a party or the county attorney cannot obtain the transcript in time to file it with the motion for review, the motion should set forth the date the transcript will be submitted. The

motion, recommended order, and memorandum of law must still be filed within the five day time period prescribed by the rule, but the decision of the court may be delayed until the court has the opportunity to review the transcript.

7.06 Order of the Court

When no review is requested, or when the right to review is waived, the findings and recommended order of the referee become the order of the court when confirmed by the judge as written or when modified by the judge sua sponte. The order shall be confirmed or modified by the court within fifteen (15) days of the transmittal of the findings and proposed order.

(Amended effective August 1, 2009.)

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.)

2003 Advisory Committee Comment

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

Rule 8. Accessibility of Juvenile Protection Case Records

8.01 Presumption of Access to Records

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

(Amended effective January 1, 2004; amended effective August 1, 2009.)

2001 Advisory Committee Comment (amended 2003)

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

8.02 Effective Date

Subdivision 1. Open Hearings Pilot Project Counties. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any of the twelve (12) open hearings pilot project counties on or after June 28, 1998, shall be accessible to the public for inspection, copying, or release. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any of the twelve (12) open hearings pilot project counties before June 28, 1998, shall not be accessible to the public for inspection, copying, or release.

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

2001 Advisory Committee Comment

Rule 8.02 identifies different effective dates for the pilot project counties (June 1998) and non-pilot project counties (July 2002) because the twelve pilot counties already permit public access to hearings and records under the open hearings pilot project. Twelve counties participated in the open hearings pilot project from June 28, 1998, through June 30, 2002: Goodhue and LeSueur (First Judicial District); Houston (Third Judicial District); Hennepin (Fourth Judicial District); Watonwan (Fifth Judicial District); St. Louis--Virginia (Sixth Judicial District); Clay (Seventh Judicial District); Stevens (Eighth Judicial District); Marshall, Pennington, and Red Lake (Ninth Judicial District); and Chisago (Tenth Judicial District).

8.03 Applicability of Rules of Public Access to Records of the Judicial Branch

Except where inconsistent with this rule, the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court shall apply to juvenile protection case records relating to juvenile protection matters. Subdivisions 1(a) and 1(c) of Rule 4 of the Rules of Public Access to Records of the Judicial Branch, which prohibit public access to domestic abuse restraining orders and judicial work products and drafts, are not inconsistent with this rule.

2001 Advisory Committee Comment

Rule 8.03 incorporates the provisions of the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court ("Access Rules"), except to the extent that the Access Rules are inconsistent with this rule. The Access Rules establish the procedure for requesting access, the timing and format of the response, and an administrative appeal process. The Access Rules also define "case records" as a subcategory of records maintained by a court. Thus, "case records" would not include items that are not made a part of the court file, such as notes of a social worker or guardian ad litem. Aggregate statistics on juvenile protection cases that do not identify parties or participants or a particular case are included in the "administrative records" category and are accessible to the public under the Access Rules. Such statistics are routinely published by the courts in numerous reports and studies. These procedures and definitions are consistent with this rule.

One significant aspect of both this rule and the Access Rules is that they govern public access only. Parties and participants in a juvenile protection matter may have greater access rights than the general public. See, e.g., Minn. R. Juv. P. 17 (2001).

Rule 8.03 preserves the confidentiality of domestic abuse restraining orders issued pursuant to Minnesota Statutes 2001 Supplement, section 518B.01. The address of a petitioner for a restraining order under section 518B.01 must not be disclosed to the public if nondisclosure is requested by the petitioner. Minnesota Statutes 2001 Supplement, section 518B.01, subdivision 3b. All other case records regarding the restraining order must not be disclosed until the temporary order made pursuant to subdivision 5 or 7 of section 518B.01 is served on the respondent. Access Rule 4, subdivision 1(a)(Supp. 2001).

Rule 8.03 prohibits public access to judicial work products and drafts. These include notes, memoranda, and drafts prepared by a judge or court employed attorney, law clerk, legal assistant, or secretary and used in the process of preparing a decision or order; except the official court minutes prepared pursuant to Minnesota Statutes 2001 Supplement, sections 546.24 and 546.25. Access Rule 4, subdivision 1(c) (2001).

The "Court Services Records" provision of Access Rule 4, subdivision 1(b), is inconsistent with this rule. The Advisory Committee is of the opinion that public access to reports and recommendations of social workers and guardians ad litem, which become case records, is an integral component of the increased accountability that underlies the concept of public access to juvenile protection matters. Court rulings will necessarily incorporate significant portions of what is set forth in those reports, and similar information is routinely disclosed in family law cases.

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) official transcript of testimony 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; amended effective August 1, 2009.)

2001 Advisory Committee Comment

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

*Rule 8.04(b) prohibits public access to audio tapes and video tapes of a child alleging or describing physical abuse, sexual abuse, or neglect of any child. This includes all tapes made pursuant to Minnesota Statutes 2001 Supplement, section 626.561, subdivision 3, during the course of a child abuse assessment, criminal investigation, or prosecution. This is consistent with Minnesota Statutes 2001 Supplement, section 13.391, which prohibits an individual who is a subject of the tape from obtaining a copy of the tape without a court order. See also *In re Application of KSTP Television v. Ming Sen Shiue*, 504 F. Supp. 360 (D. Minn. 1980)(television station not entitled to view and copy three hours of video tapes received in evidence in criminal trial). Similarly, Rule 8.04(c) prohibits public access to victims' statements, and this includes written records of interviews of victims made pursuant to Minnesota Statutes 2001 Supplement, section 626.561, subdivision 3. This is consistent with Minnesota Statutes 2001 Supplement, sections 609.115, subdivisions 1 and 5; 609.2244; and 611A.037 (pre-sentence investigations to include victim impact statements; no public access; domestic abuse victim impact statement confidential).*

Although victims' statements and audio tapes and video tapes of a child alleging or describing abuse or neglect of any child are inaccessible to the public under Rule 8.04(b) and (c), this does not prohibit the attorneys for the parties or the court from including information from the statements or tapes in the petition, court orders, and other documents that are otherwise accessible to the public. In contrast, Rule 8.04(d) prohibits public access to "portions of juvenile protection case records that identify reporters of abuse or neglect." By precluding public access to "portions of records that identify reporters of abuse or neglect," the Advisory Committee did not intend to preclude public access to any other information

included in the same document. Thus, courts and court administrators must redact identifying information from otherwise publicly accessible documents and then make the edited documents available to the public for inspection and copying. Similarly, Rule 8.04(e) requires that courts and court administrators redact from any publicly accessible juvenile court record any reference to HIV test results, and Rule 8.04(h) requires administrators to redact the face or other identifying features in a photograph of a child.

The prohibition of public access to the identity of reporters of abuse or neglect under Rule 8.04(d) is consistent with state law governing access to this information in the hands of social services, law enforcement, court services, schools, and other agencies. Minnesota Statutes 2001 Supplement, section 626.556. Rule 8.04(d) is also intended to help preserve federal funds for child abuse prevention and treatment programs. See 42 U.S.C. section 5106a(b)(2)(A) and section 5106a(b)(3) (1998); 45 C.F.R. sections 1340.1 to 1340.20 (1997). Rule 8.04(d) does not, however, apply to testimony of a witness taken during a proceeding that is open to the public.

Rule 8.04(e) prohibits public access to HIV test results. This is consistent with state and federal laws regarding court ordered testing for HIV. Minnesota Statutes 2001 Supplement, section 611A.19 (defendant convicted for criminal sexual conduct; no reference to the test, the motion requesting the test, the test order, or the test results may appear in the criminal record or be maintained in any record of the court or court services); 42 U.S.C. section 14011 (1998) (defendant charged with crime; test result may be disclosed to victim only). The Committee is also aware that federal funding for early intervention services requires confidential treatment of this information. 42 U.S.C. section 300ff-61(a); section 300ff-63 (1998).

Rule 8.04(f) and (g) prohibit public access to medical records, chemical dependency evaluations and records, psychological evaluations and records, psychiatric evaluations and records, and sexual offender treatment program reports, unless admitted into evidence under Rule 8.05. This is consistent with public access limitations in criminal and juvenile delinquency proceedings that are open to the public. See, e.g., Minnesota Statutes 2001 Supplement, section 609.115, subdivision 6 (presentence investigation reports). Practitioners and the courts must be careful not to violate applicable federal laws. Under 42 U.S.C. section 290dd-2 (1998), records of all federally assisted or regulated substance abuse treatment programs, including diagnosis and evaluation records, and all confidential communications made therein, except information required to be reported under a state mandatory child abuse reporting law, are confidential and may not be disclosed by the program unless disclosure is authorized by consent or court order. Thus, practitioners will have to obtain the relevant written consents from the parties or court orders, including protective orders, before disclosing certain medical records in their reports and submissions to the court. See 42 C.F.R. sections 2.1 to 2.67 (1997) (comprehensive regulations providing procedures that must be followed for consent and court-ordered disclosure of records and confidential communications).

Although similar requirements apply to educational records under the Federal Educational Rights and Privacy Act (FERPA), 20 U.S.C. sections 1232g, 1417, and 11432 (1998); 34 C.F.R. section 99.1 to section 99.67 (1997), FERPA allows schools to disclose education records without consent or court order in certain circumstances, including disclosures to state and local officials under laws in effect before November 19, 1974. 20 U.S.C. section 1232g(b)(1)(E)(i) (1998); 34 C.F.R. section 99.31(a)(5)(i)(A) (1997). Authorization to disclose truancy to the county attorney, for example, was in effect before that date and continues under current law. See Minnesota Statutes 1974, section 120.12 (superintendent to notify county attorney if truancy continues after notice to parent); Minnesota Laws 1987, chapter 178, section 10, (repealing Minnesota Statutes, section 120.12, and replacing with current section 120.103, which adds mediation process before notice to county attorney); see also Minnesota Statutes 2001 Supplement, sections 260A.06 and 260A.07 (referral to county attorney from school attendance review boards; county attorney truancy mediation program notice includes warning that court action may be taken). Practitioners will have to

review the procedures under which they receive education records from schools and, where necessary, obtain relevant written consents or protective orders before disclosing certain education records in their reports and submissions to the court. Additional information regarding FERPA may be found in Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs (U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, Washington, D.C. 20531, June 1997)(includes hypothetical disclosure situations and complete set of federal regulations).

Rule 8.04(h) prohibits public access to portions of photographs that identify a child, and requires administrators to redact the face or other identifying features in a photograph of a child before permitting public access. Any appropriate concern regarding public access to the remaining portions of such a photograph can be addressed through a protective order (see Rule 8.07).

Rule 8.04(i) precludes public access to an ex parte emergency protective custody order, until the hearing where all parties have an opportunity to be heard on the custody issue. This provision is designed to reduce the risk that a parent or legal custodian would try to hide a child before the child can be placed in protective custody or to take the child from custody before the court can hear the matter. See e.g., Minn. R. Juv. P. 65 (Supp. 2001)(order must either direct that child be brought immediately before the court or taken to a placement facility designated by the court; parent or legal custodian, if present when child is taken into custody, shall immediately be informed of existence of order and reasons why child is being taken into custody). Rule 8.04(i) also precludes public access to the application or request for the protective custody order, except that if the request is made in a Child In Need of Protection or Services (CHIPS) petition, only that portion of the petition that requests the order is inaccessible to the public.

Rule 8.04(j) precludes public access to portions of records that specifically identify a minor victim of sexual assault. This will require court administrators to redact information from case records that specifically identifies the minor victim, including the victim's name and address. Rule 8.04(j) does not preclude public access to other information in the particular record. This is intended to parallel the treatment of victim identities in criminal and juvenile delinquency proceedings involving sexual assault charges under Minnesota Statutes 2001 Supplement, section 609.3471. Thus, the term "sexual assault" includes any act described in Minnesota Statutes, sections 609.342, 609.343, 609.344, and 609.345. The Committee considered using the term "sexual abuse" but felt that it was a limited subcategory of "sexual assault." See Minnesota Statutes 2001 Supplement, section 626.556, subdivision 2, paragraph (a) ("sexual abuse" includes violations of Minnesota Statutes, sections 609.342 to 609.345, committed by person in a position of authority, responsible for child's care, or having a significant relationship with the child). Rule 8.04(j) does not require a finding that sexual assault occurred. An allegation of sexual assault is sufficient.

Rule 8.04(k) precludes public access to the notice of pending proceedings given by the responsible social services agency to an Indian child's tribe or to the Secretary of the Interior pursuant to 25 U.S.C. section 1912(a)(1998). The notice includes extensive personal information about the child, including all known information on direct lineal ancestors, and requires parties who receive the notice to keep it confidential. 25 C.F.R. section 23.11(d), (e)(1997). Notices are routinely given in doubtful cases because lack of notice can be fatal to a state court proceeding. See 25 U.S.C. section 1911 (1998)(exclusive jurisdiction of tribes; right to intervene; transfer of jurisdiction). The Committee believed that public access to information regarding the child's tribal heritage is appropriately given whenever a tribe intervenes or petitions for transfer of jurisdiction. Rule 8.04(k) does not preclude public access to intervention motions or transfer petitions.

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

Rule 8.04(m) prohibits public access to the names, addresses, home, location, or other identifying information about the foster parents, foster care institutions, adoptive parents, and other persons and institutions providing care or pre-adoptive care of the child. This is consistent with the confidentiality accorded adoption proceedings. It is also designed to reduce the risk of continuing contact by someone whose parental rights have been terminated or who is a potentially dangerous family member. If deemed appropriate, the name, address, home, location, or other identifying information about a child's foster placement may be protected from a party through issuance of a protective order pursuant to Rule 8.07.

Notwithstanding the list of inaccessible case records in Rule 8.04(a) through (m), many juvenile protection case records will typically be accessible to the public. Examples include: petitions, other than petitions for paternity; summons; affidavits of publication or service; certificates of representation; orders; hearing and trial notices; subpoenas; names of witnesses; motions and supporting affidavits and legal memoranda; transcripts; and reports of social workers and guardians ad litem. With the exception of information that must be redacted under Rule 8.04(d), (e), and (h), these records will be accessible to the public notwithstanding that they contain a summary of information derived from another record that is not accessible to the public. For example, a social services or guardian ad litem report might discuss the results of a chemical dependency evaluation. Although the chemical dependency evaluation itself is not accessible to the public under Rule 8.04(f), discussion of the details of that evaluation in the social services or guardian ad litem report need not be redacted before public disclosure of the report. Finally, it must be remembered that public access under this rule would not apply to records filed with the court before the effective date of this rule (see Rule 8.02) or to reports of a social worker or guardian ad litem that have not been made a part of the court file (see Rule 8.03).

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.

8.05 Access to Exhibits

Case records received into evidence as exhibits shall be accessible to the public unless subject to a protective order issued pursuant to Rule 8.07.

2001 Advisory Committee Comment

Rule 8.05 permits public access to records that have been received in evidence as an exhibit, unless the records are subject to a protective order (see Rule 8.07). Thus, any of the records identified in Rule 8.04(b) through (k) that have been admitted into evidence as an exhibit are accessible to the public, unless there is a protective order indicating otherwise. An exhibit that has been offered, but not expressly admitted by the court, does not become accessible to the public under Rule 8.05. Exhibits admitted during a trial or hearing must be distinguished from items attached as exhibits to a petition or a report of a social worker or guardian ad litem. Merely attaching something as an "exhibit" to another filed document does not render the "exhibit" to be accessible to the public under Rule 8.05.

8.06 Access to Court Information Systems

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

2001 Advisory Committee Comment

Rule 8.06 prohibits direct public access to case records maintained in electronic format in court information systems unless authorized by the court. Rule 8.06 intentionally limits access to electronic formats as a means of precluding widespread distribution of case records about children into larger, private databases that could be used to discriminate against children for insurance, employment, and other purposes. This concern also led the Advisory Committee to recommend that case titles in the petition and other documents include only the name of the parent or legal custodian, and exclude the names or initials of the children (see Rule 8.08). Rule 8.06 allows the courts to prepare calendars that identify cases by the appropriate caption. To the extent that court information systems can provide appropriate electronic formats for public access, Rule 8.06 allows the district court to make those accessible to the public.

8.07 Protective Order

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

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

(Amended effective January 1, 2004.)

2001 Advisory Committee Comment

Rule 8.07 establishes two categories of protective orders. One is made on motion of a party after a hearing, and the other is made on the court's own motion without a hearing, subject to a later hearing if requested by any person, including representatives of the media. In any case, a protective order may issue only in exceptional circumstances. The Advisory Committee felt that these procedures would provide adequate protection and flexibility.

8.08 Case Captions and Text of Decisions and Other Records

Subdivision 1. District Court. All juvenile protection court files opened and any petitions, pleadings, reports, orders, or other documents or records filed, in any

(i) of the twelve (12) open hearings pilot project counties on or after June 22, 1998, or

(ii) non-open hearings pilot project county on or after July 1, 2002, shall be captioned in the name of the child's parent(s) or legal custodian(s), as follows: "In the Matter of the Welfare of the Child(ren) of _____, Parent(s)/Legal Custodian(s)." The caption shall not include the child's name or initials. The body of any petitions, pleadings, reports, orders, or other documents or records filed with the court shall include the child's and parent's or legal custodian's full name, not their initials. The case caption shall not be modified upon the issuance of an order terminating parental rights.

Subd. 2. Appellate Court. All juvenile protection court files opened in any Minnesota appellate court shall be captioned in the initials of the parent(s) or legal custodian(s) as follows: "In the Matter of the Welfare of the Child(ren) of _____, Parent(s)/Legal Custodian(s)." The caption shall not include the child's name or initials. The body of any decision filed in any Minnesota appellate court shall use the parent's and child's

initials, not their names. Upon the filing of an appeal pursuant to Rule 47.02, the appellant shall provide to the court administrator, the appellate court, and the parties and participants notice of the correct appellate case caption required under this Rule. This Rule supercedes Rule 143.01 of the Rules of Civil Appellate Procedure regarding the provisions relating to case captions upon appeal.

(Amended effective January 1, 2004.)

2001 Advisory Committee Comment

Twelve counties participated in the pilot project from June 28, 1998, through June 30, 2002: Goodhue and LeSueur (First Judicial District); Houston (Third Judicial District); Hennepin (Fourth Judicial District); Watonwan (Fifth Judicial District); St. Louis--Virginia (Sixth Judicial District); Clay (Seventh Judicial District); Stevens (Eighth Judicial District); Marshall, Pennington, and Red Lake (Ninth Judicial District); and Chisago (Tenth Judicial District).

The change in case captions under Rule 8.08 is designed to minimize the stigma to children involved in juvenile protection matters that are accessible to the public. It is more appropriate to label these cases in the name of the adults involved, who are often the perpetrators of abuse or neglect.

Rule 9. Ex Parte Communication

9.01 Ex Parte Communication Prohibited

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

1999 Advisory Committee Comment

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

9.02 Disclosure

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

Rule 10. Orders

10.01 Written or Oral Orders; Timing

Court orders may be written or stated on the record. An order stated on the record shall also be reduced to writing by the court. Except for orders issued following a trial pursuant to Rule 39.05, all orders shall be filed with the court administrator within fifteen (15) days of the conclusion of the testimony, unless the court finds that a fifteen (15) day extension is required in the interests of justice or the best interests of the child. Each order issued following a hearing shall include the name and contact information of the court reporter. Failure to include the court reporter contact information does not extend the timeline for appeal. An order shall remain in full force and effect until the first occurrence of one of the following:

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

(Amended effective January 1, 2004; amended effective August 1, 2009.)

2008 Advisory Committee Comment

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

10.02 Immediate Effect of Oral Order

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

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 shall be accomplished within five (5) days of the date the judicial officer delivers the order to the court administrator. In a termination of parental rights matter or other permanency matter, service by the court administrator of the findings and order terminating parental rights or establishing other permanency for the child shall be accomplished within three (3) days of the date the judicial officer delivers the order to the court administrator.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective July 1, 2007; amended effective August 1, 2009.)

10.04 Notice of Filing of Order

Each order delivered or mailed to the parties and the county attorney shall be accompanied by a notice of filing of order, which shall include notice of the right to appeal a final order pursuant to Rule 47.02. The State Court Administrator shall develop a "notice of filing" form which shall be used by court administrators.

(Amended effective August 1, 2009.)

Rule 11. Recording and Transcripts**11.01 Procedure**

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

11.02 Availability of Transcripts

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

(Amended effective January 1, 2004.)

11.03 Expense

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

(Added effective January 1, 2004.)

Rule 12. Use of Telephone and Interactive Video**12.01 Motions and Conferences**

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

1999 Advisory Committee Comment

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

12.02 Hearings and Taking Testimony

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

1999 Advisory Committee Comment

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

12.03 In Court Appearance Not Precluded

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

Rule 13. Subpoenas**13.01 Subpoena for a Hearing or Trial**

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

13.02 Form; Issuance; Notice

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

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

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

13.03 Service

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

13.04 Motion to Quash a Subpoena

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

- (a) direct compliance with the subpoena;
- (b) modify the subpoena if it is unreasonable or oppressive;
- (c) deny the motion to quash the subpoena on the condition that the person requesting the subpoena prepay the reasonable cost of producing the books, papers, documents, or tangible things; or
- (d) quash the subpoena.

13.05 Objection

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

13.06 Production of Documentary Evidence

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

13.07 Subpoena for Taking Depositions; Place of Examination

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

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

13.08 Expenses

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

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

13.09 Failure to Appear

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

Rule 14. Contempt**14.01 Initiation**

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

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

14.02 Supporting and Responsive Affidavits

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

14.03 Hearing

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

14.04 Sentencing

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

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

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

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

Rule 15. Motions

15.01 Form

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

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

- (a) set forth the relief or order sought;
- (b) state with particularity the grounds for the relief or order sought;
- (c) be signed by the person making the motion;
- (d) be filed with the court, unless it is made orally in court on the record; and
- (e) be accompanied by a supporting affidavit or other supporting documentation or a memorandum of law, unless it is made orally in court on the record.

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

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

15.02 Service and Notice of Motions

Subdivision 1. Upon Whom.

(a) **Generally.** The moving party shall serve the notice of motion and motion, along with any supporting affidavit or other supporting documentation or a memorandum of law, on all parties, the county attorney, and any other persons designated by the court. If service of the petition was by publication and the address of the person remains unknown, service of a motion shall be deemed sufficient if it is mailed to the person's last known address. The moving party shall serve only the notice of the hearing and not the motion upon all participants.

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

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

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

(Amended effective January 1, 2004; amended effective August 1, 2009.)

2008 Advisory Committee Comment

Service of Motion to Transfer Juvenile Protection Matter to Jurisdiction of Tribal Court on Child Age 12 or Older. The Indian Child Welfare Act (ICWA) permits the district court to deny a request to transfer to tribal court when there is "good cause" to deny the transfer. 25 U.S.C. section 1911(b). While "good cause" to deny the transfer is not defined in the ICWA,

it is addressed in the Bureau of Indian Affairs Guidelines for State Courts: Indian Child Custody Proceedings (BIA Guidelines), which provides that "Good cause not to transfer the proceeding may exist if any of the following circumstances exists....[t]he Indian child is over twelve years of age and objects to the transfer." BIA Guidelines C.3 and C.3 Commentary, 44 Fed. Reg. 67584, 67591 at C.3 (Nov. 26, 1979). Requiring service of the motion to transfer jurisdiction to tribal court upon a child age twelve (12) or older permits the child to be aware of the request to transfer and to raise an objection.

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.)

15.04 Motion to Dismiss Petition

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

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

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 document shall be marked by the judge as stricken, but the document shall remain in the court file.

(Amended effective January 1, 2007.)

15.06 Obtaining Hearing Date; Notice to Parties

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

(Added effective August 1, 2009.)

15.07 Timing of Decision

Orders regarding motions shall be filed with the court administrator within fifteen (15) 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; amended effective August 1, 2009.)

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

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.)

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.)

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.

Rule 17. Discovery**17.01 Disclosure by Petitioner Without Court Order**

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

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

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

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

- (1) the names and addresses of all persons intended to be called as expert witnesses at trial;
- (2) the subject matter about which each expert witness is expected to testify; and
- (3) a summary of the grounds for each opinion to be offered.

17.02 Disclosure by Other Parties Without Court Order

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

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

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

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

- (1) the names and addresses of all persons intended to be called as expert witnesses at trial;
- (2) the subject matter about which each expert witness is expected to testify; and
- (3) a summary of the grounds for each opinion to be offered.

17.03 Information Not Discoverable

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

(a) documents containing privileged information between an attorney and client, legal research, records, correspondence, reports, or memoranda to the extent they contain the

opinions, theories, or conclusions of the attorney for a party or other staff of an attorney for a party; and

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

(Amended effective January 1, 2004.)

17.04 Discovery Upon Court Order

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

(a) Physical and Mental Examinations.

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

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

(b) Depositions.

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

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

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

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

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

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

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

(c) **Reports or Examinations and Tests.** Upon motion and order of the court, any party shall disclose and permit the county attorney, attorney for petitioner, and other parties to inspect and copy any results or reports of physical or mental examinations, chemical dependency assessments and treatment records, scientific tests, experiments, and comparisons relating to the particular case. It is not grounds for objection that the information sought will

be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Privileged communications are discoverable in accordance with Minnesota Statutes, section 626.556, subdivision 8.

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

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

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

(3) Unless manifest injustice would result,

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

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

(Amended effective January 1, 2004.)

17.05 Time, Place, and Manner of Discovery

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

17.06 Regulation of Discovery

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

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

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

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

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

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

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

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

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

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

Rule 18. Default

18.01 Failure to Appear

Except as otherwise provided in Rule 35.02, subdivision 1, if a parent, legal custodian, or Indian custodian fails to appear for an admit-deny hearing, a pretrial hearing, or a trial after being properly served with a summons pursuant to Rule 32.02 or a notice pursuant to Rule 32.03 or 32.04, the court may receive evidence in support of the petition or reschedule the hearing.

(Amended effective January 1, 2004.)

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.)

Rule 19. Settlement

19.01 Generally

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

19.02 Content of Settlement Agreement

Any settlement agreement shall include a statement of:

- (a) the statutory grounds to be admitted;
- (b) the statutory grounds to be dismissed, if any;
- (c) the factual allegations to be admitted;
- (d) the factual allegations asserted by the petitioner but not admitted;
- (e) whether the court will enter or withhold adjudication; and

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

19.03 Procedure

Every settlement agreement shall be filed with the court or stated and agreed to on the record by the settling parties. Before approving a settlement agreement, the court shall determine that the agreement is in the best interests of the child and that each party to the agreement understands the content and consequences of the admission or settlement agreement and voluntarily consents to the agreement. When a party makes an admission, the court may accept or reject the admission based upon the terms of the settlement agreement or may conditionally accept or reject the admission pending receipt of a predisposition report prepared for the disposition hearing. The court may accept a settlement agreement that resolves the issues with respect to the petitioner and one or more but not all parties, and proceed with the matter with respect to the non-settling parties. If the court approves the settlement agreement, it shall proceed pursuant to Rule 40. If the court rejects the settlement

agreement, it shall advise the parties and the county attorney of this decision in writing or on the record and shall call upon the parties to either affirm or withdraw the admission. If the admission is withdrawn, the court shall make a finding that the admission is not accepted and proceed pursuant to Rule 39.

19.04 Objection to Settlement Agreement - Termination of Parental Rights Matters and Permanent Placement Matters

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

Rule 20. Alternative Dispute Resolution

[Reserved for future use.]

1999 Advisory Committee Comment

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

C. PARTIES AND PARTICIPANTS

Rule 21. Parties

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 parents as defined in Rule 2.01(16), the child's Indian custodian, and the Indian child's tribe through the tribal representative;
- (d) the petitioner;
- (e) any person who intervenes as a party pursuant to Rule 23;
- (f) any person who is joined as a party pursuant to Rule 24; and
- (g) any other person who is deemed by the court to be important to a resolution that is in the best interests of the child.

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

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

- (a) the child's parents, including any noncustodial parent and any adjudicated or presumed father;
 - (b) any person entitled to notice of any adoption proceeding involving the child;
 - (c) the responsible social services agency when the agency is not the petitioner;
- and
- (d) any other person who is deemed by the court to be important to a resolution that is in the best interests of the child.

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

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009.)

21.02 Rights of Parties

A party shall have the right to:

- (a) notice pursuant to Rule 32;
- (b) legal representation pursuant to Rule 25;
- (c) be present at all hearings unless excluded pursuant to Rule 27;
- (d) conduct discovery pursuant to Rule 17;
- (e) bring motions before the court pursuant to Rule 15;
- (f) participate in settlement agreements pursuant to Rule 19;
- (g) subpoena witnesses pursuant to Rule 13;
- (h) make argument in support of or against the petition;
- (i) present evidence;
- (j) cross-examine witnesses;
- (k) request review of the referee's findings and recommended order pursuant to Rule 7;
- (l) request review of the court's disposition upon a showing of a substantial change of circumstances or that the previous disposition was inappropriate;
- (m) bring post-trial motions pursuant to Rule 45;
- (n) appeal from orders of the court pursuant to Rule 47; and
- (o) any other rights as set forth in statute or these rules.

(Amended effective January 1, 2004.)

1999 Advisory Committee Comment (amended 2004)

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

21.03 Parties' Addresses

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

(Amended effective January 1, 2004.)

Rule 22. Participants**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.)

1999 Advisory Committee Comment (amended 2004)

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

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 2.

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

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

22.03 Participants' Addresses

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

(Amended effective January 1, 2004.)

Rule 23. Intervention**23.01 Intervention of Right**

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

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

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

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

(Amended effective January 1, 2004.)

23.02 Permissive Intervention

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

(Amended effective January 1, 2004.)

23.03 Procedure

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

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

(Amended effective January 1, 2004.)

23.04 Effect of Intervention

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

Rule 24. Joinder**24.01 Procedure**

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

- (a) necessary for a just and complete resolution of the matter; and
- (b) in the best interests of the child.

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

2003 Advisory Committee Comment

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

Rule 25. Right to Representation; Appointment of Counsel**25.01 Right to Representation**

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

(Amended effective January 1, 2004.)

1999 Advisory Committee Comment (amended 2003)

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

Rule 25.02 Appointment of Counsel

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 (10) years of age or older and may appoint counsel to represent a child under age ten (10) in any case in which the court determines that such appointment is appropriate.

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

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

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

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

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

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

(b) **Truancy Matters.** In any proceeding where the sole basis for the petition is habitual truancy, the parent or legal custodian does not have the right to appointment of a public defender or other counsel at public expense. However, before any out-of-home placement, including foster care or inpatient treatment, can be ordered, the court shall 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 Parent or Custodian.** In any juvenile protection matter involving an Indian child, if the child's parent or Indian custodian is unable to afford it, the court shall appoint counsel to represent the parent or Indian custodian.

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

Subd. 3. Guardian Ad Litem. The court may appoint separate counsel for the guardian ad litem if necessary. A public defender may not be appointed as counsel for a guardian ad litem. For purposes of appeal, appointment of counsel in a juvenile protection matter shall be made within three (3) days of the request for counsel. When possible, the trial court attorney should be appointed as appellate counsel.

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; amended effective August 1, 2009.)

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.)

25.04 Notice of Right to Representation

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

25.05 Certificate of Representation

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

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**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 guardians ad litem appointed 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.)

1999 Advisory Committee Comment (amended 2003)

Rule 26.01 is consistent with Minnesota Statutes, section 260C.163, subdivision 5, which provides in part:

- (a) The court shall appoint a guardian ad litem to protect the interests of the minor when it appears, at any stage of the proceedings, that the minor is without a parent*

or guardian, or that the minor's parent is a minor or incompetent, or that the parent or guardian is indifferent or hostile to the minor's interests, and in every proceeding alleging a child's need for protection or services under Minnesota Statutes, section 260C.007, subdivision 6.

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

[P]rovisions and procedures requiring that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, and who may be an attorney or a court appointed special advocate (or both), shall be appointed to represent the child in such proceedings -

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

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

42 U.S.C. section 5106a(b)(2)(A)(xiii) (2002).

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

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 guardians ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005; amended effective January 1, 2007.)

2004 Advisory Committee Comment

If the minor parent or incompetent adult is unable to admit or deny the petition, the court may choose to appoint a substitute decisionmaker or legal guardian to admit or deny the petition.

26.03 Term of Service of Guardian Ad Litem

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

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

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

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

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

(Amended effective January 1, 2004; amended effective August 1, 2009.)

26.04 Request for Appointment of Counsel for Child

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

(Added effective January 1, 2004.)

2003 Advisory Committee Comment

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

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.)

Rule 27. Access to Hearings**27.01 Presumption of Public Access to Hearings**

Absent exceptional circumstances, hearings in juvenile protection matters are presumed to be accessible to the public. Hearings, or portions of hearings, may be closed to the public by the court only in exceptional circumstances. The closure of any hearing shall be noted on the record and the reasons for the closure given. Closure of all or part of a hearing shall not prevent the court from proceeding with the hearing or issuing a decision. Minnesota Statutes, section 260C.163, subdivision 1, paragraph (c), is superseded insofar

as it applies to public access to hearings in juvenile protection matters. An order closing a hearing or portion of a hearing to the public shall be accessible to the public.

(Amended effective July 1, 2002; amended January 1, 2004.)

27.02 Party and Participant Attendance at Hearings

Notwithstanding the closure of a hearing to the public pursuant to Rule 27.01, any party who is entitled to summons pursuant to Rule 32.02 or any participant who is entitled to notice pursuant to Rule 32.03, or any person who is summoned or given notice, shall have the right to attend the hearing to which the summons or notice relates unless excluded pursuant to Rule 27.04.

(Amended effective July 1, 2002.)

1999 Advisory Committee Comment (amended 2004)

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

27.03 Absence Does Not Bar Hearing

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

(Amended effective July 1, 2002.)

27.04 Exclusion of Parties or Participants from Hearings

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

(Amended effective January 1, 2004.)

D. COURSE OF CASE

Rule 28. Emergency Protective Care Order and Notice

28.01 Emergency Protective Care Defined

A child is in "emergency protective care" 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.

(Amended effective January 1, 2004.)

1999 Advisory Committee Comment

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

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.)

28.03 Contents of Order

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

- (a) order the child to be taken to an appropriate relative, a designated caregiver pursuant to Minnesota Statutes, section 260C.181, or a shelter care facility designated by the court pending an emergency protective care hearing;
- (b) state the name and address of the child, unless such information would endanger the child, or, if unknown, designate the child by any name or description by which the child can be identified with reasonable certainty;
- (c) state the age and gender of the child or, if the age of the child is unknown, that the child is believed to be of an age subject to the jurisdiction of the court;
- (d) state the reasons why the child is being taken into emergency protective care;
- (e) state the reasons for any limitation on the time or location of the execution of the emergency protective care order;
- (f) state the date when issued and the county and court where issued; and
- (g) state the date, time, and location of the emergency protective care hearing.

(Amended effective January 1, 2004.)

28.04 Execution of Order

An order for emergency protective care:

- (a) may only be executed by a peace officer authorized by law to execute a warrant;
- (b) shall be executed by taking the child into custody;

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

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

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

28.05 Notice

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

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

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

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

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

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

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

(Amended effective January 1, 2004.)

28.06 Enforcement of Order

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

Rule 29. Procedures During Period of Emergency Protective Care

29.01 Release from Emergency Protective Care

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

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

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

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

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

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

2003 Advisory Committee Comment

When calculating the seventy-two (72) hour period referenced in Rule 29.01, pursuant to Rule 4.01 the day the child was removed from home and any Saturday, Sunday, or legal holiday is not counted. The last day of the period shall be included, unless it is a Saturday, Sunday, or legal holiday in which event the period runs to the end of the next day that is not a Saturday, Sunday, or legal holiday.

29.02 Discretionary Release by Court; Custodial Conditions

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

- (a) place restrictions on the child's travel, associations, or place of abode during the period of the child's release; and
- (b) impose any other conditions upon the child or the child's parent or legal custodian deemed reasonably necessary and consistent with criteria for protecting the child.

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

29.03 Release to Custody of Parent or Other Suitable Person

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

29.04 Reports

Subdivision 1. Report by Peace Officer. Any report required by Minnesota Statutes, section 260C.176, subdivision 6, shall be filed with the court on or before the first court day following placement of the child and the report shall include at least:

- (a) the time the child was taken into emergency protective care;
- (b) the time the child was delivered for transportation to the shelter care facility;
- (c) the reasons why the child was taken into emergency protective care;
- (d) the reasons why the child has been placed;
- (e) a statement that the child and the child's parent or legal custodian have received the advisory required by Minnesota Statutes, section 260C.176, subdivision 3, or the reasons why the advisory has not been made; and
- (f) reasons to support the non-disclosure, if disclosure of the location of the placement has not been made because there is reason to believe that the child's health and welfare would be immediately endangered.

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

(Amended effective January 1, 2004.)

Rule 30. Emergency Protective Care Hearing**30.01 Timing**

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

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

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

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

(Amended effective January 1, 2004.)

1999 Advisory Committee Comment

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

30.02 Notice of Hearing

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

(Amended effective January 1, 2004.)

30.03 Inspection of Reports

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

1999 Advisory Committee Comment

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

30.04 Determination Regarding Notice

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

(Amended effective January 1, 2004.)

30.05 Advisory

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

- (a) the reasons why the child was taken into emergency protective care;
- (b) the substance of the statutory grounds and supporting factual allegations set forth in the petition;
- (c) the purpose and scope of the hearing;
- (d) the possible consequences of the proceedings;
- (e) the right of the parties and participants to legal representation, including the right of the child, the child's parent or legal custodian, and the child's Indian custodian to court appointed counsel pursuant to Rule 25;

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

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

(Amended effective January 1, 2004.)

30.06 Evidence

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

30.07 Filing and Service of Petition

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

30.08 Protective Care Determinations

Subdivision 1. Initial Findings.

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

(b) Endangerment.

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

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

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

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

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

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

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

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

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

(Amended effective January 1, 2004; amended effective August 1, 2009.)

1999 Advisory Committee Comment

Rule 30.08 is consistent with Minnesota Statutes, section 260C.178, subdivision 1, paragraph (b), which provides:

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

2008 Advisory Committee Comment

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

Exclusive Jurisdiction. With respect to exclusive jurisdiction, the Indian Child Welfare Act (ICWA) provides:

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

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

There are differences of opinion regarding application of Public Law 83-280, codified at 25 U.S.C. section 1322, as it may intersect with exclusive jurisdiction requirements in child welfare proceedings governed by the ICWA. See *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207-14 (1987); *Doe v. Mann (Mann II)*, 415 F.3d 1038, 1047-68 (9th Cir. 2005); *Native Village of Venetie I.R.A. Council v. Alaska (Venetie II)*, 944 F.2d 548, 559-62 (9th Cir. 1991); *Teague v. Bad River Band of the Lake Superior Tribe of Chippewa Indians*, 612 N.W.2d 709, 717-18 (Wis. 2000); *In re M.A.*, 40 Cal. Rptr. 3d 439, 441-43 (Cal. Ct. App. 2006); *State ex rel Dep't of Human Servs. v. Whitebreast*, 409 N.W.2d 460, 461-64 (Iowa 1987); 78 Wis. Op. Att'y Gen. 122 (1989).

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, paragraph (a);

(4) the parent's custodial rights to another child have been involuntarily transferred to a relative under Minnesota Statutes, section 260C.201, subdivision 11, paragraph (d), clause (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; amended effective August 1, 2009.)

2003 Advisory Committee Comment

Consistent with Minnesota Statutes, section 260C.178, Rule 30.09 requires the court to make a determination about whether the responsible social services agency made reasonable, or active efforts in the case of an Indian child, to prevent the removal of the child. Unless the child's removal is due to circumstances which do not require efforts to reunify the child with the parent or legal custodian, the responsible social services agency should provide services to prevent the child's removal. The circumstances where reunification efforts are not required are set out in subdivision 3. When the removal occurs due to an emergency, the agency should consider what services it might put into the child's home to allow the child to return home or whether the child's safety could be met by excluding from the child's home the individual responsible for abuse or neglect of the child. When the agency documents the services provided or attempted, or other measures it considered but rejected, to provide for the child's safety, and the court finds such actions reasonable, the court may properly find the agency has made reasonable efforts to prevent the removal of the child.

30.10 Protective Care Findings and Order

Within three (3) days of 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 to ensure the safety of the child or others;
 - (3) return home with reasonable conditions of release; or
 - (4) return home with no conditions;
- (b) conditions pursuant to subdivision (a), if any, to be imposed upon the parent, legal custodian, or a party;
- (c) services, if any, to be provided to the child and the child's family;
- (d) terms of parental and sibling visitation pending further proceedings;
- (e) the parent's responsibility for costs of care pursuant to Minnesota Statutes, section 260C.331, subdivision 1;
- (f) if the court knows or has reason to know that the child is an Indian child, notice of the proceedings shall be sent to the Indian child's parents or Indian custodian and Indian child's tribe consistent with 25 U.S.C. section 1912(a); Minnesota Statutes, section 260.761, subdivision 3; and Rule 32.06; and
- (g) if the child is determined to be an Indian child and is proposed to be placed in foster care, testimony, pursuant to Rule 49, of a qualified expert witness.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009.)

1999 Advisory Committee Comment (amended 2004)

Minnesota Statutes, section 260C.178, subdivision 1, paragraph (c), provides as follows:

In a proceeding regarding a child in need of protection or services, the court, before determining whether a child should continue in custody, shall also make a determination, consistent with Minnesota Statutes, section 260.012, as to whether reasonable efforts, or in the case of an Indian child, active efforts, according to the Indian Child Welfare Act of 1978, United States Code, title 25, section 1912(d), were made to prevent placement. The court shall also determine whether there are available services that would prevent the need for further detention.

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

2006 Advisory Committee Comment (amended 2009)

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(19); 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, paragraph (a), clause (2), item (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 reviews 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, 42 U.S.C. 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 45 C.F.R. 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 Minn. Dept. of Human Servs., Bull. No. 01-68-04, Title IV-E Updates (Apr. 11, 2001). 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.

2008 Advisory Committee Comment

Notice to Indian Child's Parent, Indian Custodian, and Indian Tribe required under ICWA. See the 2008 Advisory Committee Comment following Rule 34.03 for information about the notice required under the Indian Child Welfare Act (ICWA) to be provided to the Indian child's parent, Indian custodian, and Indian tribe, including timing of the notice and time to respond.

Emergency Protective Care Placement Pending ICWA Notice. While both the ICWA and Minnesota law require notice to the Indian child's parent or Indian custodian and Indian child's tribe regarding the juvenile protection proceeding, 25 U.S.C. section 1922 provides that a state may take emergency action to protect an Indian child who is domiciled or resides on a reservation but is temporarily located off the reservation. While there is no such explicit provision in the ICWA regarding an Indian child who is not domiciled on or a resident of a reservation, by analogy there is general recognition that the state may take emergency action to protect an Indian child who is not domiciled on or resident of a reservation. It is not possible to send the ICWA notice referred to in Rule 32.06 and meet the

timing requirements of 25 U.S.C. section 1912(a) before the emergency removal hearing. The ICWA notice that the court will direct be provided under Rule 30.10(f) is required under Rule 32.06 before the Admit/Deny Hearing may be held. The timing of the Admit/Deny Hearing in matters governed by the ICWA may be different due to the notice requirement of Rule 32.06.

30.11 Protective Care Review

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

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

Subd. 3. Formal Review.

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

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

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

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

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

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

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

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

(3) modify the conditions of release.

30.12 Notification When Child Returned Home

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

(Added effective January 1, 2004.)

Rule 31. Methods of Filing and Service**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 fifty (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.

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 eighteen (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.)

31.03 Service by Facsimile Transmission

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

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.)

31.05 Service of Subpoena

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

31.06 Completion of Service

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

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 non-notarized 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

32.01 Commencement

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

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 presence the court deems necessary to a determination concerning the best interests of the child. The cost of service of a summons and petition filed by someone other than a 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.)

1999 Advisory Committee Comment (amended 2003)

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

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 25;

(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; amended effective August 1, 2009.)

1999 Advisory Committee Comment (Amended 2003)

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

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.)

32.05 Orders on the Record

An oral order stated on the record directed to the parties which either separately or with written supplementation contains the information required by this rule is sufficient to provide notice and compel the presence of the parties at a stated time and place. Such an order shall be reduced to writing pursuant to Rule 10.

32.06 Petitioner's Notice Responsibility Under Indian Child Welfare Act

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

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009.)

2008 Advisory Committee Comment

Notice to Indian Child's Parent, Indian Custodian, and Indian Tribe Required under ICWA. See the 2008 Advisory Committee Comment following Rule 34.03 for information about the notice required under the Indian Child Welfare Act (ICWA) to be provided to the Indian child's parent, Indian custodian, and Indian tribe, including timing of the notice and time to respond.

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

"Notice Requirements

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

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

i. The name of the Indian child.

- ii. *His or her tribal affiliation.*
- iii. *A copy of the petition, complaint or other document by which the proceeding was initiated.*
- iv. *The name of the petitioner and the name and address of the petitioner's attorney.*
- v. *A statement of the right of the biological parents or Indian custodians and the Indian child's tribe to intervene in the proceeding.*
- vi. *A statement that if the parents or Indian custodians are unable to afford counsel, counsel will be appointed to represent them.*
- vii. *A statement of the right of the natural parents or Indian custodians and the Indian child's tribe to have, on request, twenty days (or such additional time as may be permitted under state law) to prepare for the proceedings.*
- viii. *The location, mailing address and telephone number of the court.*
- ix. *A statement of the right of the parents or Indian custodians or the Indian child's tribe to petition the court to transfer the proceeding to the Indian child's tribal court.*
- x. *The potential legal consequences of an adjudication on future custodial rights of the parents or Indian custodians.*
- xi. *A statement in the notice to the tribe that since child custody proceedings are usually conducted on a confidential basis, tribal officials should keep confidential the information contained in the notice concerning the particular proceeding and not reveal it to anyone who does not need the information in order to exercise the tribe's right under the Act."*

BIA Guidelines, 44 Fed. Reg. 67584, 67588, 67591 at B.5 (Nov. 26, 1979).

Rule 33. Petition

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.)

1999 Advisory Committee Comment

If a child in need of protection or services matter is pending at the time a termination of parental rights matter is filed regarding the same child, the termination petition should be filed in the same file as the child in need of protection or services matter.

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, current address unless stating the address would endanger the child or seriously risk disruption of the current placement, and, if the child is believed to be an Indian child, the name of the child's tribe;

(c) the names, race, dates of birth, residences, and post office addresses of the child's parents when known, and, if the child is believed to be an Indian child, the name of the child's tribe;

(d) the name, residence, and post office address of the child's legal custodian, the person having custody or control of the child, the nearest known relative if no parent or legal custodian can be found, and, if the child is believed to be an Indian child, the name and post office address of the child's Indian custodian, if any, and the Indian custodian's tribal affiliation;

(e) the name, residence, and post office address of the spouse of the child;

(f) the statutory grounds on which the petition is based, together with a recitation of the relevant portion of the subdivision(s);

(g) a statement regarding the applicability of the Indian Child Welfare Act;

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

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

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

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

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

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

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

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

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 an agent of the commissioner of human

services shall be filed on a form developed by the state court administrator. Copies of the form shall be available from the court administrator in each county.

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

(i) a statement that the petitioner has reported the circumstances underlying the petition to the responsible 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; amended effective August 1, 2009.)

2008 Advisory Committee Comment

For a quote from the Indian Child Welfare Act (ICWA) that addresses "exclusive jurisdiction," see the 2008 Advisory Committee Comment following Rule 30.08.

33.03 Verification

A petition shall be verified by a person having knowledge of the facts and may be verified on information and belief.

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.)

33.05 Timing

If a child is in emergency protective care pursuant to Rule 28, the petition shall be filed at or prior to the time of the emergency protective care hearing held pursuant to Rule 30.

1999 Advisory Committee Comment

Minnesota Statutes, section 260C.143, provides that a peace officer or school attendance officer may issue a notice to a child to appear in court and file the notice with the juvenile court.

Rule 34. Admit/Deny Hearing

34.01 Generally

An admit/deny hearing is a hearing at which the statutory grounds set forth in the petition are admitted or denied pursuant to Rule 35.

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.

(d) Indian Child Welfare Act Matters.

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

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

Subd. 2. Child Not in Placement.

(a) **Generally.** When the child is not placed outside the child's home by court order, an admit/deny hearing shall be held no sooner than 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; amended effective August 1, 2009.)

34.03 Hearing Procedure

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

(a) verify the child's name, date of birth, race, gender, current address unless stating the address would endanger the child or seriously risk disruption of the current placement, and, if the child is believed to be an Indian child, the name of the child's tribe;

(b) 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;

(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;

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

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

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; amended effective August 1, 2009.)

1999 Advisory Committee Comment (amended 2003, 2008)

Rule 34.03, subdivision 2, is consistent with Minnesota Statutes, section 260C.201, subdivision 11, which provides that a permanency progress review hearing must be held within six (6) months of a child's removal from the home if the child is under eight (8) years of age at the time the petition is filed. The requirements of Rule 34.03, subdivisions 3 and 4, are consistent with federal requirements regarding the timing of reasonable efforts determinations and permanency hearings.

2008 Advisory Committee Comment

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

Timing of ICWA Notice. The ICWA, 25 U.S.C. section 1912(a), provides that no foster care placement or termination of parental rights proceeding shall be held until at least ten (10) days after receipt of notice by the Indian child's parent or Indian custodian and the Indian child's tribe, provided that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty (20) additional days from receipt of the notice to prepare for such proceeding.

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

Rule 35. Admission or Denial**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.)

35.02 Denial

Subdivision 1. Denial Without Appearance. A written denial or a denial on the record of the statutory grounds set forth in a petition may be entered by counsel without the personal appearance of the person represented by counsel.

Subd. 2. Further Proceedings After Denial. When a denial by any party is entered, the court shall schedule further proceedings pursuant to Rule 36 or Rule 39.

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

36.01 Timing

The court shall convene a pretrial hearing at least ten (10) days prior to trial.

(Amended effective January 1, 2007; amended effective August 1, 2009.)

36.02 Purpose

The purposes of a pretrial hearing shall be to:

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

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

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

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

(e) identify any unresolved discovery matters;

(f) resolve any pending pretrial motions;

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

(1) the factual allegations admitted or denied;

- (2) the statutory grounds admitted or denied;
- (3) any stipulations to foundation and relevance of documents; and
- (4) any other stipulations, admissions, or denials;
- (h) exchange witness lists and a brief summary of each witness' testimony;
- (i) exchange exhibit lists;
- (j) confirm the trial date and estimate the length of trial;
- (k) determine the need for, and date for submission of, proposed findings; and
- (l) determine any other relevant issues.

(Amended effective January 1, 2007; amended effective August 1, 2009.)

1999 Advisory Committee Comment

Rule 36.02(d) addresses the need to determine whether the child will testify. The intent of the rule is to provide that an order protecting the child from testifying or placing conditions on the child's testimony can only be made after notice of motion and a hearing. The Committee intends that any such motion be heard and resolved at the pretrial conference.

36.03 Pretrial Order

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

(Added effective January 1, 2007; amended effective August 1, 2009.)

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

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; 245.492, subdivision 16; 256B.092; 260C.212, subdivision 1; or 626.556, subdivision 10, whichever is applicable.

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

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 child and parent, legal custodian, or Indian custodian, participated in the preparation of the plan. If a parent or legal custodian refuses to participate in the preparation of the plan or disagrees with the services recommended in the plan by the responsible social

services agency, the agency shall state in the plan the attempts made to engage the parent, legal custodian, and child in case planning and note such refusal or disagreement. The plan shall also include a statement about whether the child's guardian ad litem; the child's tribe, if the child is an Indian child; and the child's foster parent or representative of the residential facility have been consulted in the plan's preparation. The agency shall document whether the parent, legal custodian, or Indian custodian; child, if appropriate; the child's tribe, if the child is an Indian child; and foster parents have received a copy of the plan. When 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; amended effective August 1, 2009.)

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

Subdivision 1. Child in Voluntary Foster Care For Reasons Other than for Treatment.

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

Subd. 2. Procedure for Approving Out-of-Home Placement Plan for Child in Voluntary Foster Care. The court shall consider the appropriateness of the case plan or out-of-home placement plan in determining whether the voluntary placement is in the best interests of the child as required under Rule 44.02.

(Added effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009.)

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 Rules, part 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 Rules, part 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.)

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; 245.492, subdivision 16; or 256B.092, the plan shall be filed with the court. Services may be ordered provided to the child according to the provisions of Minnesota Statutes, section 260C.201, subdivision 1, paragraph (a), clause (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.)

37.06 Non-Child Protection Cases; Child Not in Out-of-Home Care

Subdivision 1. Timing of Filing of Case Plan for Child Under Protective Supervision, in Need of Special Care or Services, Allowed to Live Independently, or Who is a Runaway or Habitual Truant. When a petition is filed alleging a child to be in need of protection or services and no plan is required under Rule 37.02, 37.04, or 37.05, the responsible social services agency or other agency shall file a case plan designed to correct the conditions underlying the allegations that make the child in need of protection or services and may be based on the investigation and report required under subdivision 2. The case plan must be filed and served not later than five (5) days prior to the date of the disposition hearing.

Subd. 2. Predisposition Investigation and Report. Upon request of the court, the responsible social services agency or probation officer shall investigate the personal and family history and environment of any minor coming within the jurisdiction of the court under Minnesota Statutes, section 260C.101, and shall report its findings to the court. The court may order any minor coming within its jurisdiction to be examined by a duly qualified physician, psychiatrist, or psychologist appointed by the court, the cost of which shall be paid pursuant to Minnesota Statutes, section 260C.331, subdivision 1. The predisposition report shall be governed by Rule 41.

(Added effective January 1, 2004.)

Rule 38. Reports to the Court

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 support 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.)

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, subdivision 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.)

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.)

38.04 Objections to Agency's Report or Recommendations

Any party objecting to the content or recommendations of the responsible agency's report may submit a written objection to the report 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 agency's report and recommendations may also be stated on the record as long as the court gives the agency a reasonable opportunity to respond to the party's objection.

(Added effective January 1, 2004.)

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 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

39.01 Generally

A trial is a hearing to determine whether the statutory grounds set forth in the petition are or are not proved.

39.02 Timing

Subdivision 1. 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 admit/deny hearing, whichever is earlier, and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and whenever possible should be over consecutive days.

(b) **Trial Following Permanency Progress Review Hearing for Child Under Age 8.** A trial required by Rule 42.04(c) following a Permanency Progress Review Hearing shall be commenced within thirty (30) days of the filing of a petition in the case of a transfer of legal custody or within ninety (90) days of the filing of the petition in the case of a petition for termination of parental rights, and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and whenever possible should be over consecutive days.

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

(d) **Simultaneous Criminal Proceedings.** If criminal charges have been filed against a parent arising out of conduct alleged to constitute egregious harm, the county attorney shall determine whether the criminal matter or the juvenile court matter should proceed to trial first, consistent with the best interests of the child and subject to the defendant's right to a speedy trial.

Subd. 2. Continuance. The court may, either on its own motion or upon motion of a party or the county attorney, continue or adjourn a trial to a later date upon written findings or oral findings made on the record that a continuance is necessary for the protection of the child, for accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown, so long as the permanency time requirements set forth in these rules are not delayed. Failure to conduct a pretrial hearing shall not constitute good cause.

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; amended effective August 1, 2009.)

39.03 Procedure

Subdivision 1. Initial Procedure. At the beginning of the trial the court shall on the record:

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

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

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

(d) determine whether any child or the child's parent or legal custodian is present without counsel and, if so, explain the right to representation pursuant to Rule 25;

(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. Conduct and Procedure.

(a) **Trial Rights.** The parties and the county attorney shall have the right to:

(1) present evidence;

(2) present witnesses;

(3) cross-examine witnesses;

(4) present arguments in support of or against the statutory grounds set forth in the petition; and

(5) ask the court to order that witnesses be sequestered.

(b) **Trial Procedure.** The trial shall proceed as follows:

(1) the party that drafted and filed the petition pursuant to Rule 33 may make an opening statement confining the statement to the facts expected to be proved;

(2) the other parties, in order determined by the court, may make an opening statement or may make a statement immediately before offering evidence, and the statement shall be confined to the facts expected to be proved;

(3) the party that drafted and filed the petition pursuant to Rule 33 shall offer evidence in support of the petition;

(4) the other parties, in order determined by the court, may offer evidence;

(5) the party that drafted and filed the petition pursuant to Rule 33 may offer evidence in rebuttal;

(6) the other parties, in order determined by the court, may offer evidence in rebuttal;

(7) when evidence is presented, other parties may, in order determined by the court, cross-examine witnesses;

(8) at the conclusion of the evidence the parties, other than the party that drafted and filed the petition pursuant to Rule 33, in order determined by the court, may make a closing statement;

(9) the party that drafted and filed the petition pursuant to Rule 33 may make a closing statement; and

(10) if written argument is to be submitted, it shall be submitted within fifteen (15) days of the conclusion of testimony, and the trial is not considered completed until the time for written arguments to be submitted has expired.

39.04 Standard of Proof

Subdivision 1. Generally. Pursuant to Minnesota Statutes, section 260C.163, subdivision 1, paragraph (a), and the Indian Child Welfare Act, 25 U.S.C. section 1912(e), in a child in need of protection or services matter, the standard of proof is clear and convincing evidence.

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

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

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

(Amended effective August 1, 2009.)

1999 Advisory Committee Comment

In In Re the Matter of M.S.S., 465 N.W.2d 412 (Minn. Ct. App. 1991), the court held that the parental rights to an Indian child may not be terminated unless the county proves beyond a reasonable doubt that it has complied with section 1912(f) of the Indian Child Welfare Act, 25 U.S.C. section 1901 et seq., requiring the county to make active efforts to prevent or avoid placement.

39.05 Decision

Subdivision 1. Timing. Within fifteen (15) days of the conclusion of the testimony, during which time the court may require simultaneous written arguments to be filed and served, the court shall issue its findings and order regarding whether one or more statutory grounds set forth in the petition have been proved. The court may extend the period for issuing an order for an additional fifteen (15) days if the court finds that an extension of time is required in the interests of justice and the best interests of the child.

Subd. 2. Child in Need of Protection or Services Matters and Habitual Truant, Runaway, and Prostitution Matters. The court shall dismiss the petition if the statutory grounds have not been proved. If the court finds that one or more statutory grounds set forth in the petition have been proved, the court shall either enter or withhold adjudication pursuant to Rule 40 and schedule the matter for further proceedings pursuant to Rule 41. The findings and order shall be filed with the court administrator who shall proceed pursuant to Rule 10.

Subd. 3. Termination of Parental Rights and Other Permanency Matters.

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

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

(1) **Non-Indian Child.** 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) **Indian Child.** In any termination of parental rights proceeding involving an Indian child, the court shall make specific findings regarding the following:

(i) *Active Efforts.* The petitioner has proven beyond a reasonable doubt that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

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

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

- (i) the child's interests in preserving the parent-child relationship;
- (ii) the parent's interests in preserving the parent-child relationship; and
- (iii) any competing interests of the child.

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

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

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; amended effective August 1, 2009.)

Rule 40. Adjudication

40.01 Adjudication

If the court makes a finding that the statutory grounds set forth in a petition alleging a child to be in need of protection or services are proved, the court shall:

- (a) adjudicate the child as in need of protection or services and proceed to disposition pursuant to Rule 41; or
- (b) withhold adjudication of the child pursuant to Rule 40.02.

40.02 Withholding Adjudication

Subdivision 1. Generally. When it is in the best interests of the child to do so, the court may withhold an adjudication that the child is in need of protection or services. The court may withhold adjudication for a period not to exceed ninety (90) days from the finding that the statutory grounds set forth in the petition have been proved. During the withholding of an adjudication, the court may enter a disposition order pursuant to Rule 41.

Subd. 2. Further Proceedings. At a hearing, which shall be held within ninety (90) days following the court's withholding of adjudication, the court shall either:

(a) dismiss the matter without an adjudication if both the child and the child's legal custodian have complied with the terms of the continuance; or

(b) adjudicate the child in need of protection or services if either the child or the child's legal custodian has not complied with the terms of the continuance. If the court enters an adjudication, the court shall proceed to disposition pursuant to Rule 41.

Rule 41. Disposition

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, sections 260C.205 and 127A.47.

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

41.02 Timing

To the extent practicable, the court shall conduct a disposition hearing and enter a disposition order the same day it makes a finding that the statutory grounds set forth in the petition have been proved. In the event disposition is not ordered at the same time as the adjudication, the disposition order shall be issued within ten (10) days of the date the court finds that the statutory grounds set forth in the petition have been proved.

(Amended effective August 1, 2009.)

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.)

41.04 Procedure; Evidence

Disposition hearings shall be conducted in an informal manner designed to facilitate the opportunity for all parties to be heard.

The court may admit any evidence, including reliable hearsay and opinion evidence, which is relevant to the disposition of the matter. Privileged communications may be admitted in accordance with Minnesota Statutes, section 626.556, subdivision 8.

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;

(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 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; and

(e) in the case of an Indian child, the foster care placement of the child shall be ordered only upon the testimony, pursuant to Rule 49, of at least one qualified expert witness that the continued custody of the child by the parent or legal custodian or Indian custodian is likely to result in serious emotional or physical damage to the child.

Subd. 2. Content.

(a) **Mandatory Provisions.** The court shall enter an order making one 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 admit/deny 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; amended effective August 1, 2009.)

2006 Advisory Committee Comment

Minnesota Statutes, section 260C.331, subdivision 1, paragraph (a), clause (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."

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

(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 at litem have reasonable access to the child to determine the child's safety, health, and well-being;

(5) whether the parents or legal custodian are able to utilize the services set out in the plan to correct the conditions which led to the court's determination that the child is in need of protection or services, and if not, what other services might be appropriate; and

(6) whether the child is receiving necessary services identified in the plan and whether those services are meeting the best interests of the child.

Subd. 3. 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; amended effective August 1, 2009.)

2008 Advisory Committee Comment

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

Rule 42. Permanent Placement and Termination of Parental Rights Matters; Post-Permanency Review Requirements

42.01 Timing

Subdivision 1. Timing of Required Permanency Proceedings for Child in Need of Protection or Services Matters. In the case of a child who is alleged or found to be in need

of protection or services, ordered into foster care or the home of a noncustodial parent, and where reasonable efforts for reunification are required, the first order placing the child in foster care or the home of a noncustodial parent shall set the date or deadline for:

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

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

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

Subd. 3. Calculating Time Period. The child shall be considered placed in foster care or the home of a noncustodial parent at the earlier of:

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

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

Subd. 4. Accumulation of Out-of-Home Placement Time. The time period requiring the court to commence permanent placement determination proceedings 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;

(b) if a child has been placed in foster care within the previous five (5) 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 (5) years are accumulated. If a child under this clause has been in foster care for twelve (12) months or more, the court, if it is in the best interests of the child and for compelling reasons, may extend the total time the child may continue out of the home under the current petition up to an additional six (6) months before making a permanency determination; and

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

Subd. 5. Notification of Timing. Not later than when the court sets the date or deadline for the admit/deny hearing commencing the permanent placement determination proceedings and the permanency progress review hearing, the court shall notify the parties and participants of the following requirements:

(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 permanency progress review hearing to review the progress of the case, the parent's progress on the case plan

or out-of-home placement plan, and the provision of services not later than six (6) months after the child is placed in foster care or in the home of a noncustodial parent. At the hearing required under this paragraph, the court may conduct a permanency progress review hearing for any sibling of the child, regardless of age, when the sibling is also in foster care or in the home of a noncustodial parent.

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

Subd. 6. Timing for Cases Where Reasonable Efforts for Reunification Are Not Required. When the court finds that the petition states a prima facie case that one or more of the five circumstances under Minnesota Statutes, section 260.012, and Rule 30.09, subdivision 3, exist where reasonable efforts for reunification are not required, the court shall order that an admit/deny hearing under Rule 34 be conducted within thirty (30) days and a trial be conducted within ninety (90) days of its prima facie finding. Unless a permanency or termination of parental rights petition under Rule 33 has already been filed, the county attorney requesting the prima facie determination shall file a permanency or termination of parental rights petition that permits the completion of service by the court at least ten (10) days prior to the admit/deny hearing.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009.)

1999 Advisory Committee Comment

Rule 42.01 is consistent with Minnesota Statutes, section 260C.201, subdivision 11, which became effective July 1, 1999. The statute provides that a permanent placement determination hearing must be held within six months of a child's removal from the home if the child is under eight (8) years of age at the time the petition is filed or within twelve (12) months of the child's removal if the child is eight (8) years of age or older at the time the petition is filed.

42.02 Purpose of Permanent Placement Determination Proceeding and Permanency Progress Review Hearing

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

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

Subd. 3. Matters Where Reasonable Efforts for Reunification Are Not Required. The purpose of holding the trial on the petition within ninety (90) days of the prima facie determination permitted under Rule 30.09, subdivision 3, and Minnesota Statutes, section 260.012, in cases where reasonable efforts for reunification are not required is to ensure timely decision by the court that either:

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

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

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009.)

42.03 Procedures for Permanency Progress Review Hearing

The following procedures govern a permanency progress review hearing required within six (6) months of placement for a child under the age of eight (8) at the time the petition was filed alleging the child to be in need of protection or services and may also apply to any sibling of the child, regardless of age, when the sibling also is in foster care or the home of a noncustodial parent.

(a) **Written Report.** Not later than ten (10) days prior to the hearing, the county attorney shall 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 and Parent 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 within thirty (30) days of the hearing. A trial on the petition shall be held as provided in subdivision (c).

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

(1) if the court either returns the child home or continues 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 continue to make reasonable efforts to achieve reunification of the child and the parent as ordered by the court under an approved case plan;

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

(3) if the court orders the agency to file a termination of parental rights petition, unless the county attorney can show cause why a termination of parental rights petition should not be filed, a petition for termination of parental rights shall be filed with the court

within thirty (30) days of the hearing required under this subdivision and a trial on the petition shall be held within ninety (90) days of the filing of the petition.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009.)

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

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

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

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

(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; amended effective August 1, 2009.)

42.05 Permanent Placement Findings and Order

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

- (a) how the child's best interests are served by the order;
- (b) the nature and extent of the responsible social services agency's reasonable efforts, or in the case of an Indian child active efforts, to reunify the child with the parent or guardian where reasonable efforts are required;
- (c) the parent's efforts and ability to use services to correct the conditions which led to the out-of-home placement; and
- (d) that the conditions which led to the out-of-home placement have not been corrected so that the child can safely return home.

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

- (a) Return the child home pursuant to Rule 42.06;
- (b) Transfer permanent legal and physical custody to a relative pursuant to Rule 42.07;
- (c) Terminate parental rights pursuant to Rule 42.08;
- (d) Guardianship and legal custody to the Commissioner of Human Services upon consent by the child's parent to adopt pursuant to Rule 42.09;
- (e) Long-term foster care pursuant to Rule 42.11; or

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

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009.)

42.06 Return Child Home

If the court orders the child to be returned to the care of a parent, the court may enter or continue a prior finding that the child is in need of protection or services and may order conditions directed to correction of the child's need for protection or services. The court may order:

- (a) the child returned on a trial home visit pursuant to Rule 41.05, subdivision 2(a)(3);
- (b) the child placed under the protective supervision of the responsible social services agency under Rule 41.05, subdivision 2(a)(1); or
- (c) monitoring of the parent's continued ability to maintain the child safely in the home under Rule 41.05, subdivision 2(a)(6).

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009.)

42.07 Transfer of Permanent Legal and Physical Custody to a Relative

Subdivision 1. Order. The court may order transfer of permanent legal and physical custody to a fit and willing relative pursuant to Minnesota Statutes, section 260C.201, subdivision 11, paragraph (d), clause (1).

Subd. 2. Jurisdiction Terminated Unless Retained. If the court transfers permanent legal and physical custody to a relative, juvenile court jurisdiction is terminated unless specifically retained by the court in its order.

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

Subd. 4. Order and Further Proceedings in Family Court. When juvenile court jurisdiction is terminated, the court shall include an order directing the juvenile court administrator to file the order with the family court. Any further proceedings for modification of the order transferring permanent legal and physical custody to a relative shall be brought in the family court of the county where the original order was filed. The review shall be pursuant to Minnesota Statutes, sections 518.18 and 518.185. Notice of any family court proceedings shall be provided by the court administrator to the responsible social services agency which shall be a party to the family court proceeding pursuant to Minnesota Statutes, section 260C.201, subdivision 11, paragraph (j).

Subd. 5. Voluntary Transfer of Custody. A parent or legal custodian may voluntarily agree to transfer permanent legal and physical custody of the child to a fit and willing relative by either filing a petition to transfer permanent legal and physical custody pursuant to Rule 33.01 and establishing that such transfer is in the child's best interests under Minnesota Statutes, 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.

Subd. 6. Order Requirements. In addition to the findings required under Rule 42.05, the order transferring permanent legal and physical custody shall address parental and sibling visitation and ongoing services to be delivered to the child while the juvenile court has jurisdiction, and shall state whether the transfer was voluntary or involuntary. The order shall state whether a child support order exists or if the issue is reserved for future determination.

Subd. 7. Review for a Child Who is with a Relative Who Has Permanent Legal and Physical Custody. When the court orders transfer of permanent legal and physical

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

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

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

(Added effective August 1, 2009.)

42.08 Involuntary and Voluntary Termination of Parental Rights Proceedings

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

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

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

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

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

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

(f) the effective date of the order.

Subd. 2. Voluntary Termination of Parental Rights Proceedings.

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

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

(1) asking that the petition be granted; and

(2) establishing that there is good cause for termination of parental rights and that it is in the best interests of the child to terminate parental rights.

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

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

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

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

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

(d) **Voluntary 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.

Subd. 3. Voluntary Termination of Parental Rights in Matters Governed by the Indian Child Welfare Act. When the child is an Indian child and the matter is governed by the Indian Child Welfare Act, 25 U.S.C. section 1913, the following procedures apply to a voluntary termination of parental rights by an Indian parent.

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

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

(b) **Timing of Consent.** Any consent to termination of parental rights given prior to, or within ten (10) days after, the birth of the Indian child shall not be valid.

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

Subd. 4. Notice to Parents Whose Rights Have Been Terminated. Upon entry of an order terminating the parental rights of any person who is identified as a parent on the original birth record of the child, the court shall serve upon that person at the person's last known address written notice setting forth a statement regarding:

- (a) the right of the person at any time to file with the state registrar of vital statistics a consent to disclosure, as defined in Minnesota Statutes, section 144.212, subdivision 11;
- (b) the right of the person at any time to file with the state registrar of vital statistics an affidavit stating that the information on the original birth record shall not be disclosed as provided in Minnesota Statutes, section 144.2252;
- (c) the effect of failure to file either a consent to disclosure or an affidavit stating that the information on the original birth record shall not be disclosed; and
- (d) the right of the parent to file an appeal pursuant to Rule 47.

Subd. 5. Review When Child is Under the Guardianship of the Commissioner of Human Services. 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 at least every ninety (90) days thereafter, for the purpose of reviewing the progress towards finalization of adoption. Review under this rule is required unless the court has ordered the child into long-term foster care. The court shall notify the county attorney, responsible social services agency, the child's guardian ad litem, the child, the child's attorney, and the child's foster parent, pre-adoptive parent, and relative caregiver of the date and time of the hearing. In lieu of the court report required under Rule 38, not later than five (5) business days before the hearing the responsible social services agency shall file with the court and serve upon the parties a report which addresses the following:

- (a) where the child currently resides, the length of time the child has resided in the current placement, the number of other placements the child has experienced, and whether the current foster care provider is willing to adopt the child;
- (b) whether the responsible social services agency has made adequate efforts to identify, locate, and place the child with a relative willing to adopt the child; if the child is an Indian child, the agency's plan to meet the adoptive placement preferences of 25 U.S.C. 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, subdivision 1, paragraph (e), and Minnesota Rules, part 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.

(f) At least every twelve (12) months, the court shall enter a finding regarding whether or not the responsible social services agency has made reasonable efforts to finalize the permanent plan for the child as long as the permanent plan remains adoption.

(g) When an adoptive placement was made more than twelve (12) months prior to the review hearing and no hearing to finalize the adoption has been scheduled, a hearing under Minnesota Statutes, section 259.22, subdivision 4, shall be scheduled.

(Added effective August 1, 2009.)

2008 Advisory Committee Comment

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

42.09 Guardianship and Legal Custody to the Commissioner of Human Services Upon Consent by the Child's Parent to Adopt Under Minnesota Statutes, Section 260C.201, subdivision 11, paragraph (d)

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

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

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

Subd. 2. When Consent is Irrevocable. Consent to adoption executed by a parent under Minnesota Statutes, section 260C.201, subdivision 11, paragraph (d), clause (5), is irrevocable upon acceptance by the court unless fraud is established and an order issued permitting revocation. In a matter governed by the Indian Child Welfare Act, 25 U.S.C.

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.

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

(Added effective August 1, 2009.)

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

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

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

- (1) the Commissioner of Human Services;
- (2) a licensed child placing agency; or
- (3) an individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

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

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

- (1) the Commissioner of Human Services;
- (2) a licensed child placing agency; or
- (3) an individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

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

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

- (1) that both parents or the only known legal parent are or is deceased;
- (2) no appointment has been made or petition for appointment filed under Minnesota Statutes, sections 524.5-102 to 524.5-317; and
- (3) there is no individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

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

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

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

(Added effective August 1, 2009.)

2008 Advisory Committee Comment

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

42.11 Long-Term Foster Care

Subdivision 1. Requirements for Compelling Reasons Why Permanent Legal and Physical Custody and Adoption is Not in the Child's Best Interests. The court may order 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, paragraph (d), clause (3), are met.

Subd. 2. Disruption. Pursuant to Rule 42.15, 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 matter.

Subd. 3. Long-Term Foster Care For State Wards.

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

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

Subd. 4. Annual Review When Child is Ordered Into Long-Term Foster Care.

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

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

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

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

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

(4) 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, paragraph (c), clause (8).

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

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

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

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

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

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

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

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

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

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

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

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

(d) **Agency Responsibility for Notice When Child is Seventeen (17).** When the child is age seventeen (17), the responsible social services agency shall establish for the court that it has given the notice required under Minnesota Rules, part 9560.0660, regarding the right to continued access to services for children in foster care past age eighteen (18), including the right to appeal a denial of social services under Minnesota Statutes, section 256.045. If the agency is unable to establish that the notice, including the right to appeal a denial of social services, has been given, the court shall order the agency to give it.

Subd. 5. Modifying an Order for Long-Term Foster Care for a Child Who is Not a State Ward.

(a) **Modification by Parent.** A parent may seek modification of an order for long-term foster care only upon motion and a showing by the parent of a substantial change in the parent's circumstances such that the parent could provide appropriate care for the child and that removal of the child from the child's permanent placement and the return to the parent's care would be in the best interest of the child.

(b) **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 the placement is in the child's best interests. If the agency's request is to terminate parental rights, the county attorney shall file a petition under Rule 33 and the court shall proceed under Rule 34. If the agency's request is transfer of permanent legal and physical custody to a relative, the county attorney may file a motion under Rule 15 to modify the permanency order establishing long-term foster care for the child. If a party entitled to notice of the motion opposes the transfer of permanent legal and physical custody to a fit and willing relative, the responsible social services agency and county attorney shall establish:

- (1) that the relative is fit and willing; and
- (2) that the transfer is in the best interest of the child.

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

Subd. 7. Further Reasonable Efforts Not Required. The court shall not require further reasonable efforts to reunify the child with the parent or guardian as a basis for vacating the order for long-term foster care and ordering a different permanent placement in the child's best interests.

Subd. 8. 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).

(Added effective August 1, 2009.)

42.12 Foster Care for a Specified Period of Time

Subdivision 1. Requirements for Compelling Reasons Why Permanent Legal and Physical Custody and Adoption is Not in the Child's Best Interests. The court may order foster care for a specified period of time only if it approves the responsible social services agency's compelling reasons that neither an award of permanent legal and physical custody to a relative, nor termination of parental rights, is in the child's best interests and all of the requirements of Minnesota Statutes, section 260C.201, subdivision 11, paragraph (d), clause (4), are met.

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

Subd. 3. Continued Review of Foster Care for a Specified Period of Time. If it is necessary for a child who has been ordered into foster care for a specified period of time to be in foster care longer than one year, then not later than twelve (12) months after the time the child was ordered into foster care for a specified period of time the matter shall 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.

(Added effective August 1, 2009.)

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

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

- (a) the child's progress during the trial home visit;
- (b) the parent's progress during the trial home visit;
- (c) the agency's reasonable efforts to finalize the child's safety and permanent return to the care of the parent.

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

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

(Added effective August 1, 2009.)

42.14 Terminating Jurisdiction When Child is Continued in Voluntary Foster Care for Treatment Under Minnesota Statutes, Chapter 260D

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

Subd. 2. Motion and Petition to Terminate Jurisdiction. When the agency and the parent agree to voluntary placement of the child for treatment, the agency shall file a motion to terminate jurisdiction under Minnesota Statutes, section 260C.193, subdivision 6, which also terminates the order for foster care under Rule 30 or 41 and Minnesota Statutes, section 260C.178 or 260C.201, subdivision 1, together with the petition required under Rule 43.04, subdivision 2, and Minnesota Statutes, section 260D.07, paragraph (b), for permanency review and the court's approval of the voluntary arrangement.

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

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

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

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

(Added effective August 1, 2009.)

2008 Advisory Committee Comment

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

42.15 Review of Child Who Experiences Disruption of a Permanent Placement

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

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

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

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

(Added effective August 1, 2009.)

2008 Advisory Committee Comment

Rule 42.15, subdivision 2, delineates what orders are to be reviewed under Minnesota Statutes, section 260C.212, subdivision 6.

Rule 43. Review of Children in Voluntary Foster Care for Treatment

43.01 Generally

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

Subd. 2. Jurisdiction. The court assumes jurisdiction to review the voluntary foster care placement of a child pursuant to Minnesota Statutes, section 260D.01, upon the filing of a report by the responsible social services agency pursuant to Minnesota Statutes, section 260D.06.

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

(Added effective August 1, 2009.)

43.02 Report by Agency

Subdivision 1. Content and Timing of Report. Within 165 days of the date of the voluntary foster care agreement the responsible social services agency shall file with the court and serve upon the county attorney; the responsible social services agency; the parent; the parent's attorney; the foster parent or foster care facility; the child, if age twelve (12)

or older; the child's attorney, if one is appointed; the child's guardian ad litem, if one is appointed; and the child's Indian tribe, if the child is an Indian child, a written report which shall contain or have attached:

- (a) a statement of facts that necessitate the child's foster care placement;
- (b) the child's name, date of birth, race, gender, and current address;
- (c) the name, race, date of birth, residence, and post office address of the child's parents or legal custodian;
- (d) a statement regarding the child's eligibility for membership or enrollment in an Indian tribe and the agency's compliance with applicable provisions of Minnesota Statutes, sections 260.751 to 260.835;
- (e) the name and address of the child's foster parents or chief administrator of the facility in which the child is placed;
- (f) a copy of the out-of-home placement plan required under subdivision 5 and Minnesota Statutes, section 260C.212, subdivision 1;
- (g) a written summary of the proceedings of the administrative review required under Minnesota Statutes, sections 260C.212, subdivision 7, and 260D.03;
- (h) a statement that the parent, representative of the foster care facility, and the child have been notified of their right to request a hearing; and
- (i) any other information the agency, parent or legal custodian, child, or foster parent or other residential facility wants the court to consider.

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

Subd. 3. Additional Report Requirements for Child Who Has a Developmental Disability. In the case of a child in placement due to developmental disability or a related condition, the written report shall include, as an attachment, the child's individual service plan as provided in Minnesota Statutes, 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).

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

Subd. 5. Content of Case Plan. The out-of-home placement plan required under Minnesota Statutes, section 260C.212, subdivision 1, shall include a statement about whether the child and parent, legal custodian or Indian custodian participated in the preparation of the plan. The plan shall also include a statement about whether the child's guardian ad litem; the child's tribe, if the child is an Indian child; and the child's foster parent or representative of the residential facility have been consulted in the plan's preparation. The agency shall document whether the child, if appropriate; the child's parent, legal custodian, or Indian custodian; the child's tribe, if the child is an Indian child; and the foster parents have received a copy of the plan. When a child is in foster care due solely to the child's emotional

disturbance, the child's mental health treatment provider shall also be consulted in preparation of the plan and the agency shall document such consultation with the plan filed with the court.

(Added effective August 1, 2009.)

43.03 Court Review and Determinations Based on Court Report

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

- (a) whether the voluntary foster care arrangement is in the child's best interests;
- (b) whether the parent and agency are appropriately planning for the child; and
- (c) in the case of a child age twelve (12) or older who disagrees with the foster care facility or services provided under the out-of-home placement plan, whether it is appropriate to appoint counsel and a guardian ad litem for the child using standards and procedures under Minnesota Statutes, section 260C.163.

Subd. 2. Hearing.

(a) **Hearing Not Required.** Unless requested by a parent, representative of the foster care facility, or child age twelve (12) or older, no in-court hearing is required in order for the court to make findings and issue an order under subdivision 3.

(b) **Hearing Requested.** If a hearing is requested by a parent, representative of the foster care facility, or child age twelve (12) or older, the hearing shall be promptly scheduled so that the judge may make the findings required in Rule 43.03 within ten (10) days of the date the report is filed.

Subd. 3. Order.

(a) **Procedure When Voluntary Foster Care is in Child's Best Interests.** If the court finds that the voluntary foster care arrangement is in the child's best interests and that the agency and parent are appropriately planning for the child, the court shall issue an order containing explicit, individualized findings to support its determination. The individualized findings shall be based on the responsible social services agency's written report and other materials and information submitted to the court. The court may make this determination notwithstanding the child's disagreement, if any, reported under Rule 43.02, subdivision 4.

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

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

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

- (1) notify the county attorney; the responsible social services agency; the parent; the parent's attorney; the foster parent or foster care facility; the child, if age twelve (12) or older; the child's attorney, if one is appointed; the child's guardian ad litem, if one is appointed; and the child's Indian tribe, if the child is an Indian child, of the court's determinations and the basis for the court's determinations; and

(2) set the matter for hearing within ten (10) days and, if a guardian ad litem has not already been appointed, appoint a guardian ad litem for the child under Minnesota Statutes, section 260C.163, subdivision 5.

(Added effective August 1, 2009.)

Rule 43.04 Required Permanency Review Hearing

Subdivision 1. Required Agency Action. When the court finds that the voluntary arrangement is in the child's best interests and that the agency and parent are appropriately planning for the child pursuant to the report submitted under Rule 43.02 and Minnesota Statutes, section 260D.06, and the child continues in voluntary foster care for treatment as defined in Minnesota Statutes, section 260D.02, subdivision 5, for thirteen (13) months from the date of the voluntary foster care agreement, or has been in placement for fifteen (15) of the last twenty-two (22) months, and the agency determines there are compelling reasons to continue the voluntary foster care arrangement, the agency shall request judicial approval of its determination.

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

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

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

- (1) the date of the voluntary foster care agreement;
- (2) whether the voluntary foster care placement is due to the child's developmental disability or emotional disturbance;
- (3) the plan for the ongoing care of the child and the parent's participation in the plan;
- (4) a description of the parent's visitation and contact with the child;
- (5) either:
 - (i) the date of the court finding that the voluntary foster care placement was in the best interests of the child, if required under Minnesota Statutes, section 260D.06; or
 - (ii) the date the agency filed the motion under Rule 42.14 and Minnesota Statutes, section 260D.09, paragraph (b);
- (6) the agency's reasonable efforts to finalize the permanency plan for the child, including returning the child to the care of the child's family;
- (7) the length of time, including cumulated time, the child has been in foster care;
- (8) a citation to Minnesota Statutes, chapter 260D, as the basis for the petition; and
- (9) a statement of what findings are requested from the court.

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

(d) **Manner of Service.** The court shall serve the petition together with a notice of hearing by U.S. mail upon the county attorney; the responsible social services agency; the parent; the parent's attorney; the foster parent or foster care facility; the child, if age twelve

(12) or older; the child's attorney, if one is appointed; the child's guardian ad litem, if one is appointed; and the child's Indian tribe, if the child is an Indian child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Added effective August 1, 2009.)

2008 Advisory Committee Comment

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

Under Minnesota Statutes, section 260D.07(1), a finding that the court approves the continued voluntary placement means that the responsible social services agency has continued legal authority to place the child while the voluntary foster care agreement remains in effect. The parent or the agency may terminate a voluntary agreement as provided in Minnesota Statutes, section 260D.10. Termination of a voluntary foster care placement of an Indian child by a parent is governed by Minnesota Statutes, section 260.765, subdivision 4.

43.05 Annual Review

Subdivision 1. Required Annual Review.

(a) **Timing.** After the court conducts a permanency review hearing under Rule 43.04 and Minnesota Statutes, section 260D.07, the matter shall be returned to the court for further review of the child's foster care placement at least every twelve (12) months while the child is in foster care.

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

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

(d) **Service.** At least ten (10) days prior to the date set for the annual review hearing, the court shall give notice by U.S. mail of the date and time of the hearing to the county

attorney; the responsible social services agency; the parent; the parent's attorney; the foster parent or foster care facility; the child, if age twelve (12) or older; the child's attorney, if one is appointed; the child's guardian ad litem, if one is appointed; and the child's Indian tribe, if the child is an Indian child.

Subd. 2. Conduct of Hearing.

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

- (1) ensure that the agreement for voluntary foster care is the most appropriate legal arrangement to meet the child's safety, health, and best interests;
- (2) engage and support the parent in continued involvement in planning and decision making for the needs of the child;
- (3) strengthen the child's ties to the parent, relatives, and community;
- (4) implement the out-of-home placement plan required under Minnesota Statutes, section 260C.212, subdivision 1; and
- (5) ensure that the plan requires the provision of appropriate services to address the physical health, mental health, and educational needs of the child.

(b) **Review for Youth Age 16 or Older.** When a child is age sixteen (16) or older, the court shall also review the agency's reasonable efforts to implement the independent living plan required under Minnesota Statutes, section 260C.212, subdivision 1, paragraph (c), clause (8), and the provision of services to the child related to the well-being of the child as the child prepares to leave foster care. The court's review shall include the findings and review required under Rule 42.11, subdivision 4(c).

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

Subd. 4. Service of Order. The court administrator shall serve the order upon the county attorney; the responsible social services agency; the parent; the parent's attorney; the foster parent or foster care facility; the child, if age twelve (12) or older; the child's attorney, if one is appointed; the child's guardian ad litem, if one is appointed; and the child's Indian tribe, if the child is an Indian child.

(Added effective August 1, 2009.)

Rule 44. Review of Voluntary Placement Matters

44.01 Generally

Subdivision 1. Scope of Review. This rule governs review of all voluntary foster care placements made pursuant to Minnesota Statutes, section 260C.212, subdivision 8.

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, upon the filing of a petition pursuant to Minnesota Statutes, section 260C.141, subdivision 2.

Subd. 3. Court File Required. Upon the filing of a 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 petition shall be filed in that file.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009.)

44.02 Petition and Hearing

Subdivision 1. Timing of Petition. When the responsible social services agency expects the child's need for voluntary foster care placement will not exceed a total of 180

days and the child's safety, health, and best interests do not require the court to order the child in foster care, a petition shall be filed within ninety (90) days of the date of the voluntary placement agreement and shall state the reasons why the child is in placement, the progress on the out-of-home placement 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. A copy of the out-of-home placement plan shall be filed with the petition.

Subd. 2. Service of Petition. Upon the filing of the petition, the court administrator shall serve the petition, together with out-of-home placement plan, upon the parties by U.S. mail and shall schedule a hearing pursuant to subdivision 3.

Subd. 3. Timing of Hearing. When a petition is filed under subdivision 1, the matter shall be set for hearing within twenty (20) days of service of the petition.

Subd. 4. Initial Hearing.

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

(b) **Findings.** When all parties agree and the court finds that it is in the best interests of the child, the court may find the petition states a prima facie case that:

- (1) the child's needs are being met;
- (2) the placement of the child in foster care is in the best interests of the child;
- (3) reasonable efforts to reunify the child and the parent or legal custodian are being made; and
- (4) the child will be returned home in the next ninety (90) days.

(c) **Approval of Placement.** If the court makes the findings required pursuant to paragraph (b), the court shall approve the voluntary arrangement and continue the matter for up to ninety (90) days to ensure the child returns to the parent's home or that the matter is returned to court as required under subdivision 5(b).

Subd. 5. Further Proceedings.

(a) **Agency Report to Court Upon Child's Return Home.** The responsible social services agency shall report to the court when the child returns home and the progress made by the parent on the case plan required pursuant to Minnesota Statutes, section 260C.212, subdivision 1. Upon receiving the report that the child has returned home, the court shall dismiss the petition.

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

- (1) the matter shall be returned to court for:
 - (i) an emergency protective care hearing pursuant to Rule 30 if the petition filed under item (2) of this paragraph asks the court to order protective care; or
 - (ii) for an admit/deny hearing pursuant to Rule 34 if the petition does not ask the court to order protective care; and
- (2) the responsible social services agency shall file a new petition alleging the child's need for protection or services and explaining why the child's foster care placement shall exceed the 180-day statutory maximum permitted for voluntary placements under Minnesota Statutes, section 260C.212, subdivision 8. The petition shall:
 - (i) state a prima facie basis for the court to order the child to continue in foster care under Rule 30 and Minnesota Statutes, section 260C.178; or

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

(c) **Trial.** If the petition is not admitted at the hearing scheduled under subdivision 4(a), the matter shall be set for trial.

Subd. 6. Disagreement with Voluntary Placement. If any party or the child disagrees with the voluntary placement or the sufficiency of the services offered by the responsible social services agency at the time of the initial hearing, or if the court finds that the placement or case plan is not in the best interests of the child, the court shall schedule a trial to determine what is in the best interests of the child.

Subd. 7. 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 whether 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.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009.)

2008 Advisory Committee Comment

Rule 44.02, subdivisions 5(a) and (b), deal with the child's return home. A child may not continue in foster care on a voluntary basis longer than 180 days unless the child is in foster care treatment under Minnesota Statutes, chapter 260D. See Minnesota Statutes, section 260C.212, subdivision 8. The parent may agree that the child needs to continue in foster care longer than 180 days, in which case the parent may admit a petition alleging the child in need of protection or services which states the basis for the child's need to continue in foster care. Under these circumstances the court has a legal basis to order the child to continue in foster care. If the parent does not agree, the agency shall return the child to the care of the parent unless there is a basis for an order for emergency protective care under Rule 30 and Minnesota Statutes, section 260C.178.

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

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

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

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

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

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

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

(Added effective August 1, 2009.)

Rule 45. Post-Trial Motions**45.01 Procedure and Timing**

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

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

Subd. 3. Time for Serving Affidavits. When a post-trial motion is based upon affidavits, such affidavits shall be served with the notice of motion. The parties and the county attorney shall have five (5) days after such service in which to serve opposing affidavits pursuant to Rule 15. The court may permit reply affidavits so long as the time for issuing a decision is not extended beyond the time permitted in Rule 45.05.

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

(Amended effective January 1, 2007; amended effective August 1, 2009.)

45.02 New Trial on Court's Own Motion

Not later than fifteen (15) days after finding that the statutory grounds set forth in the petition are or are not proved, the court may upon its own initiative order a new trial for any reason for which it might have granted a new trial on a motion. After giving appropriate notice and an opportunity to be heard, the court may grant a motion for a new trial, timely served, for reasons not stated in the motion. In either case, the court shall specify in the order the basis for ordering a new trial.

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.)

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.)

45.05 Decision

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

(Renumbered effective January 1, 2007; amended effective August 1, 2009.)

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

46.01 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.

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.)

46.03 Invalidation of Action Under ICWA

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

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

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

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

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

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

(Added effective January 1, 2004; amended effective August 1, 2009.)

2008 Advisory Committee Comment

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

Time Limit for Filing Petition to Invalidate. Although there is no time limit for bringing a petition to invalidate contained in section 1914 of the ICWA, the Alaska Supreme Court has held that a challenge to an adoption under section 1914 shall be brought within a year. *In re Adoption of Erin G.*, 140 P.3d 886, 891 (Alaska 2006). In a slightly later case, the Alaska Supreme Court suggested that the time limit in an ICWA challenge brought under 42 U.S.C. section 1983 would be two years. *Dept. of Health & Soc. Servs. v. Native Village of Curyung*, 151 P.3d 388, 411 (Alaska 2006). The authors of *A Practical Guide to the Indian Child Welfare Act* do not cite any other cases, but they disagree that there should be time limits which vary from state to state. *Native American Rights Fund, A Practical Guide to the Indian Child Welfare Act* 161 (2007). The authors of *The Indian Child Welfare Act Handbook* recommend using the two-year time limit contained in section 1913(d). B.J. Jones, M. Tilden & K. Gaines-Stoner, *The Indian Child Welfare Act Handbook: A Legal Guide to the Custody and Adoption of Native American Children* 156 (2d ed. 2008).

Reach of Relief Available. There are a number of cases which hold that section 1914 of the ICWA is not available to attack an ICWA violation occurring during the foster care placement proceeding (i.e., child in need of protection or services (CHIPS)) as part of the termination of parental rights proceeding. *In Re Welfare of the Children of S.W., et al., Parents*, 727 N.W.2d 144 (Minn. Ct. App. 2007); *Interest of J.D.B.*, 584 N.W.2d 577 (Iowa Ct. App. 1998); *Interest of J.W.*, 528 N.W.2d 657, 661 (Iowa Ct. App. 1995); *D.E.D. v. State*, 704 P.2d 774, 782 (Alaska 1985); *In Re M.E.M.*, 679 P.2d 1241, 1243-44 (Mont. 1984). Although these courts have rejected this sort of collateral attack, there is some suggestion in all four of these cases that a different decision might have resulted if the termination of

parental rights judge had made extensive use of the evidence introduced in the foster care placement proceeding in which the violations occurred. The North Dakota Supreme Court appears to agree. See *B.R.T. v. Social Serv. Bd.*, 391 N.W.2d 594, 600 n.10 (N.D. 1986).

The Native American Rights Fund cites three cases that, it says, compel vacation of the adjudication for specific ICWA violations: *Interest of H.D.*, 729 P.2d 1234, 1240-41 (Kansas Ct. App. 1986); *In re L.A.M.*, 727 P.2d 1057, 1060 (Alaska 1986); and *Morgan v. Morgan et al.*, 364 N.W.2d 754, 758 (Mich. Ct. App. 1985). Native American Rights Fund, *A Practical Guide to the Indian Child Welfare Act* 162 (2007). But none of these three cases invalidates a subsequent termination of parental rights because of ICWA violations occurring during the foster care placement proceeding.

In an American Bar Association treatise on the subject, the authors argue a broader role for section 1914, including collateral attack in federal court. See B.J. Jones, M. Tilden & K. Gaines-Stoner, *The Indian Child Welfare Act Handbook: A Legal Guide to the Custody and Adoption of Native American Children*, pp. 153-56) (2d ed. 2008).

Necessity of Objection During Trial Court Proceeding. Although it is not a section 1914 case, *Matter of L.A.M.*, 727 P.2d 1057, 1059 (Alaska 1986), specifically holds that objection during the trial court proceeding is not required to preserve an objection on appeal to a section 1912 violation. The Native American Rights Fund lists two cases which hold that an objection below is not necessary to seek relief under section 1914: *In re S.R.M.*, 153 P.3d 438 (Colo. Ct. App. 2006); and *In re S.M.H.*, 103 P.3d 976, 982 (Kan. Ct. App. 2005). Native American Rights Fund, *A Practical Guide to the Indian Child Welfare Act* 161 (2007).

Rule 47. Appeal

47.01 Applicability of Rules of Civil Appellate Procedure

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

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

Subd. 2. Timing of Filing Notice of Appeal. Any appeal shall be taken within twenty (20) 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 motion 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.

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

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

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

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

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

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

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009.)

2003 Advisory Committee Comment (Amended 2004, 2006, 2009)

*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).*

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.)

47.04 Right to Additional Review

Upon an appeal, any party or the county attorney may obtain review of an order entered in the same case which may adversely affect that person by filing a notice of review with the clerk of appellate courts. The notice of review shall specify the order to be reviewed, shall be served and filed within fifteen (15) days after service of the notice of appeal, and shall contain proof of service.

47.05 Transcript of Proceedings

The requirements regarding preparation of a transcript shall be governed by Rule 110.02 of the Rules of Civil Appellate Procedure, except that the estimated completion

date contained in the certificate of transcript shall not exceed thirty (30) days from the date the request for transcript is received.

(Amended effective August 1, 2009.)

47.06 Time for Rendering Decision by Minnesota Court of Appeals

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

(Amended effective August 1, 2009.)

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

Rule 117 of the Rules of Civil Appellate Procedure applies to petitions for review of decisions of the court of appeals in juvenile protection matters, except that any petition for further review shall be filed with the clerk of the appellate courts and served upon the parties within fifteen (15) days of the filing of the court of appeals' decision, and any response to such petition shall be filed with the clerk of appellate courts and served upon the parties within ten (10) days of service of the petition.

(Added effective August 1, 2009.)

Rule 48. Transfer To Child's Tribe

48.01 Transfer of Juvenile Protection Matter to the Tribe

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

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

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

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

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

(b) When an on-the-record request is made pursuant to subdivision 1(b), the objection and continuance provisions of Rule 15.01, subdivision 3, apply.

Subd. 3. Transfer Required Absent Objection by Parent or Good Cause Finding. Upon motion or request of an Indian child's parent, Indian custodian, or tribe pursuant to subdivision 1, the court shall issue an order transferring the juvenile protection matter to the Indian child's tribe absent objection by either parent pursuant to subdivision 4 or a finding of good cause to deny transfer pursuant to subdivision 6(b), and shall proceed pursuant to Rule 48.02. The order transferring the juvenile protection matter to the Indian child's tribe shall order jurisdiction of the matter retained pursuant to subdivision 7 until the Indian child's tribe exercises jurisdiction over the matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) **Decision.** The court shall make findings regarding the existence of good cause to deny transfer. If good cause to deny transfer is not found, the court shall order the matter transferred to tribal court and shall proceed pursuant to Rule 48.02. If good cause to deny transfer is found, the court may either deny the request to transfer or order the matter transferred to tribal court.

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

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

(a) **District Court Jurisdiction.** The district court shall retain jurisdiction over the juvenile protection matter by written order until the district court judge receives information from the tribal court that the tribe has exercised jurisdiction over the matter. Pending

exercise of jurisdiction by the Indian child's tribe, the district court has continued authority to:

- (1) approve or modify services to be provided to the child and the child's family pursuant to Rule 30.10; or
- (2) approve or modify the case plan pursuant to Rules 41.05 and 41.06; and
- (3) make other orders that ensure a smooth transition of the matter to the tribe.

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

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

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

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

- (1) stating the factual basis for the judge's determination that the Indian child's tribe has exercised jurisdiction;
- (2) terminating jurisdiction over all parties, the Indian child's parent or Indian custodian, and the Indian child;
- (3) terminating the responsible social services agency's legal responsibility for the Indian child's placement when the district court has ordered the child into protective care under Rule 30.10 and Minnesota Statutes, section 260C.178;
- (4) terminating the responsible social services agency's legal custody of the child when the court has transferred legal custody to the responsible social services agency under Rule 41.05 and Minnesota Statutes, section 260C.201, subdivision 1;
- (5) discharging the Commissioner of Human Services as guardian and terminating the order for legal custody to the commissioner when the court has ordered guardianship and legal custody to the commissioner; and
- (6) discharging court appointed attorneys and the guardian ad litem for the child and for the parent, if any.

(Added effective August 1, 2009.)

2008 Advisory Committee Comment

"Tribe," "Tribal Court," and "Tribal Social Services." Throughout the Indian Child Welfare Act (ICWA), 25 U.S.C. sections 1901-1963, the phrases "tribe," "tribal court," and "tribal social services" are used. In an effort to remain consistent with the ICWA, Rule 48 mirrors the use of those phrases.

Tribe's Method of Communicating Exercise of Jurisdiction. Rule 48.01, subdivision 7(c), provides "The district court may accept and rely on any reasonable form of communication indicating the tribe has exercised jurisdiction over the juvenile protection matter." The information received may be in a written order or letter, a telephone call, a faxed or emailed message, a copy of a hearing notice setting the matter for hearing in tribal court, or any other form of communication between the tribe and the district court judge regarding the tribe's action in regard to the district court order transferring the matter to the Indian child's tribe.

Transfer of Juvenile Protection Matter After Termination of Parental Rights. The Indian Child Welfare Act (ICWA) does not preclude the transfer of matters to tribal court following termination of parental rights. Rule 48.04, subdivision 7(e)(5), recognizes the practice of transferring cases to the tribe after termination of parental rights and requires certain orders when such a transfer is made, inter alia, discharging the Commissioner of Human Services as the guardian for the child.

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

"Good Cause" to Deny Transfer. Consistent with the Indian Child Welfare Act (ICWA), 25 U.S.C. section 1911(b), Rule 48.01, subdivision 3, mandates that transfer to the Indian child's tribe must occur upon motion absent objection by a parent or a finding of "good cause to deny transfer." "Good cause" is not defined in the ICWA. Good cause not to transfer a proceeding may exist if a child age twelve (12) or older objects to the transfer. Bureau of Indian Affairs Guidelines for State Courts: Indian Child Custody Proceedings, 44 Fed Reg. 67584, 67590 at C3(b)(i) (Nov. 26, 1979) [hereinafter "BIA Guidelines."]. "Good cause" is discussed in the BIA Guidelines. 44 Fed Reg. at 67583, 67590 at C.3 Commentary (Nov. 26, 1979). See also *In Re the Welfare of the Child of: T.T.B. & G.W.*, 724 N.W.2d 300 (Minn. 2006), and *In Re the Welfare of the Children of R.M.B. & R.E.R.*, 735 N.W.2d 348 (Minn. Ct. App. 2007) rev. denied (Minn. Sept. 26, 2007). See BIA Guidelines, 44 Fed. Reg. 67,584, 67,591 at C.3(b)(i)-(iv), (c), (d) (Nov. 26, 1979) (as modified).

48.02 Communication Between District Court and Tribal Court Judges

Subdivision 1. Child Ward of Tribal Court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Added effective August 1, 2009.)

2008 Advisory Committee Comment

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

48.03 Court Administrator's Duties

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

(Added effective August 1, 2009.)

Rule 49. Qualified Expert Witness Requirement Under The Indian Child Welfare Act

49.01 Timing - Temporary Emergency Custody

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

(Added effective August 1, 2009.)

49.02 Foster Care Placement

In the case of an Indian child, foster care placement shall not be ordered in the absence of testimony of at least one qualified expert witness, as defined in Rule 2.01(21), that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(Added effective August 1, 2009.)

49.03 Termination of Parental Rights

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

(Added effective August 1, 2009.)

2008 Advisory Committee Comment

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

Qualified Expert Witness. Rule 49 recognizes the unique requirements for and qualifications of the qualified expert witness whose testimony must be presented to the court before the court may order foster care placement or termination of parental rights under the ICWA. Rule 49.03 is a restatement of the Bureau of Indian Affairs Guidelines for State

Courts; Indian Child Custody Proceedings (hereinafter BIA Guidelines) regarding the timing of qualified expert testimony when there is an emergency removal of an Indian child. See BIA Guidelines, 44 Fed. Reg. 67,584, 67,589-90 at B.7(d) (Nov. 26, 1979). Compliance with the requirement for a qualified expert witness is best achieved by timely notice to the child's tribe, ensuring that the county agency works with the child's tribe to discuss the need for placement, identifying extended family who can serve as placement resources and support for the family, ensuring that culturally appropriate services are delivered to the family, and requesting qualified expert witness testimony from the tribe or elsewhere. When the court has determined that the ICWA applies, but the child's tribe has not participated in planning for the child, or when the child's tribe does not support placement of the child in foster care or termination of parental rights, the requirements of this rule may be met by a person who meets the criteria of Rule 2.01(21)(b) or (c).

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Revisor's Note: The Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings is repealed and its provisions as amended by Supreme Court Order C2-95-1476, dated December 26, 2001, are incorporated into Rule 8 (formerly Rule 44) of the Rules of Juvenile Protection Procedure.

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With amendments received through August 1, 2009

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TEXT OF RULES**Rule 1. Scope and Purpose****1.01 Scope**

These rules govern the procedure in the juvenile courts of Minnesota for all adoptions pursuant to Minnesota Statutes, sections 259.20 to 259.89. These rules do not apply to a change of name under Minnesota Statutes, sections 259.10 to 259.13.

1.02 Purpose

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

- (a) the best interests of the child are met in the planning and granting of an adoption, including an individualized determination of the child's needs and how the adoptive placement will serve the child's needs;
- (b) there is recognition of the diversity of Minnesota's population and the diverse needs of persons affected by adoption; and

- (c) the processes are culturally responsive.

2004 Advisory Committee Comment

Rule 1.02 reflects the policy set forth in Minnesota Statutes, sections 259.20 and 259.29. The purpose statement also reflects the policy set forth in the federal Adoption and Safe Families Act of 1997, 42 U.S.C., sections 601, 603, 622, 629, 653, 675, 670-679, and 1320, which emphasizes that the overriding objective in any juvenile protection matter is to timely provide a safe, stable, permanent home for the child.

Rule 2. Definitions

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 stepparent adoption, relative adoption, inter-country 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 eighteen (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 eighteen (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 eighteen (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 stepparent 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.)

Rule 3. Applicability of Other Rules and Statutes

3.01 Rules of Civil Procedure

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

3.02 Rules of Evidence

The Minnesota Rules of Evidence apply to adoption matters.

3.03 Rules of Guardian Ad Litem Procedure

The Minnesota Rules of Guardian Ad Litem Procedure apply to adoption matters.

3.04 Indian Child Welfare Act and Other Minnesota Statutes

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

3.05 Court Interpreter Statutes, Rules, and Court Policies

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

3.06 Interstate Compact on the Placement of Children

Adoption matters concerning children crossing state lines for the purpose of adoption are subject to the provisions of the Interstate Compact on the Placement of Children, Minnesota Statutes, sections 260.851 to 260.91.

3.07 Human Services Licensing Act

The Human Services Licensing Act, Minnesota Statutes, section 245A.03, applies to adoption matters.

2004 Advisory Committee Comment

The Human Services Licensing Act establishes that only Minnesota licensed adoption agencies or county social services agencies are authorized to complete adoption "placement activities" defined under Rule 2.01(v). Minnesota Statutes, section 245A.03, subdivisions 1 and 2.

Rule 4. Time; Timelines

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.)

4.02 Additional Time After Service by Means Other Than Mail

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

Rule 5. Continuances

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.)

5.02 Notice of Continuance

The court shall provide written notice to the parties of the date and time of the continued hearing or trial.

5.03 Existing Orders; Interim Orders

Unless otherwise ordered, existing orders shall remain in full force and effect during a continuance. When a continuance is ordered, the court may make any interim orders it deems to be in the best interests of the child in accordance with Minnesota Statutes, sections 259.20 to 259.89.

Rule 6. Referees and Judges**6.01 Referee Authorization to Hear Matter**

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

6.02 Objection to Referee Presiding Over Matter

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

6.03 Removal of Particular Referee

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

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

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

2004 Advisory Committee Comment

A party may not remove a particular referee and then object to having the case heard by any referee.

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.)

6.05 Review of Referee's Findings and Recommended Order

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

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

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

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

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

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

2004 Advisory Committee Comment

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

6.06 Order of the Court

When no review is requested, or when the right to review is waived, the findings and recommended order of the referee become the order of the court when confirmed by the judge as written or when modified by the judge sua sponte. The order shall be confirmed or modified by the court within three (3) days of the transmittal of the findings and proposed order.

(Amended effective August 1, 2009.)

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.)

Rule 7. Access to Adoption Case Records and Birth Record Information**7.01 Access to Adoption Case Records Limited**

Adoption case records and files maintained by the court relating to adoption matters shall not be available for inspection or copying by any person except:

- (a) the court and court personnel;
- (b) the Commissioner of Human Services or the Commissioner's representatives, including the responsible social services agency, local social services agency, or child placing agency;
- (c) an agency acting under Minnesota Statutes, section 259.47, subdivision 10; or
- (d) upon an order of the court expressly permitting inspection and copying pursuant to a petition filed as provided in Rule 7.02.

2004 Advisory Committee Comment

Rule 7.01 mirrors Minnesota Statutes, section 259.61, which does not permit party access to adoption case records or court files relating to adoption matters.

7.02 Petition to Access Adoption Case Records and Birth Record Information

Subdivision 1. Content of Petition. A person not listed in Rule 7.01 may only access adoption case records or birth record information relating to an adoption matter by filing with the court in the county which issued the final adoption decree a petition which sets forth the reasons why the person is requesting access to the case records or birth record information and shall include the following, if known:

- (a) the procedural history of the adoption proceeding, including the date of adoption or of adoptive placement;
- (b) the names and addresses of all persons who may be affected by the request;
- (c) a factual statement about how granting the petitioner access to the adoption case records would be of greater benefit than not granting access;
- (d) the particular information sought, including whether the request for disclosure includes the name of the biological parent;

(e) the date the petitioner contacted the Department of Health requesting identifying information on a birth record, if the petitioner is requesting identifying information in a birth record; and

(f) the legal basis, if any, given to the petitioner by the Department of Health, the Department of Human Services, or agency responsible for supervising the adoptive placement for the Department's or agency's refusal to disclose the requested information.

Subd. 2. Service of Petition.

(a) Request for Access to Identifying Information in Birth Record - Commissioner of Health. Where access to identifying information in the birth record is sought, the court administrator shall serve the petition on the Commissioner of Health by U.S. mail. Upon service of the petition on the Commissioner of Health, the Commissioner shall supply to the court any affidavit of notification it has from the Department of Human Services pursuant to Minnesota Statutes, section 259.89, and any other information the Commissioner of Health has regarding the legal basis for its refusal to disclose the requested information, including whether:

(1) the biological parent has consented to disclosure of identifying information in the adoption record or birth record;

(2) the biological parent has filed an affidavit objecting to the release of identifying information which remains unrevoked; and

(3) the biological parent is living or deceased.

(b) Request for Access to Agency Records - Agency Supervising Adoptive Placement. When access to records of the agency responsible for supervising the adoptive placement is requested, the court administrator shall serve the petition on the director of the agency by U.S. mail.

(c) Other Persons. The court may order the petition to be served on such other persons as are necessary to its determination regarding whether nondisclosure of the requested information is of greater benefit than disclosure. If the court orders service upon the biological parent when the biological parent's address is known to the Department or the agency, the court may order the Department or the agency to disclose the biological parent's name and address to the court administrator who shall maintain the information in a confidential manner and cause the petition to be served on the biological parent in a confidential manner by certified U.S. mail designated "deliver to addressee only."

Subd. 3. Access to Information - Other Agencies. The court shall forward data and information to agencies and others as required by statute or these rules.

Subd. 4. Tribal Affiliation Information. Upon application by an Indian person who has reached the age of eighteen (18) and who was the subject of an adoptive placement, the court which entered the final adoption decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

Subd. 5. Counsel Sharing Record with Client. Unless otherwise expressly ordered by the court, counsel for a party may only share adoption case records with that party consistent with state and federal access rules.

2004 Advisory Committee Comment

Rule 7.01, subdivision 4, sets forth the substantive law of the Indian Child Welfare Act.

7.03 Stepparent Adoption

In a stepparent adoption, upon written request from a parent whose parental rights would be or have been severed by the adoption under Minnesota Statutes, section 259.59, the court may confirm in writing whether or not the adoption decree has been granted, and if so, the date of the adoption decree.

7.04 Disclosure to Employer and Military Prohibited

Adoption case records and court files relating to adoption matters shall not be inspected, copied, disclosed, or released to the military services or to any present or prospective employer of the adopted person.

7.05 Protective Order

Upon motion pursuant to Rule 15, and for good cause shown, the court may at any time issue a protective order regarding any adoption case record or portion of such a record.

7.06 Suitability of Proposed Adoptive Parents

Pursuant to Minnesota Statutes, section 259.53, subdivision 3, paragraph (b), a judge of the court having jurisdiction of the adoption matter shall upon request disclose to a party to the proceedings or the party's counsel any portion of a report or record that relates only to the suitability of the proposed adoptive parents. In this disclosure, the judge may withhold the identity of individuals providing information in the report or record. When the judge is considering whether to disclose the identity of individuals providing information, the agency with custody of the report or record shall be permitted to present reasons for or against disclosure.

7.07 Release of Identifying Information

Subdivision 1. Request for Identifying Information. After first accessing or attempting to access the requested information pursuant to Minnesota Statutes, sections 259.83 and 259.89, an adopted person who is age nineteen (19) or older may petition the court for release of identifying information about a biological parent.

Subd. 2. Notice to Biological Parent. Upon petition for release of identifying information under Rule 7.02, including service of the petition on the agency that supervised the adoptive placement, the court may order such agency to locate and identify the biological parent's current address, including contacting the biological parent in a confidential manner as required under Minnesota Statutes, section 259.83. Pursuant to Minnesota Statutes, section 259.83, the agency may charge the petitioner a reasonable fee for its efforts to locate the biological parent. Not later than ninety (90) days after the order, or sooner if exigent circumstances exist, the agency shall inform the court of the results of the search.

Subd. 3. Biological Parent's Response to Notice.

(a) **Biological Parent's Consent.** If the biological parent has been located and consents to release of the identifying information, the petitioner shall advise the court when the requested identifying information is received at which time the court shall dismiss the petition.

(b) **Biological Parent's Refusal.** If the biological parent refuses release of identifying information, including through an affidavit objecting to the release of identifying information under Minnesota Statutes, section 259.83, the agency shall inform the court of the parent's refusal. If the parent's address is known, it shall be provided to the court administrator who shall maintain it in a confidential manner. Upon receipt of the parent's address, the court shall serve a copy of the petition requesting release of information and any supporting documentation on the biological parent by certified U.S. mail designated "deliver to addressee only."

(c) **Biological Parent Cannot be Located.** If the agency is unable to locate the biological parent's address, the agency shall inform the court about the efforts made to locate the parent's address. The court may then either direct the agency to conduct further search or grant the request for release of identifying information.

Subd. 4. Objection to Release of Identifying Information. A biological parent objecting to the release of identifying information shall have the opportunity to present evidence to the court that nondisclosure of identifying information is of greater benefit to the biological parent than disclosure to the adopted person. Such an objection shall be filed

with the court within thirty (30) days of the contact and such objection shall be maintained by the court in a confidential manner.

7.08 Access to Original Birth Record Information; Decision

Subdivision 1. Adoptions Prior to August 1, 1977. A person adopted prior to August 1, 1977, may petition the court for disclosure of the original birth record. The petition shall include information necessary for the court to make the decision required in subdivision 2. Pursuant to Minnesota Statutes, section 259.89, for adoptions occurring prior to August 1, 1977, and after consideration of the interests of all known persons involved, if the biological parent is deceased and the court determines that disclosure of the birth record information would be of greater benefit than nondisclosure, the court shall grant the petition and order the Commissioner of Health to disclose identifying information including the name of the biological parent on the original birth record.

Subd. 2. Adoptive Placements After August 1, 1982. Pursuant to Minnesota Statutes, section 259.83, for adoptive placements made on or after August 1, 1982, and after consideration of the interests of all known persons involved, if a living biological parent has filed an unrevoked affidavit objecting to the release of identifying information and the court determines that disclosure of the birth record information would be of greater benefit than nondisclosure, the court shall grant the petition and order the agency responsible for supervising the adoptive placement to disclose identifying information retained by the agency including the name of the biological parent, the biological parent's last known address, the birth date, and birth place of the biological parent named on the adopted person's original birth record.

2004 Advisory Committee Comment

In many situations where adult adopted persons seek information about their adoptions including the names of biological parents, the Department of Health or the agency responsible for supervising the adoptive placement have legal authority to release the requested information. The instances where the Department of Health and responsible agencies do not have such legal authority are covered by Rule 7.08.

7.09 Information to Adopted Persons and Others About Access to Birth and Adoption Records

Upon inquiry from an adopted person, a biological or adopted parent, or an adult genetic sibling, the court administrator shall give information about access to information about original birth records or adoption records as provided in Minnesota Statutes, sections 259.83 and 259.89, on an information sheet prepared by the State Court Administrator's Office.

Rule 8. Presence at Hearings

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.)

8.02 Absence Does Not Bar Hearing

The absence from a hearing of any person who is entitled to notice of the hearing, except the petitioners, shall not prevent the hearing from proceeding, provided appropriate notice has been served.

8.03 Exclusion of Persons Who Have Right to Attend Hearings

In any hearing the court may temporarily exclude the presence of any person other than counsel or the guardian ad litem when it is in the best interests of the child to do so. If a person other than counsel or the guardian ad litem engages in conduct that disrupts the

court, the person may be excluded from the courtroom. The exclusion of the person shall not prevent the court from proceeding with the hearing.

8.04 Record of Exclusion and Right to Continued Participation

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

Rule 9. Ex Parte Communication

9.01 Ex Parte Communication Prohibited

Ex parte communication is prohibited, except as to procedural matters not affecting the merits of the case. All communications between the court and a party shall be in the presence of all other parties or in writing with copies to the parties or, if represented, the party's attorney, except as otherwise permitted by statute or these rules.

2004 Advisory Committee Comment

Rule 9.01 reflects the prohibition against ex parte communication set forth in Minn. R. Prof. Cond. 3.5(g) and Canon 3A(7) of the Code of Judicial Conduct.

9.02 Disclosure

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

Rule 10. Orders

10.01 Written or Oral Orders

Court orders may be written or stated on the record. An order stated on the record shall also be reduced to writing by the court. Except for orders issued following a trial pursuant to Rule 44.06, all orders shall be filed with the court administrator within fifteen (15) days of the conclusion of the hearing. An order shall remain in full force and effect until the occurrence of any of the following:

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

(Amended effective August 1, 2009.)

10.02 Immediate Effect of Oral Order

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

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 for children who are:
 - (i) under guardianship of the Commissioner or a licensed child-placing agency according to Minnesota Statutes, section 260C.201, subdivision 11, or 260C.317;
 - (ii) placed by the commissioner, commissioner's agent, or licensed child-placing agency after a consent to adopt according to Minnesota Statutes, section 259.24, or

under an agreement conferring authority to place for adoption according to Minnesota Statutes, section 259.25; or

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

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

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

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

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; amended effective August 1, 2009.)

10.04 Notice of Filing of Order and Adoption Decree

Each order or adoption decree delivered or mailed pursuant to Rule 10.03 shall be accompanied by a notice of filing of order. The State Court Administrator shall develop a "notice of filing" form, which shall be used by court administrators.

Rule 11. Recording and Transcripts

11.01 Procedure

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

11.02 Availability of Transcripts

Transcripts shall be available only to the parties or their counsel if represented.

11.03 Expense

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

Rule 12. Use of Telephone and Interactive Video

12.01 Motions and Conferences

The court may hear motions and conduct conferences by telephone or interactive video where testimony is not required and to resolve procedural matters.

12.02 Hearings and Taking Testimony

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

12.03 In Court Appearance Not Precluded

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

Rule 13. Subpoenas**13.01 Subpoena for a Hearing or Trial**

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

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.)

13.03 Service

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

13.04 Motion to Quash a Subpoena

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

- (a) direct compliance with the subpoena;
- (b) modify the subpoena if it is unreasonable or oppressive;
- (c) deny the motion to quash the subpoena on the condition that the person requesting the subpoena prepay the reasonable cost of producing the books, papers, documents, or tangible things; or
- (d) quash the subpoena.

13.05 Objection

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

may, at any time before or during the taking of the deposition, and upon notice of motion and motion to the deponent, request an order requiring compliance with the subpoena.

13.06 Subpoena for Taking Deposition; Place of Deposition

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

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

13.07 Expenses

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

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

13.08 Failure to Appear

If any person personally served with a subpoena fails, without reasonable cause, to appear or bring the child if ordered to do so, or if the court has reason to believe the person is avoiding personal service, the court may sua sponte or upon the motion of a party pursuant to Rule 15 proceed against the person for civil contempt of court pursuant to Rule 14, or the court may issue a warrant for the person's arrest, or both.

Rule 14. Contempt

14.01 Initiation

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

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

14.02 Supporting and Responsive Affidavits

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

14.03 Hearing

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

14.04 Sentencing

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

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

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

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

Rule 15. Motions**15.01 Form**

Subdivision 1. Generally. An application to the court for an order shall be by motion. Motions may be made for any purpose authorized by statutes or these rules.

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

- (a) set forth the relief or order sought;
- (b) state with particularity the grounds for the relief or order sought;
- (c) be signed by the person making the motion;
- (d) be filed with the court;
- (e) be accompanied by a supporting affidavit; and
- (f) be accompanied by a memorandum of law, if appropriate.

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

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

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.)

15.03 Ex Parte Motion

A motion may be made ex parte without a hearing when permitted by statute or these rules. Upon issuance of an ex parte order, a hearing shall be scheduled at the earliest possible date upon the request of a party.

Rule 16. Signing of Pleadings, Motions, and Other Papers; Sanctions**16.01 Signing of Pleadings, Motions, and Other Papers**

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

Subd. 2. Party Not Represented by an Attorney. A party who is not represented by an attorney shall personally sign the pleading, motion, or other paper filed with the court and shall state the party's address and telephone number. If a party asserts that providing the address and telephone number is not in the best interests of the child, the address and telephone number 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 of motion and motion, the court may disclose the address and telephone number as it deems appropriate.

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

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

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

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

16.02 Sanctions

If a pleading, motion, affidavit, 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, affidavit, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, including sanctions permitted pursuant to Minn. R. Civ. P. 11, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, affidavit, or other paper, including reasonable attorney fees.

Rule 17. Discovery

17.01 Applicability

These discovery rules apply only to contested adoption matters and only to the extent permitted and upon the conditions ordered by the court. To the extent that there are any discovery issues that arise out of an uncontested adoption matter, any requests for information shall be addressed to the court which shall determine whether such discovery will be allowed and, if so, in what form and whether any protective order shall be issued.

17.02 Regulation of Discovery

Discovery in adoption matters shall be governed by Minn. R. Civ. P. 26-37.

Rule 18. Default

18.01 Procedure

If a party fails to appear, as that term is defined in Minn. R. Civ. P. 5.01, 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.)

2004 Advisory Committee Comment

If consent is required and has not been given, the procedure that must be followed is to initiate a termination of parental rights proceeding pursuant to the Minnesota Rules of Juvenile Protection Procedure.

Rule 19. Settlement

19.01 Generally

Settlement discussions may be utilized to achieve one or more of the purposes set forth in these rules.

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.)

19.03 Content of Settlement Agreement

Any settlement agreement shall include information that identifies:

- (a) the parties to the agreement;
- (b) the attorneys for the parties, if any;
- (c) the judicial officer receiving the settlement;
- (d) the date, time, and place the settlement was reached;
- (e) any and all necessary statutory grounds and factual allegations to support the settlement agreement; and
- (f) signatures and notarizations of all parties to the settlement.

19.04 Procedure

Every settlement agreement shall be filed with the court or stated and agreed to on the record by the settling parties. Before approving a settlement agreement, the court shall determine that the agreement is in the best interests of the child and that each party to the agreement understands the content and consequences of the settlement agreement and voluntarily consents to the agreement. If the court approves the settlement agreement, it shall issue an order, judgment, or decree as appropriate. If the court rejects the settlement agreement, it shall advise the parties of this decision in writing or on the record and the matter shall proceed as any other contested adoption matter.

Rule 20. Parties**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 Minn. R. Juv. Prot. P. 2.01(k);
- (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.)

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.)

20.03 Parties' Addresses

It shall be the responsibility of the petitioner to set forth in the petition the names and addresses of all parties if known to the petitioner after reasonable inquiry. It shall be the responsibility of each party to inform the court administrator of any change of address. For good cause shown, the court may grant a party's request to keep the party's address confidential.

Rule 21. Intervention

21.01 Intervention of Right

Subdivision 1. Child. A child younger than age ten (10) who is the subject of the adoption matter has the right to intervene as a party at any point in the proceeding.

Subd. 2. Indian Tribe. In any adoption matter relating to an Indian child, if the child's Indian tribe is not already a party pursuant to Rule 20.01(g), the child's tribe has the right to intervene as a party at any point in the proceeding.

Subd. 3. Local Social Services Agency. The local social services agency has the right to intervene as a party at any point in the proceeding.

Subd. 4. Procedure. A child younger than age ten (10), the child's Indian tribe, or the local social services agency may intervene as a party by filing with the court and serving upon the parties a notice of intervention as a matter of right. The notice of intervention form shall be available from the court administrator. The intervention shall be deemed accomplished upon service of the notice of intervention, unless a party files and serves a written objection within ten (10) days of the date of service.

21.02 Parent Intervention Prohibited

No parent who has executed a valid consent to the adoption or whose parental rights to the child who is the subject of the adoption petition have been terminated may intervene in an adoption matter.

21.03 Permissive Intervention

Subdivision 1. Generally. Any person or agency may be permitted to intervene as a party if the court finds that such intervention is in the best interests of the child.

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

21.04 Effect of Intervention

The court may conduct hearings, make findings, and issue orders at any time before intervention is accomplished or denied. The intervention shall be effective as of the date accomplished or granted and shall not affect prior proceedings and decisions of the court, unless otherwise ordered by the court or required by the Indian Child Welfare Act, 25 U.S.C., section 19.01, et seq.

Rule 22. Joinder

22.01 Procedure

The court sua sponte, or upon notice of motion and motion of a party pursuant to Rule 15, may join a person or entity as a party if the court finds that joinder is:

- (a) necessary for a just and complete resolution of the matter; and
- (b) in the best interests of the child.

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

Rule 23. Right to Representation; Appointment of Counsel

23.01 Right to Representation

Every party has the right to be represented by counsel in an adoption matter, including through appeal if any. This right attaches no later than when the party first appears in court.

23.02 Appointment of Counsel

Subdivision 1. Adoptee. Pursuant to Minnesota Statutes, section 259.65, in any adoption matter the court may appoint an attorney for the person being adopted. The court may inquire into the ability of the adopting parent to pay for the attorney's services and, after giving the adopting parent a reasonable opportunity to be heard, may order the adopting parent to pay the attorney's fees.

Subd. 2. Putative Father. Pursuant to Minnesota Statutes, section 259.52, subdivision 12, upon proof of indigency, a putative father who has registered with the Minnesota Fathers' Adoption Registry, has received a notice to registered putative father, and has timely filed an intent to claim paternal rights form with the court administrator, shall be appointed counsel at public expense.

2004 Advisory Committee Comment

Rule 23.01 sets forth the basic principle that each party appearing in court has the right to be represented by counsel. Each party, however, does not necessarily have the right to court appointed counsel as provided in Rule 23.02. The phrase "at public expense" is not defined in the statute.

Rule 23.01, subdivision 1, is consistent with Minnesota Statutes, section 259.65, which provides: "In any adoption proceeding, the court may appoint an attorney or guardian ad litem, or both, for the person being adopted. The court may order the adopting parents to pay the costs of services rendered by guardians or attorneys appointed,....provided that such parents be given a reasonable opportunity to be heard."

Rule 23.02, subdivision 2, is consistent with Minnesota Statutes, section 259.52, subdivision 12, which provides: "Upon proof of indigency, a putative father who has registered with the Minnesota Fathers' Adoption Registry, has received a notice to registered putative father, and has timely filed an intent to claim paternal rights form with the court administrator must have counsel appointed at public expense."

23.03 Representation of Responsible Social Services Agency

In any adoption matter in which the Commissioner of Human Services is the legal guardian for the child, the responsible social services agency shall be represented by its county attorney.

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.)

23.05 Certificate of Representation

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

23.06 Withdrawal of Counsel

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

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

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

23.07 Appointment of Counsel in Adoption Involving an Indian Child

Subdivision 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**24.01 Appointment**

Subdivision 1. Generally. A guardian ad litem appointed to serve in a juvenile protection matter, as defined in Minn. R. Juv. Prot. P. 2.01(k), 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.)

2004 Advisory Committee Comment

Rule 24.01, subdivision 1, is consistent with Minnesota Statutes, section 259.65, which provides: "In any adoption proceeding, the court may appoint an attorney or a guardian ad litem, or both, for the person being adopted."

Rule 24.01 is intended to reflect the clear legislative mandate that the guardian ad litem in a juvenile protection matter shall continue to serve until the adoption decree is entered. See Minnesota Statutes, section 260C.317, subdivision 3, paragraph (b), and Minn. R. Juv. Prot. P. 26.03. It is preferable that the same individual serve continuously as the child's guardian ad litem for both the juvenile protection matter and the adoption matter. However, if that is not practicable, the guardian ad litem program shall assign another individual to serve as the child's guardian ad litem in the adoption matter following the termination of parental rights in the juvenile protection matter. Upon the assignment of a new individual to serve as guardian ad litem, the court shall issue a new appointment order.

24.02 Responsibilities

The guardian ad litem shall carry out the responsibilities set forth in the Minnesota Rules of Guardian Ad Litem Procedure. The guardian ad litem shall have the rights and powers set forth in the Minnesota Rules of Guardian Ad Litem Procedure.

24.03 Reimbursement

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

2004 Advisory Committee Comment

Rule 24.03 is consistent with Minnesota Statutes, section 259.65, which provides: "The court may order the adopting parents to pay the costs of services rendered by guardians or attorneys appointed,...provided that such parents shall be given a reasonable opportunity to be heard."

Rule 25. Methods of Filing and Service

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.)

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 25 U.S.C., 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.)

25.03 Service by Facsimile Transmission

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

25.04 Service Upon Counsel; Social Services Agency

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

25.05 Service of Subpoena

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

25.06 Completion of Service

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

25.07 Proof of Service

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

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

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

Rule 26. Commencement of Adoption Matter

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, paragraph (d).

(Amended effective January 1, 2007.)

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 Minn. R. Juv. Prot. P. 41.06.

(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

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.)

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.)

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.)

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 fifteen (15) 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; amended effective August 1, 2009.)

Rule 30. Intercountry Adoptions

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.)

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.)

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**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.)

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.)

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.)

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

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.

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

33.01 Persons and Agencies Required to Consent

Written consent to an adoption is required by the following:

- (a) the child to be adopted, if the child is fourteen (14) years of age or older, and the child's consent must be consent to adoption by a particular person;
- (b) the adult to be adopted, whose consent shall be the only consent required;
- (c) a registered putative father, if pursuant to Rule 32 he has:
 - (1) been notified under the Minnesota Fathers' Adoption Registry;
 - (2) timely filed an intent to claim parental rights form; and
 - (3) timely filed a paternity action;
- (d) the child's parents or legal guardian, except:
 - (1) a parent not entitled to notice of the proceedings;
 - (2) a parent who has abandoned the child or a parent who has lost custody of the child through a divorce decree or a decree of dissolution and upon whom notice has been served as required under Rule 31; and
 - (3) a parent whose parental rights to the child have been terminated by a juvenile court order or through a decree in a prior adoption matter;
- (e) if there is no parent or legal guardian qualified to consent to the adoption, the consent shall be given by the Commissioner of Human Services;
- (f) the agency having authority to place the child for adoption, which shall have the exclusive right to consent to the adoption of such child; and
- (g) the Commissioner of Human Services when the Commissioner is the legal guardian or legal custodian of the child, who shall have the exclusive right to consent to the adoption of such child.

(Amended effective January 1, 2007; amended effective August 1, 2009.)

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.

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.)

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.

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.)

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.)

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.

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.)

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.)

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 thereto 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).

Rule 34. Communication or Contact Agreement

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.

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.

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.)

34.04 Timing

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

(Amended effective August 1, 2009.)

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.

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.

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. Attorney's Fees. The prevailing party upon a motion to enforce a communication or contact agreement order may be awarded reasonable attorney's fees and costs.

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.

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**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.

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.)

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.)

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.)

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.)

35.06 Verification

The petition shall be signed and dated by the petitioner and verified upon information and belief.

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.)

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 and Background Study

37.01 Adoption Study and Background Study Required; Exception

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

(Amended effective January 1, 2007; amended effective August 1, 2009.)

37.02 Adoption Study Report

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

- (a) a background study pursuant to Minnesota Statutes, sections 259.41, subdivision 3, and 245C.33, including:
 - (i) an assessment of the data and information required in Minnesota Statutes, section 245C.33, subdivision 4, to determine if the prospective adoptive parent and any other person over the age of 13 living in the home has a felony conviction consistent with subdivision 3 and section 471(a)(2) of the Social Security Act; and
 - (ii) an assessment of the effect of any conviction or finding of substantiated maltreatment on the capacity of the prospective adoptive parent to safely care for and parent a child;
- (b) an assessment of medical and social history;
- (c) an assessment of current health;
- (d) an assessment of potential parenting skills;
- (e) an assessment of ability to provide adequate financial support for a child;
- (f) an assessment of the level of knowledge and awareness of adoption issues, including, where appropriate, matters relating to interracial, cross-cultural, and special needs adoptions; and

(g) recommendations regarding the suitability of the subject of the study to be an adoptive parent.

(Amended effective August 1, 2009.)

37.03 Direct Placement Adoption; Background Study Incomplete

Unless otherwise ordered by the court, in a direct placement adoption the child may be placed in the preadoptive home prior to completion of the background study if each prospective adopting parent has completed and filed with the court a sworn affidavit stating whether the affiant or any person residing in the household has been convicted of a crime. The affidavit shall also:

(a) state whether the adoptive parent or any other person residing in the household is the subject of an open investigation of, or has been the subject of a substantiated allegation of, child or vulnerable adult maltreatment within the past ten (10) years;

(b) include a complete description of the crime, open investigation, or substantiated allegation of child abuse or vulnerable adult maltreatment, and a complete description of any sentence, treatment, or disposition; and

(c) include the following statement: "Petitioner acknowledges that if, at any time before the adoption is final, a court receives evidence leading to a conclusion that a prospective adoptive parent knowingly gave false information in the affidavit, it shall be determined that the adoption of the child by the prospective adoptive parent is not in the best interests of the child."

(Amended effective January 1, 2007; amended effective August 1, 2009.)

37.04 Background Study; Timing

Subdivision 1. Timing of Background Study. The background study required in Rule 37.03 shall be completed before an adoption petition is filed.

Subd. 2. Direct Placement Adoption. In a direct placement adoption, if an adoption study report has been submitted to the court before the background study is complete, an updated adoption study report which includes the results of the background study shall be filed with the adoption petition.

Subd. 3. Agency Unable to Complete Background Study. In the event that an agency is unable to complete the background study, the agency shall submit with the adoption petition an affidavit documenting the agency's efforts to complete the background study.

(Amended effective January 1, 2007; amended effective August 1, 2009.)

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.

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.)

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**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.)

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.

38.03 Background Study

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), the agency, as part of its post-placement assessment report, shall conduct a background study meeting the requirements of Minnesota Statutes, section 259.41, subdivision 3, paragraph (b).

(Amended effective August 1, 2009.)

38.04 Waiver by Court

Subdivision 1. Post-Placement Assessment Waiver Permitted. 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 fifteen (15) days of filing, unless a written objection to the waiver is filed, in which case a hearing must be conducted as soon as practicable.

Subd. 2. Background Study Waiver Prohibited. The court shall not waive the background study.

(Amended effective January 1, 2007; amended effective August 1, 2009.)

Rule 39. Answer When Contested Adoption Matter**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.)

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.)

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

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.)

40.02 Involuntary Dismissal of Petition

Pursuant to the timing, notice, and format requirements of Minn. R. Civ. P. 7, 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.)

40.03 Summary Judgment

Pursuant to the timing, notice, and format requirements of Minn. R. Civ. P. 7, 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

41.01 Generally

A final hearing is a hearing to determine whether an uncontested adoption petition should be granted.

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.)

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.)

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.

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**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.

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.

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

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.

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.)

43.03 Pretrial Order

Within fifteen (15) days of 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.

(Amended effective August 1, 2009.)

Rule 44. Trial in Contested Matters

44.01 Generally

A trial is a hearing to determine whether an adoption petition should be granted.

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.)

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.

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.

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.

44.06 Timing of Decision; Delay of Issuance of Order if Adoption Assistance Not Yet Acted Upon

Subdivision 1. Generally. Within fifteen (15) days of the conclusion of the trial in a contested matter, the court shall issue findings of fact, conclusions of law, an order for judgment, and an adoption decree pursuant to Rule 45. If written argument is to be submitted, such argument must be submitted within fifteen (15) days of the conclusion of testimony. For good cause, the court may extend this period for an additional fifteen (15) days. The trial is not considered completed until written arguments, if any, are submitted or the time for submission of written arguments has expired.

Subd. 2. Delay of Issuance of Order if Adoption Assistance Not Yet Acted Upon. For adoption matters involving a child who is a ward of the Commissioner of Human Services, if there has been no opportunity for the adopting parent to apply for adoption assistance, the court shall delay issuing its findings of fact, conclusions of law, order for judgment, and adoption decree pursuant to Rule 45 until such time as the responsible social services agency documents for the court that either the commissioner has acted upon an adoption assistance application made on behalf of the adopting parent and child or the adopting parent has declined in writing to apply for adoption assistance. "Acted upon" means the commissioner or commissioner's delegate has signed an adoption assistance agreement or denied adoption assistance eligibility pursuant to a completed application submitted to the Department of Human Services. Nothing in this rule grants jurisdiction over the commissioner in regard to procedures or substantive decisions regarding the award or denial of adoption assistance.

(Amended effective January 1, 2007; amended effective August 1, 2009.)

2008 Advisory Committee Comment

Rule 44.06, subdivision 2, requires the court to delay issuing its order after a final hearing or trial on an adoption matter relating to a child who is a state ward if the adopting parent has not had the opportunity to apply for adoption assistance or if the responsible agency has not documented in writing signed by the adopting parent that the adopting parent was advised of the opportunity to apply for adoption assistance and has declined adoption assistance. The reason for requiring the delay is because there may not have been an adoption assistance application by, or agency discussion of the opportunity to apply for adoption assistance with, the adopting parent when two or more competing adoption petitions regarding the same child are heard and the Commissioner of Human Services has given consent to the adoption, as required under Minnesota Statutes, section 259.24, subdivision 1, paragraph (d), by a different prospective adoptive petitioner than the adopting parent whose petition the court is granting. There may be an adoption assistance agreement for the parent to whom the Commissioner gave consent, but no application may have been made in regard to the competing petitioner. The court is required to delay issuing the adoption decree to give the responsible social services agency time to discuss the opportunity to apply for adoption assistance on behalf of the child with family whose petition the court is granting and for the commissioner to act on any application that is made. This will mean more certain eligibility for adoption assistance and timely start of adoption assistance payments after the decree is issued, if the child and adoptive parent are determined eligible.

Rule 45. Findings of Fact, Conclusions of Law, Order for Judgment, and Adoption Decree

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.

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.

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 preadoptive 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 2(a), (b), (c), (d), (g), (j), and (m); and

(b) may include findings about the issues identified in subdivision 2(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.)

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

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.)

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 than 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.

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

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.

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.

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. Within fifteen (15) days of 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; amended effective August 1, 2009.)

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

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.

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 Minn. R. Civ. App. P. 104.01 subds 2 and 3, apply, except that the time for appeal runs for all parties from the service of notice by the court administrator of the filing of the order disposing of the last post-trial motion.

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 Minn. R. Juv. Prot. P. 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 as required under Minn. R. Juv. Prot. P. 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, 200)

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 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 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).

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.

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.

48.05 Transcript of Proceedings

The requirements regarding preparation of a transcript shall be governed by Minn. R. Civ. App. P. 110.02, except that the estimated completion date contained in the certificate of transcript shall not exceed thirty (30) days.

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**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.)

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.)

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**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.)

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.)

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.)

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.)

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