

Minnesota Rules of Juvenile Delinquency Procedure

Rules effective May 1, 1983
With amendments effective July 1, 2015

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TEXT OF RULES**Rule 3. Right to Counsel**

[For text of 3.01, see M.S. 2014, Volume 15]

3.02 Appointment of Counsel

Subdivision 1. Delinquency Felonies and Gross Misdemeanors. In any delinquency 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. Delinquency Misdemeanors. In any delinquency 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 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 July 1, 2015.)

[For text of 3.03, see M.S. 2014, Volume 15]

3.04 Waiver of Right to Counsel

Subdivision 1. Conditions of Waiver. The following provision does not apply to Juvenile Petty or Traffic 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 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 July 1, 2015.)

[For text of 3.05 to 3.07, see M.S. 2014, Volume 15]

3.08 Certificates of Representation

A lawyer representing a client in juvenile court, other than a public defender, shall file with the court administrator a certificate of representation prior to appearing.

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 on the prosecuting attorney, and on the client by mail or personal service; 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 prosecuting attorney, and on the client 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 o'clock midnight January 1, 1998; amended effective December 1, 2012; amended effective July 1, 2015.)

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, 387 U.S. 1 (1967), 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 delinquency 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 in a delinquency proceeding 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 includes most offenses that would be misdemeanors if committed by an adult. 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. 5.04. 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. 5.04 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 warrant that it shall be filed in the juvenile court. When so designated, the 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; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011; amended effective July 1, 2015.)

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 and 33.05, except as modified by this Rule. If the focus of the warrant pertains to a juvenile, the court may designate on the warrant that it shall be filed in the juvenile court. When so designated, the search warrant, warrant application, affidavit(s) or other supporting documents 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; amended effective July 1, 2015.)

4.03 Warrants for Immediate Custody

Subdivision 1. Probable Cause Required. Probable cause may be established as authorized by Rule 6.05.

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 delinquency misdemeanor, juvenile 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; amended effective July 1, 2015.)

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 documents 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 delinquency 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

[For text of 5.01, see M.S. 2014, Volume 15]

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 standby or temporary custodian under Minnesota Statutes, chapter 257B; 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; amended effective July 1, 2015.)

[For text of 5.03, see M.S. 2014, Volume 15]

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, or signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116. Oral testimony shall be recorded and retained by the judge. Facts that are contained in a written document may be presented to the judge by telephone, video, or other electronic means. If probable cause is determined on facts contained in a written document and the judge is not available 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 or signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, 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; amended effective December 1, 2012; amended effective July 1, 2015.)

[For text of 5.05 to 5.08, see M.S. 2014, Volume 15]

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. 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 or a citation, and includes charging documents filed in paper form, or charging documents or data filed by electronic means authorized by the State Court Administrator.

(Amended effective December 1, 2012; amended effective July 1, 2015.)

6.02 Citation

Subdivision 1. Generally. Juvenile petty offenses as defined by Minnesota Statutes, section 260B.007, subdivision 16, delinquency misdemeanors, juvenile traffic offenses and gross misdemeanors under Minnesota Statutes, chapter 169A, may be charged by 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 citation may be filed with the court, it shall be screened by the prosecuting attorney for diversion eligibility. A citation must be filed by electronic means authorized by the State Court Administrator when the technology is available, otherwise a citation may be filed in a paper form approved by the State Court Administrator. Filing a citation gives the juvenile court jurisdiction over the matter.

Subd. 3. Contents of Citation. Citations shall contain:

- (A) the name, address, and date of birth 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;
- (E) a designation of the case as a delinquency, a juvenile petty offense, or a juvenile traffic offense; and
- (F) other administrative information published by the State Court Administrator.

Subd. 4. Notice of Court Appearance. When a 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 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 December 1, 2012; amended effective July 1, 2015.)

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 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. A petition must be filed by electronic means authorized by the State Court Administrator when the technology is available, otherwise a petition may be filed in paper form. Electronic signature of petitions is governed by Minnesota Rules of Criminal Procedure, section 1.06, subdivision 3.

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 name, date of birth, and address of the child;

(D) the names and addresses of the child's parent(s), legal guardian, legal custodian, or nearest known relative;

(E) the name and address of the child's spouse; and

(F) 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 date, county, and place of the alleged offense; and

(F) 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; amended effective July 1, 2015.)

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, juvenile 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; amended effective July 1, 2015.)

6.05 Probable Cause

Subdivision 1. Establishing Probable Cause. The facts establishing probable cause may be set forth in writing in the charging document. No police reports or other supporting documents may be attached to the charging document at the time of filing to establish probable cause. Probable cause may also be established by subsequently filed police reports, sworn affidavits, or written statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, or by sworn testimony presented to the court. If police reports are subsequently filed in support of 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. 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. 11.04.

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; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011; amended effective July 1, 2015.)

[For text of 6.06 to 6.08, see M.S. 2014, Volume 15]

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 and citations for these offenses to get cases to court more promptly. In 2015, all references to tab charges were removed from the rules to eliminate tab charges as a valid method of charging in juvenile cases.

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.

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 have been published by the State Court Administrator on the Minnesota Judicial Branch Web site. The reference to the Minnesota Offense Code was removed from this rule in 2015 in recognition of the possible transition away from the use of MOC codes and to another coding system that will serve the same purpose. Although the reference to the MOC codes was removed from the rules, the MOC code is still required as part of the "other administrative information" that was approved by the committee and published by the State Court Administrator. Any changes regarding what is required for coding purposes will be addressed in that document.

The references to citations filed by electronic means are intended to recognize that in some counties law enforcement has already begun to electronically file citations in juvenile cases. It is understood that electronic filing of tab charges and citations and petitions is not available statewide at this time. The rule authorizes and requires electronic filing in the locations where the technology is available, and anticipates the expansion of the practice in other locations as facilitated by State Court Administration. Juvenile citations filed in paper form currently vary statewide. It is anticipated that a statewide standard will be created for use in juvenile cases, in consultation with justice agency partners, which will either be similar to or a modification to the current adult standard commonly referred to as the Statewide Standard Citation. When a statewide standard for juvenile citations is created, it will be published on the Minnesota Judicial Branch Statewide Standard Citation website and communicated statewide. Once the juvenile standard citation is available, its use will be mandatory in juvenile cases.

Rule 7. Arraignment

[For text of 7.01 to 7.03, see M.S. 2014, Volume 15]

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, 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; amended effective July 1, 2015.)

[For text of Comment - Rule 7, see M.S. 2014, Volume 15]

Rule 8. Pleas

[For text of 8.01 and 8.02, see M.S. 2014, Volume 15]

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.

(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 December 1, 2012; amended effective July 1, 2015).

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 in a delinquency matter 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; amended effective July 1, 2015.)

[For text of Comment - Rule 8, see M.S. 2014, Volume 15]

Rule 10. Discovery

[For text of 10.01 to 10.06, see M.S. 2014, Volume 15]

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 secure the deposition, noting the title of the case and "Deposition of (here insert name of witness)" and shall promptly file it under seal with the court in which the case is pending. The deposition must not be unsealed or disclosed except by court order. 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; amended effective July 1, 2015.)

[For text of Comment - Rule 10, see M.S. 2014, Volume 15]

Rule 14. Continuance for Dismissal

[For text of 14.01 to 14.04, see M.S. 2014, Volume 15]

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, written statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, 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.

(Amended effective July 1, 2015.)

[For text of 14.06, see M.S. 2014, Volume 15]

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 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; amended effective July 1, 2015.)

[For text of 14.08 to 14.10, see M.S. 2014, Volume 15]

[For text of Comment--Rule 14, see M.S. 2014, Volume 15]

Rule 15. Delinquency Disposition

[For text of 15.01, see M.S. 2014, Volume 15]

15.02 Timing

Subdivision 1. Hearing. After the court makes a general finding that the allegations in the charging document have been proved beyond a reasonable doubt, the court may conduct a disposition hearing immediately or continue the matter for a disposition hearing at a later time as follows:

(A) for a child not held in detention, within forty-five (45) days from the finding that the allegations in the charging document have been proved beyond a reasonable doubt; or

(B) for a child held in detention, within fifteen (15) days from the finding that the allegations in the charging document have been proved beyond a reasonable doubt; or

(C) in cases involving a transfer of the file under subdivision 4, for a child not held in detention, as early as practicable but within ninety (90) days from the finding that the allegations in the charging document have been proved beyond a reasonable doubt.

Subd. 2. Order. The court shall enter a dispositional order pursuant to Rule 15.05 within three (3) days of the disposition hearing. For good cause, the court may extend the time to enter a dispositional order to fifteen (15) days from the disposition hearing.

Subd. 3. Delay. For good cause, the court may extend the time period to conduct a disposition hearing 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 conduct a disposition hearing or 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 disposition hearing is not conducted or a dispositional order 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 order a continuance and direct the court administrator to transfer the file to the juvenile court in 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, except that case records and documents transferred electronically from one county to another within the court's case management system need not be certified. 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; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011; amended effective July 1, 2015.)

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 report shall not be disclosed to the public except by court order.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12 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 July 1, 2015.)

[For text of 15.04, see M.S. 2014, Volume 15]

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 pursuant to Minnesota Statutes, section 260B.198, subdivision 7.

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, clause (3), 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 not inimical to public safety 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 one hundred eighty (180) days from the date of disposition. The court may extend the continuance for an additional successive period not to exceed one hundred eighty (180) days with the consent of the prosecutor and only after the court has reviewed the case and entered its order for the additional continuance without a finding of delinquency.

(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, except clause (4).

(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; amended effective December 1, 2012; amended effective July 1, 2015).

[For text of 15.06, see M.S. 2014, Volume 15]

15.07 Probation Violation

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

(A) *Contents of Probation Violation Report.* The probation violation report and supporting affidavits, or written statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, 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; amended effective July 1, 2015.)

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 attachments, 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 attachments, 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; amended effective July 1, 2015.)

[For text of Comment - Rule 15, see M.S. 2014, Volume 15]

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;

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

(H) ineffective assistance of child's counsel.

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 or written statement signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, 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 court's specific findings are made pursuant to Rule 13.09. The motion shall be heard within thirty (30) days after the court's specific findings are made pursuant to Rule 13.09 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 or Written Statements. When a motion for new trial is based on affidavits or written statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, 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 documents. The period may be extended by the court upon an order extending the time for hearing under this rule. The court may permit reply documents.

(Amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011; amended effective July 1, 2015.)

[For text of 16.02 to 16.05, see M.S. 2014, Volume 15]

[For text of Comment - Rule 16, see M.S. 2014, Volume 15]

Rule 17. Juvenile Petty Offender and Juvenile Traffic Offender

[For text of 17.01 to 17.04, see M.S. 2014, Volume 15]

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 juvenile 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; amended effective July 1, 2015.)

[For text of 17.06 to 17.09, see M.S. 2014, Volume 15]

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 transferring 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 court 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; amended effective July 1, 2015.)

[For text of 17.11, see M.S. 2014, Volume 15]

[For text of Comment - Rule 17, see M.S. 2014, Volume 15]

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 court 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; amended effective July 1, 2015.)

[For text of 18.02 and 18.03, see M.S. 2014, Volume 15]

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 report shall not be disclosed to the public 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; amended effective July 1, 2015.)

[For text of 18.05 to 18.09, see M.S. 2014, Volume 15]

[For text of Comment - Rule 18, see M.S. 2014, Volume 15]

Rule 19. Extended Jurisdiction Juvenile Proceedings and Prosecution

[For text of 19.01 and 19.02, see M.S. 2014, Volume 15]

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 report shall not be disclosed to the public 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; amended effective July 1, 2015.)

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, 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 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; amended effective July 1, 2015.)

[For text of 19.05 and 19.06, see M.S. 2014, Volume 15]

19.07 Order

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

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

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

(C) findings of fact as to:

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

(2) the date of the alleged offense(s).

Subd. 2. Decision, Timing, and Content of Order Following Contested Hearing. Within fifteen (15) days of the contested hearing, the court shall 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, except that case records and documents transferred electronically from one county to another within the court's case management system need not be certified. 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; amended effective July 1, 2015.)

[For text of 19.08, see M.S. 2014, Volume 15]

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

Subdivision 1. General Procedure and Timing. Minnesota Statutes, chapters 260 and 260B and these Rules apply to extended jurisdiction juvenile prosecutions. However, every child who is the subject of an extended jurisdiction juvenile prosecution is entitled to trial by jury on the underlying offense pursuant to 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 file and serve 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; amended effective July 1, 2015.)

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 pled 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, except that case records and documents transferred electronically from one county to another within the court's case management system need not be certified. 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, the transferring court shall prepare and provide to 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.

(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; amended effective July 1, 2015.)

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, and the signature of the issuing judge or judicial officer of the district court. The amount of any bail or other conditions of release may be set by the issuing judge or judicial officer and stated 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; amended effective July 1, 2015.)

[For text of Comment - Rule 19, see M.S. 2014, Volume 15]

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 file a written report with the court, and the court shall provide a copy to 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 to review the report with the parties. If either party objects to the report's conclusion regarding the child's competency to proceed, 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. The court shall enter its written order within fifteen (15) days of the hearing.

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, juvenile petty offense, 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. The court shall provide a copy of the reports 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; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011; amended effective July 1, 2015.)

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 before 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 for in camera review, 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 filed with the court, and the court shall provide a copy to the prosecuting attorney and to the child's counsel. The report shall not be disclosed to the public 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 7.

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; amended effective July 1, 2015.)

20.03 Simultaneous Examinations

The court may order a civil commitment examination under Minnesota Statutes, chapter 253B, or successor statute, a competency examination under Rule 20.01, and an examination under Rule 20.02 to all be conducted simultaneously.

(Added effective July 1, 2015.)

[For text of Comment - Rule 20, see M.S. 2014, Volume 15]

Rule 21. Appeals

[For text of 21.01 and 21.02, see M.S. 2014, Volume 15]

21.03 Appeal By Child

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

(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;
- (3) adjudication and disposition in delinquency proceedings;
- (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(4) 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 copy of the judgment or order appealed from; and

(d) 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, 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, 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) If the parties have stipulated to the accuracy of a transcript of video or audio exhibits and made the transcript part of the district court record, it becomes part of the record on appeal, and it is not necessary for the court reporter to transcribe the exhibits. If no such transcript exists, a transcript need not be prepared unless expressly requested by

the appellant or the respondent. If the exhibit must be transcribed, the court reporter need not certify the correctness of this transcript.

(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 addendum 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 addendum 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 addendum, 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 addendum 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 addendum 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 addendum, 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 documents 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; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011; amended effective July 1, 2015.)

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;

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

(G) a continuance ordered in contravention of Minnesota Statutes, section 260B.198, subdivision 7.

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(4) 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 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. 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; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011; amended effective July 1, 2015.)

[For text of 21.05 to 21.07, see M.S. 2014, Volume 15]

[For text of Comment - Rule 21, see M.S. 2014, Volume 15]

Rule 25. Notice

25.01 Summons, Notice in Lieu of Summons, Oral Notice on the Record, Service by Electronic 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, or electronically transmitted as authorized by the State Court Administrator, 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 or electronically transmitted 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 Electronic Transmission or Notice by Telephone Permitted.

(A) *Service By Electronic Transmission.* 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 ensure that the child, child's attorney, prosecuting attorney, child's parent(s), legal guardian(s) or legal custodian(s), or spouse of the child receives 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 electronic transmission, mailed notice, 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 electronic transmission, mail, 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; amended effective December 1, 2012; amended effective July 1, 2015.)

[For text of 25.02, see M.S. 2014, Volume 15]

25.03 Procedure for Notification

Subdivision 1. First Notice. 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, or electronically transmitted as authorized by the State Court Administrator, 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 or electronic transmission, 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 or electronically transmitted 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 or Electronic Transmission.* On or before the date set for appearance, the person who served notice in lieu of summons by mail or electronic transmission shall enter in the court record:

- (1) the name of the person to whom the summons or notice was sent;
- (2) the date the summons or notice was sent; and
- (3) whether the summons or notice was sent by first class mail, certified mail, or electronic transmission.

(C) *Notice of Detention Hearing: Telephone Call.* The person providing notice of a detention hearing by telephone call shall file a document with the court or make an entry in the court record stating:

- (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 or other authorized means.

(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 December 1, 2012; amended effective July 1, 2015).

[For text of 25.04, see M.S. 2014, Volume 15]

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. The rule also recognizes that notice may be sent by electronic transmission where authorized.

This rule allows for notice of a detention hearing to be provided by telephone call when, given the time remaining before the detention hearing, mailed or electronically transmitted notice in lieu of summons would not be effective. Notice by 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 27. Motions

[For text of 27.01, see M.S. 2014, Volume 15]

27.02 Service of Motions

Subdivision 1. When Required. Every written motion along with any supporting documents 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, by mail, or electronically as authorized or required by Rule 14 of the General Rules of Practice for the District Courts. Service by mail shall be complete upon mailing to the last known address of the person to be served. Service by authorized electronic means through the E-Filing System as defined by Rule 14 of the General Rules of Practice for the District Courts is complete upon completion of the electronic transmission of the document(s) to the E-Filing System.

Subd. 3. Time. Any motion required by this rule to be served, along with any supporting documents, 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.

(Amended effective December 1, 2012; amended effective July 1, 2015).

Rule 30. Records

[For text of 30.01, see M.S. 2014, Volume 15]

30.02 Availability of Juvenile Court Records

Subdivision 1. By Statute or Rule. Juvenile Court records shall be available for inspection, copying and release as required by statute or these rules. Access to all reporter's tapes and electronic recordings shall be governed by the Rules of Public Access to Records of the Judicial Branch. Other than for criminal justice and other government agencies, juvenile delinquency records in proceedings that are public under Minnesota Statutes, section 260B.163, subdivision 1, shall not be "remotely accessible," as defined in Rule 8, subdivision 2 of the Rules of Public Access to Records of the Judicial Branch, but may be made accessible in either electronic form or paper form at the court facility as permitted by Rule 8. Criminal justice and other government agencies shall have access to juvenile court records as permitted by Rule 8, subdivision 4, of the Rules of Public Access to Records of the Judicial Branch.

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 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.

(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; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011; amended effective May 14, 2014; amended effective July 1, 2015.)

[For text of Comment - Rule 30, see M.S. 2014, Volume 15]

Rule 31. Timing

31.01 Computation

Unless otherwise provided by statute or specific Minnesota Rules of Juvenile Delinquency 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, a legal holiday, a day on which weather or other conditions result in the closing of the office of the court administrator of the court where the action is pending or where filing or service is either permitted or required to be made electronically, or a day on which unavailability of the computer system used by the court for electronic filing and service makes it impossible to accomplish service or filing, in which case the period runs until the end of the next day that is not one of the aforementioned days. 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 and Lincoln'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, and a day that the United States Mail does not operate.

(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 July 1, 2015.)

31.02 Additional Time After Service by Mail or Electronic Service Late in the Day

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 electronic means and accomplished after 5:00 p.m. Minnesota time on the day of service, one additional day shall be added to the prescribed period.

(Amended effective July 1, 2015.)

Rule 32. Electronic Service, Filing, and Signature

32.01 Service

Except where personal service is required by these rules, service shall be made by any means authorized by law, including electronically as authorized or required by Rule 14 of the General Rules of Practice for the District Courts. Any notices or copies required to be provided under these rules may also be provided electronically as authorized or required by Rule 14 of the General Rules of Practice for the District Courts.

(Added effective July 1, 2015.)

32.02 Filing

Except as otherwise specified in these rules, documents may be filed electronically as authorized or required by Rule 14 of the General Rules of Practice for the District Courts. Notwithstanding Rule 14 of the General Rules of Practice for the District Courts, documents prepared and presented to the court during a court proceeding, including but not limited to a signed guilty plea petition or signed waiver of counsel, are not required to be filed electronically.

(Added effective July 1, 2015.)

32.03 Signature

Any signature required under these rules may be applied electronically.

(Added effective July 1, 2015.)

Minnesota Rules of Juvenile Protection Procedure

Rules effective March 1, 2000
Renumbered effective January 1, 2004
With amendments effective July 1, 2015

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TEXT OF RULES

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

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

(4) "**Child**" means an individual under 18 years of age. "Child" also includes individuals under age 21 who are in foster care pursuant to Minnesota Statutes, section 260C.451.

(5) "**Child placing agency**" means any agency licensed pursuant to Minnesota Statutes, sections 245A.02 to 245A.16 or 252.28.

(6) "**Child custody proceeding**" is defined in the Indian Child Welfare Act, 25 U.S.C. section 1903(1), and Minnesota Statutes, section 260.755, subdivision 3, and 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.

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

(a) the duty of support ordered in a parentage proceeding under Minnesota Statutes, sections 257.51 to 257.74;

(b) a contribution by parents ordered under Minnesota Statutes, section 256.87; or

(c) support ordered under Minnesota Statutes, chapter 518B or 518C.

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

(9) "**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.

(10) "**Extended family member**," as defined in the Indian Child Welfare Act, 25 U.S.C. section 1903(2), which provides that the term is 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.

(11) **"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 correction's 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. Foster care is intended to provide for a child's safety or access to treatment. Foster care must not be used as a punishment or consequence for a child's behavior.

(12) **"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 (11).

(13) **"Indian child"** is defined in the Indian Child Welfare Act, 25 U.S.C. section 1903(4), and modified by Minnesota Statutes, section 260.755, subdivision 8, and 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.

(14) **"Indian custodian"** is defined in the Indian Child Welfare Act, 25 U.S.C. section 1903(6), and Minnesota Statutes, section 260.755, subdivision 10, and 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.

(15) **"Indian child's tribe"** is defined in the Indian Child Welfare Act, 25 U.S.C. section 1903(5), and Minnesota Statutes, section 260.755, subdivision 9, and 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.

(16) **"Indian tribe"** is defined in the Indian Child Welfare Act, 25 U.S.C. section 1903(8), and Minnesota Statutes, section 260.755, subdivision 12, and 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.

(17) **"Juvenile protection case records"** means all records regarding a particular juvenile protection matter filed with or generated by the court, including orders, notices, the register of actions, the index, the calendar, and the official transcript. See also "records" defined in subdivision (31).

(18) **"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, sections 260C.503 to 260C.521, including matters involving termination of parental rights, guardianship to the commissioner of human services, transfer of permanent legal and physical custody to a relative, permanent custody to the agency, and temporary legal custody to the agency, and matters involving voluntary placement pursuant to Minnesota Statutes, section 260D.07.

(19) **"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.

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

(21) **"Parent"** is defined in Minnesota Statutes, section 260C.007, subdivision 25.

(22) **"Parentage matter"** means an action under Minnesota Statutes, sections 257.51 to 257.74, to:

(a) establish a parent and child relationship, including determination of paternity or maternity, the name of the child, legal and physical custody, parenting time, and child support; or

(b) declare the nonexistence of the parent and child relationship.

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

(24) **"Presumed father"** means an individual who is presumed to be the biological father of a child under Minnesota Statutes, sections 257.55, subdivision 1, or 260C.150, subdivision 2.

(25) **"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.

(26) **"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.

(27) **"Putative father"** is defined in Minnesota Statutes, section 259.21.

(28) **"Qualified expert witness"** is defined in Minnesota Rules, part 9560.0221, subpart 3, item G, and 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.

(29) **"Reasonable efforts to prevent placement"** is defined in Minnesota Statutes, section 260.012, paragraph (d), and 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.

(30) **"Reasonable efforts to finalize a permanent plan for the child"** is defined in Minnesota Statutes, section 260.012, paragraphs (e) and (f), and 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;

(d) to place siblings removed from their home in the same home for foster care or adoption, or transfer permanent legal and physical custody to a relative. Visitation between siblings who are not in the same foster care, adoption, or custodial placement or facility shall be consistent with Minnesota Statutes, section 260C.212, subdivision 2; and

(e) 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.

(31) **"Records"** is defined in Rule 3 of the Rules of Public Access to Records of the Judicial Branch. See also "juvenile protection case records" defined in subdivision (17).

(32) **"Relative"** is defined in Minnesota Statutes, section 260C.007, subdivision 27, and 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).

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

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

(35) **"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.

(36) **"Trial home visit"** is defined in Minnesota Statutes, section 260C.201, subdivision 1, paragraph (a), clause (3), and 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.

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

(38) **"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 or the child, when the child is age 18 or older. 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.227, 260C.229, and 260D.02, subdivision 5.

(39) **"Voluntary foster care of an Indian child"** is defined in Minnesota Statutes, section 260.755, subdivision 22, and 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; amended effective July 1, 2014; amended effective July 1, 2015.)

Rule 3. Applicability of Other Rules and Statutes

[For text of 3.01 to 3.05, see M.S. 2014, Volume 15]

3.06 General Rules of Practice for the District Courts

Except as otherwise provided by statute or these rules, Rules 1-2, 4-14, and 901-907 of the General Rules of Practice for the District Courts apply to juvenile protection matters. Rules 3 and 101-814 of the General Rules of Practice for the District Courts do not apply to juvenile protection matters. Rule 5 of the General Rules of Practice for the District Courts does not apply to attorneys who represent Indian tribes in juvenile protection matters.

(Added effective August 1, 2009; amended effective July 1, 2015.)

3.07 Rules of Public Access to Records of the Judicial Branch

The Rules of Public Access to Records of the Judicial Branch apply to juvenile protection case records.

(Added effective July 1, 2015.)

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.

2015 Advisory Committee Comment

Rule 3.06 is amended to specify the applicability of the General Rules of Practice for the District Courts to juvenile protection matters.

Rule 5 of the General Rules of Practice provides, in part: "Lawyers who are admitted to practice in the trial courts of any other jurisdiction may appear in any of the courts of this state provided (a) the pleadings are also signed by a lawyer duly admitted to practice in the State of Minnesota, and (b) such lawyer admitted in Minnesota is also present before the court, in chambers or in the courtroom or participates by telephone in any hearing conducted by telephone." General Rule 5 is amended in 2015 to provide an "out-of-state lawyer is subject to all rules that apply to lawyers admitted in Minnesota, including rules related to e-filing." Consistent with the letter and spirit of the Indian Child Welfare Act, the Juvenile Protection Rules Committee does not want to place any barriers to participation by Indian tribes in juvenile protection matters. For that reason, Rule 3.06 is amended to provide that the requirements of Rule 5 dealing with pro hac vice and electronic filing are not applicable to attorneys who represent Indian tribes.

Rule 4. Time; Timeline

[For text of 4.01, see M.S. 2014, Volume 15]

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

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

(Amended effective January 1, 2004; amended effective July 1, 2015.)

[For text of 4.03 to 4.05, see M.S. 2014, Volume 15]

Rule 8. Accessibility of Juvenile Protection Case Records

8.01 Presumption of Access to Juvenile Protection Case Records

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

(Amended effective January 1, 2004; amended effective August 1, 2009; amended effective July 1, 2015.)

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.

[For text of 8.02, see M.S. 2014, Volume 15]

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

(a) **Access to Records Filed Before July 1, 2015.** For juvenile protection case records filed before July 1, 2015, confidential information to which access is restricted under Rule 8.04 of these rules shall, if necessary, be redacted by or at the direction of court administration staff prior to allowing access to any party, participant, or member of the public. In the case of a request for access to a petition filed before July 1, 2015, when a redacted petition has not been filed as required under Rule 33.01, court administration staff may notify the petitioner of the access request and direct the petitioner to promptly file a petition from which the confidential information has been redacted as required under Rule 33.01 so that access may be provided to the requesting individual.

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

(Amended effective July 1, 2015.)

2015 Advisory Committee Comment

Rule 8.03 is added to clarify that access to juvenile protection case records filed with or generated by the court prior to July 1, 2015, shall be denied until it is determined that the record or portion of the record requested is free of confidential information to which access is restricted under Rule 8.04. Where an individual requests access to a petition filed prior to July 1, 2015, and the petition contains confidential information to which access is restricted under Rule 8.04, court administration staff may notify the petitioner of the access request and direct the petitioner to promptly file an appropriately redacted petition so that access may be provided to the requesting individual.

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

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

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

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

(c) "Remote Access" and "remotely accessible" are defined in Rule 8, subdivision 2, of the Rules of Public Access to Records of the Judicial Branch.

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

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

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

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

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

(c) victims' statements;

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

(e) records of HIV testing or portions of records that reveal a person has undergone HIV testing;

(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;

(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; and

(n) the child's education, physical health, and mental health records contained in or attached to the case plan required under Minnesota Statutes, section 260C.212, subdivision 1, and identified as inaccessible under Rule 37.02, subdivision 3, paragraph (b).

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

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

(b) **Parties.** Unless otherwise ordered by the court, parties shall have access to inspect and copy all juvenile protection case records in the court file, except those listed in subdivision 2, paragraphs (b), (d), and (e) of this rule.

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

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

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

(b) "Confidential Information Forms" filed under subdivision 5; and

(c) all juvenile protection case records where any child is a party.

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

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

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

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

(d) **Noncompliance.**

(1) **Confidential Document.** If it is brought to the attention of court administration staff that a confidential document has not been filed under a "Confidential Document" cover sheet and/or has not been designated as confidential, court administration staff shall designate the document as confidential and notify the filer of the change in designation.

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

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

(Amended effective January 1, 2004; amended effective August 1, 2009; amended effective July 1, 2015.)

2001 Advisory Committee Comment (amended 2015)

Rule 8.04, subdivision 2(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, subdivision 2(b), prohibits public access to audio and video recordings of a child alleging or describing physical abuse, sexual abuse, or neglect of any child. This includes all recordings made pursuant to Minnesota Statutes, section 626.561, subdivision 3, during the course of a child abuse assessment, criminal investigation, or prosecution. This is consistent with Minnesota Statutes, section 13.821, 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, section 626.561, subdivision 3. This is consistent with Minnesota Statutes, 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 and video recordings of a child alleging or describing abuse or neglect of any child are inaccessible to the public under Rule 8.04, subdivision 2(b) and (c), this does not prohibit the attorneys for the parties or the court from including summaries or quotes 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, subdivision 2(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. Instead, filers are required to omit from their documents the identity of reporters of abuse or neglect, thus allowing the remainder of the document to be publicly accessible. If it is brought to the attention of court administration staff that a filer failed to omit the information, court administration staff are required to designate the otherwise public document as confidential and inaccessible to the public. Similarly, under Rule 8.04, subdivision 2(e) filers are required to omit from their documents any reference to records of HIV testing. If it is brought to the attention of court administration staff that a filer failed to omit the information, court administration staff are required to designate the otherwise public document as confidential and inaccessible to the public.

The prohibition of public access to the identity of reporters of abuse or neglect under Rule 8.04, subdivision 2(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, subdivision 2(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, subdivision 2(d), does not, however, apply to testimony of a witness taken during a proceeding that is open to the public.

Rule 8.04, subdivision 2(e), is amended in 2015 to prohibit public access not only to HIV test results, but also to any records of HIV testing or portion of records that reveal a person has undergone HIV testing. This is consistent with state and federal laws regarding court ordered testing for HIV. Minnesota Statutes, 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, subdivision 2(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, 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. sections 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 120A.26, which adds mediation process before notice to county attorney); see also Minnesota Statutes, 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, subdivision 2(h), prohibits public access to portions of photographs that identify a child. Filers are required to designate as confidential any photograph that identifies a child's face or other features. If it is brought to the attention of court staff that a filer failed to designate as confidential a photograph that identifies a child, court administration staff are required to designate as confidential and inaccessible to the public. 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, subdivision 2(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. 28 (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, subdivision 2(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, subdivision 2(j), precludes public access to portions of records that specifically identify a minor victim of an alleged or adjudicated sexual assault. Filers are required to omit from their documents the identity of a minor victim of an alleged or adjudicated sexual assault, including the child's name, address, and references to "him," "her," "he," "she," etc. If it is brought to the attention of court administration staff that a filer failed to omit the information from an otherwise public accessible document, court administration staff are required to designate the document as confidential and inaccessible to the public. This is intended to parallel the treatment of victim identities in criminal and juvenile delinquency proceedings involving sexual assault charges under Minnesota Statutes, 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, 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, subdivision 2(j), does not require a finding that sexual assault occurred. An allegation of sexual assault is sufficient.

Rule 8.04, subdivision 2(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, subdivision 2(k), does not preclude public access to intervention motions or transfer petitions.

Rule 8.04, subdivision 2(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, subdivision 2(a). Procedures for issuing protective orders are set forth in Rule 8.07.

Rule 8.04, subdivision 2(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.

Rule 8.04, subdivision 2(n), is a new provision prohibiting public access to the child's education, physical health, and mental health records contained in or attached to the publicly accessible out-of-home placement plan required under Minnesota Statutes, sections 260C.212, subdivision 1.

Notwithstanding the list of inaccessible case records in Rule 8.04, subdivision 2(a) through (n), 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, subdivision 2(d), (e), (j), (l), and (m), 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 petition or social services or guardian ad litem report might discuss or quote the results or other content of a chemical dependency evaluation. Although the chemical dependency evaluation itself is not accessible to the public under Rule 8.04(f), quotes from or discussion of the details of that evaluation in the petition or social services or guardian ad litem report need not be redacted before public disclosure of the document. 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 (amended 2015)

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, subdivision 2(j), when the child is the victim of an alleged or adjudicated sexual assault and under Rule 8.04, subdivision 2(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.

2015 Advisory Committee Comment

Rule 8.04, subdivision 3, is added to clarify access authorized by parties, participants, and members of the public.

Rule 8.04, subdivision 4, is a new provision listing juvenile protection case records that are confidential and presumptively inaccessible to the public, unless the court issues an order granting access on a case-by-case basis.

Rule 8.04, subdivision 4(c), is a new provision providing that juvenile protection case records in juvenile protection matters where a child is a party are confidential and inaccessible to the public unless otherwise ordered by the court on a case-by-case basis. The Committee fully endorses the recommendation of the Advisory Committee on the Rules of Public Access to Records of the Judicial Branch to prohibit remote electronic access to juvenile protection case records, and to permit electronic access to juvenile protection case records only through the Minnesota Public Access Courthouse portal ("MPA Courthouse") so long as records cannot be searched by a child's name. The committee believes that restricting child name searches is a necessary barrier aimed at protecting children from harm and reducing incidences of child victimization. Because "MPA Courthouse" has no existing functionality to mask child-party names or to restrict child-party name searches, the Committee recommends that, unless otherwise ordered by the court on a case-by-case basis, all juvenile protection case records should be made confidential and electronically inaccessible to the public in any juvenile protection matter where a child is a party. This recommendation is temporary - it is the position of the Committee that the confidential classification should continue only until MPA Courthouse has the technical functionality to mask child-party names and restrict child-party name searches.

Rule 8.04, subdivision 5, is a new provision intended to prevent the filing of confidential documents without the appropriate designation, or the inclusion of confidential information in publicly accessible documents. The rule emphasizes that it is the filer's responsibility to omit confidential information and perform all required redactions prior to filing. For guidance, the amendment specifies the kind of information inaccessible to the public under Rule 8.04, subdivision 2, that must be omitted from publicly accessible documents. Rule 8.04, subdivision 2, generally precludes public access to entire documents such as medical records and reports. The rule does not prohibit a person from referencing, quoting, or mentioning the contents of such confidential documents in other documents filed with the court. However, because Rule 8.04, subdivision 2(d), (e), (j), (l), and (m) preclude public access to "portions of juvenile protection records" that contain specified types of confidential information, the filer must redact (or omit entirely) portions of a publicly accessible document that reference or disclose confidential information.

Rule 8.04, subdivision 5(b), requires filers to omit confidential information, as that phrase is defined in Rule 8.04, subdivision 1, from publicly accessible documents and, instead, to include that information on a "Confidential Information Form." When omitting from a petition or other document the confidential name of a child (e.g., a child who is an alleged victim of sexual abuse) or foster parent and including that information on a "Confidential Information Form," the Committee recommends the following format as a best practice:

(a) *Child: In the petition or other document, do not use the child's initials but, instead, refer to the child as "Child 1," "Child 2," etc. In the "Confidential Information Form" state the child's name (e.g., "Child 1 is Jane Doe" and "Child 2 is John Doe") and then include the other information required in Rule 33.02, subdivision 1(b): Child 1's date of birth, race, gender, current address (foster home address), and, if the child is believed to be an Indian child, the name of the child's tribe.*

(b) *Foster Parent: In the petition or other document, do not use the foster parent's initials but, instead, refer to the person as "Foster Parent 1," "Foster Parent 2," etc. In the "Confidential Information Form" state the name of the foster parent (e.g., "Foster Parent 1 is Jane Doe" and "Foster Parent 2 is John Doe") and then include address of the foster parent.*

The requirement in Rule 8.04, subdivision 5(b), for filers to omit confidential information from publicly accessible documents and, instead, to include such information on a "Confidential Information Form" does not apply to judicial officers pursuant to Rule 8.04, subdivision 5(c). Because court orders are publicly accessible, the Committee urges judicial officers to cautiously consider what information to include in their orders. For example, judicial officers should, on a case-by-case basis, determine whether it is appropriate to include the name of a child who is an alleged victim of sexual abuse (which is confidential information) or, in the alternative, to generically reference such a child as "Child 1" and include the confidential information either in a confidential memo attached to the order or in a "Confidential Information Form." To ensure each child's placement is eligible under Title IV-E, judicial officers should be sure to include each child's name either in the order or in a confidential memo or "Confidential Information Form."

8.05 Access to Exhibits

Juvenile protection case records received into evidence as exhibits during a hearing or trial shall be accessible to the public unless subject to a protective order issued pursuant to Rule 8.07.

(Amended effective July 1, 2015.)

2001 Advisory Committee Comment (amended 2015)

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, subdivision 2(b) through (n) 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" accessible to the public under Rule 8.05.

8.06 Electronic Access to Juvenile Protection Case Records

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

(Amended effective July 1, 2015.)

2015 Advisory Committee Comment

Rule 8.06 is amended to allow for electronic access to public juvenile protection case records in light of the Judicial Branch's transition to electronic court records and its effort to offer electronic accessibility to public court documents across all case types. Electronic access to public juvenile protection case records will be available to the public only at courthouse facilities. Remote access to public records is governed by Rule 8, subdivision 2, of the Rules of Public Access to Records of the Judicial Branch, which prohibits remote

access to juvenile protection case records. Access to juvenile protection records by government agencies is governed by Rule 8, subdivision 4, of the Rules of Public Access to Records of the Judicial Branch.

[For text of 8.07 to 8.10, see M.S. 2014, Volume 15]

Rule 10. Orders

[For text of 10.01 and 10.02, see M.S. 2014, Volume 15]

10.03 Method and Timing of Service; Persons to be Served

Subdivision 1. Persons to be Served and Method of Service. 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 personal service at the hearing, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court. If a party is represented by counsel, delivery or service shall be upon counsel.

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

Subd. 3. Timing of Service. Service of the order by the court administrator shall be accomplished within five (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.

Subd. 4. Notification to Family Court. If a parentage matter is pending in family court regarding a child who is the subject of a juvenile protection matter, the court administrator shall send notification to the family court administrator and the assigned family court judicial officer of the filing of an order listed in Rule 50.06, subdivision 2.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective July 1, 2007; amended effective August 1, 2009; amended effective July 1, 2014; amended effective July 1, 2015.)

2014 Advisory Committee Comment

The phrase "send notification" to the family court is used in subdivision 4 to permit flexibility at the local level in determining the "notification" used to alert both the family court administrator and the assigned family court judicial officer that the juvenile protection matter has progressed to the point where the parentage matter may be completed. It is not intended to require formal legal notice as that term is used in Rule 32 in regard to ensuring parties or participants have notice of hearings or as used in Rule 10.04 in regard to notice of filing of an order. Court administration may use "notice of filing" as set out in Rule 10.04, but may also use any other reasonable means of letting family court know the parentage matter may be completed.

10.04 Notice of Filing of Order

Each order served upon the parties and the county attorney shall be accompanied by a notice of filing of order, which shall include notice of the right to appeal a final order pursuant to Rule 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; amended effective July 1, 2015.)

Rule 13. Subpoenas

[For text of 13.01 and 13.02, see M.S. 2014, Volume 15]

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. Upon written agreement of the witness, a subpoena may be served by U.S. mail, through the E-Filing System, by e-mail, or by other electronic means.

(Amended effective July 1, 2015.)

[For text of 13.04 to 13.09, see M.S. 2014, Volume 15]

Rule 15. Motions

[For text of 15.01, see M.S. 2014, Volume 15]

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

Subd. 3. Time. Any written motion, along with any supporting affidavit or other supporting documentation or memorandum of law, shall be served at least five (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; amended effective July 1, 2015.)

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.

[For text of 15.03 to 15.07, see M.S. 2014, Volume 15]

Rule 16. Signing of Pleadings, Motions, and Other Documents; 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 similar document shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each document shall state the signer's name, address, telephone number, e-mail address if the document is filed or served electronically, and attorney registration number if signed by an attorney. If providing a party's or participant's address, e-mail address, or telephone number would endanger the party or participant, the address, e-mail address, or telephone number may be provided to the court in a separate information statement that shall not be accessible to the public, parties, or participants, but shall be accessible to the attorneys and the guardian ad litem. Upon notice and motion, the court may disclose the address, e-mail address, or 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 document shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party. The filing, serving, or submitting of a document through the E-Filing System constitutes certification of compliance with Rule 16.02.

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; amended effective September 1, 2012; amended effective July 1, 2014; amended effective July 1, 2015.)

Advisory Committee Comment - 2012 Amendment

Rule 16.01, subdivision 1, is amended to add the last sentence, which is intended to facilitate a pilot project on electronic filing and service, but is designed to be a model for the implementation of electronic filing and service if the pilot project is made permanent and statewide. The sole purpose of the amendment is to make explicit the status of "signatures" affixed to pleadings and other documents that are electronically filed and served. Whatever means are used to sign these documents, whether pen and ink, facsimile of a signature, or an indication that the document is signed (such as a "/s/ Pat Smith" notation), each will be treated the same way and deemed to be signatures for all purposes under the rule.

[For text of 16.02 to 16.04, see M.S. 2014, Volume 15]

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(19), 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 Sexually Exploited Child Matters. In addition to the parties identified in subdivision 1, in any matter alleging a child to be a

habitual truant, a runaway, or a sexually exploited child, the child, regardless of age, shall also be a party. In any matter alleging a child to be a habitual truant, the child's school district may be joined as a party pursuant to Rule 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; amended effective July 1, 2014; amended effective July 1, 2015.)

[For text of 21.02, see M.S. 2014, Volume 15]

21.03 Parties' Names and Addresses

It shall be the responsibility of the petitioner to set forth in the petition the names and addresses of all parties if known to the petitioner after reasonable inquiry, and to specify that each such person has party status. It shall be the responsibility of each party to inform the court administrator of any change of address or e-mail address; Registered Users of the E-Filing System shall also update any change of e-mail address in the E-Filing System. If a party is endangered, the party may ask the court to keep the party's name and address confidential and, if the court grants the request, the name and address shall be provided to the court in a separate information statement that shall not be accessible to the public, parties, or participants, but shall be accessible to the attorneys and the guardian ad litem.

(Amended effective January 1, 2004; amended effective July 1, 2014; amended effective July 1, 2015.)

Rule 22. Participants

[For text of 22.01 and 22.02, see M.S. 2014, Volume 15]

22.03 Participants' Names and Addresses

It shall be the responsibility of the petitioner to set forth in the petition the names and addresses of all participants if known to the petitioner after reasonable inquiry, and to specify that each such person has participant status. It shall be the responsibility of each participant to inform the court administrator of any change of address or e-mail address; Registered Users of the E-Filing System shall also update any change of e-mail address in the E-Filing System. If a participant is endangered, the participant may ask the court to keep the participant's name and address confidential and, if the court grants the request, the name and address shall be provided to the court in a separate information statement that shall not be accessible to the public, parties, or participants, but shall be accessible to the attorneys and the guardian ad litem.

(Amended effective January 1, 2004; amended effective July 1, 2014; amended effective July 1, 2015.)

Rule 28. Emergency Protective Care Order and Notice

[For text of 28.01, see M.S. 2014, Volume 15]

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, Sexually Exploited Child, 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 is a sexually exploited child, 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; amended effective July 1, 2015.)

[For text of 28.03 to 28.06, see M.S. 2014, Volume 15]

Rule 30. Emergency Protective Care Hearing

[For text of 30.01 to 30.08, see M.S. 2014, Volume 15]

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, 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 Bypass of Child In Need of Protection or Services Proceedings.

(a) **Permanency Determination.** Reasonable efforts to prevent placement and for rehabilitation and reunification are always required except upon notice by the county attorney and a determination by the court at the emergency protective care hearing, or at any time prior to adjudication, that a petition has been filed stating a prima facie case that at least one of the circumstances under Minnesota Statutes, section 260.012, paragraph (a), exists.

(b) **Permanency Hearing Required.** If the court makes a determination under subdivision 3(a), the court shall bypass the child in need of protection or services proceeding and shall proceed directly to permanency by scheduling 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; amended effective July 1, 2014; amended effective July 1, 2015.)

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.

[For text of 30.10 to 30.12, see M.S. 2014, Volume 15]

Rule 31. Methods of Filing and Service

31.01 Types of Filing

Subdivision 1. Generally; Electronic Filing. When a document is required to be filed electronically through the E-Filing System, the document shall be filed in accordance with Rule 14 of the General Rules of Practice for the District Courts. Otherwise, any document may be filed with the court personally, by U.S. mail, electronically through the E-Filing System, or by facsimile transmission.

Subd. 2. Filing by Facsimile Transmission.

(a) Any document not required to be filed through the E-Filing System may be filed with the court by facsimile transmission. Filing shall be deemed complete at the time that the facsimile transmission is received by the court. The facsimile shall have the same force and effect as the original. Only facsimile transmission equipment that satisfies the published criteria of the supreme court shall be used for filing in accordance with this rule.

(b) Within five (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 document 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; amended effective September 1, 2012; amended effective July 1, 2015.)

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.

Advisory Committee Comment - 2012 Amendment

Rule 31.01, subdivision 1, is amended to add the last sentence, which is intended to facilitate a pilot project on electronic filing and service, but is designed to be a model for the implementation of electronic filing and service if the pilot project is made permanent and statewide. The purpose of the amendment is to authorize electronic filing when authorized by order of the Minnesota Supreme Court.

31.02 Types of Service

Subdivision 1. Personal Service. Personal service means personally delivering the document to the person to be served or leaving it at the person's home or usual place of abode with a person of suitable age and discretion residing therein. Unless otherwise provided by these rules or ordered by the court, the sheriff 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. Whenever personal service is required under these rules, the court may authorize alternative personal service pursuant to Rule 31.02, subdivision 5.

(a) **Personal Service Outside State.** Personal service of a summons outside the state, proved by the affidavit of the person making the same, 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 the document in the U.S. mail, first class, postage prepaid, addressed to the person to be served.

Subd. 3. Publication. Service by publication substitutes for personal service when authorized by the court. Service by publication means the publication in full of the summons, notice, or other documents in the regular issue of a qualified newspaper, once each week for the number of weeks specified pursuant to Rule 32.02. The court shall authorize service by publication only if the petitioner has filed a written statement or affidavit describing diligent efforts to locate the person to be served. Service by publication shall be completed in a location approved by the court. The published summons shall be directed to the person for whom personal service was not accomplished and shall not include the child's name or initials. 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. Electronic Service. When authorized or required by Rule 14 of the General Rules of Practice for the District Courts, documents, except those required by these rules to be served personally or by registered U.S. mail return receipt requested, may, or, where

required, shall be served electronically by following the procedures of that rule and will be deemed served in accordance with the provisions of that rule.

Subd. 5. Alternative Personal Service.

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

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

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

(d) The court may order the costs of personal service to be paid by the person served, if such person does not complete and return the notice and acknowledgment form within twenty (20) days of the date it is mailed.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective September 1, 2012; amended effective July 1, 2014; amended effective July 1, 2015.)

2014 Advisory Committee Comment

Rule 31.06, subdivision 6, is based upon alternative personal service authorized under Rule 355.02, subdivision 1(c), of the General Rules of Practice for the District Courts.

31.03 Service by Electronic Means

Unless these rules require personal service or service through the E-Filing System, any document may be served by e-mail or other electronic means agreed upon in writing or on the record by the person to be served.

(Amended effective July 1, 2015.)

2015 Advisory Committee Comment

Rule 31.03 authorizes service by "electronic means." Pursuant to Rule 14.01(a)(7) of the General Rules of Practice for the District Courts, "electronic means" is defined as "transmission using computers or similar means of transmitting documents electronically, including facsimile transmission." Because "electronic means" includes "facsimile transmission," the reference in Rule 31.03 to "facsimile transmission" has been deleted.

[For text of 31.04 and 31.05, see M.S. 2014, Volume 15]

31.06 Completion of Service

Personal service is complete upon delivery of the document. Service by U.S. mail is complete upon mailing to the last known address of the person to be served. Completion of service by electronic means is governed by Rule 14.03(e) of the General Rules of Practice for the District Courts.

(Amended effective July 1, 2015.)

2015 Advisory Committee Comment

With respect to completion of service, Rule 14.03(e) of the General Rules of Practice for the District Courts provides "[s]ervice is complete upon completion of the electronic transmission of the document to the E-Filing System notwithstanding whether the document is subsequently rejected for filing by the court administrator. Service by facsimile transmission, where authorized, is complete upon the completion of the facsimile transmission." Similar to service by U.S. mail, which is complete when sent rather than when received,

the intent of Rule 31.06 is that service through the E-Filing System is complete when the document is transmitted to the E-Filing System and service by e-mail is complete when the e-mail is sent.

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 an affidavit of service stating:

- (a) whether the document was served;
- (b) the method of service;
- (c) the name of the person served; and
- (d) the date and place of service.

If the court administrator served the document, the court administrator may file a written statement in lieu of an affidavit.

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 certificate of distribution under oath or penalty of perjury under Minnesota Statutes, section 358.116, 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; amended effective July 1, 2015.)

Rule 32. Summons and Notice

[For text of 32.01, see M.S. 2014, Volume 15]

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.** Except as provided in subdivision 3, the court shall serve a summons and petition upon each party identified in Rule 21; the child's parents, except alleged fathers who shall be served a notice of hearing pursuant to Rule 32.03; and any other person whose presence the court deems necessary to a determination concerning the best interests of the child. The cost of service of a summons and petition filed by someone other than a 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 parent or legal guardian, and any attorney representing a party in an ongoing child in need of protection or services proceeding involving the subject child. A summons shall not be served upon a putative father, as defined in Minnesota Statutes, section 259.21, who has failed to timely register with the Minnesota Fathers' Adoption Registry under Minnesota Statutes, section 259.52, unless that individual also meets the requirements of Minnesota Statutes, section 257.55, or is required to be given notice under Minnesota Statutes, section 259.49, subdivision 1.

Subd. 3. Service.

(a) **Parents, Parties, and Attorneys.** 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 parents or legal guardian. Service of the summons and petition upon parties and attorneys shall be made through the E-Filing System or by personal service, U.S. mail, e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court. Alleged parents and participants shall be served a notice of hearing and petition pursuant to Rule 32.03. The court may authorize alternative personal service pursuant to Rule 31.02, subdivision 5.

(b) **Habitual Truant, Runaway, and Sexually Exploited Child 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 a sexually exploited child, initial service may be made as follows:

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

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

(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.** In all cases involving a voluntary placement of a child pursuant to Rule 44, the summons shall be served upon the parent or legal custodian personally, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

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 served 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; amended effective July 1, 2014; amended effective July 1, 2014; amended effective July 1, 2015.)

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, the court administrator, or designee, shall 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. Method of Service.

(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, including, but not limited to, phone calls, personal service, the E-Filing System, or e-mail or other electronic means agreed upon in writing by the person to be served, 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 the notice of hearing and petition through the E-Filing System or

by personal service, U.S. mail, e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009; amended effective July 1, 2015.)

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

(a) **Upon Whom.** For each hearing following the emergency protective care or admit/deny hearing, the court shall order and the court administrator shall serve upon each party, participant, and attorney a written notice of the date, time, and location of the next hearing.

(b) **Form.** The notice may be on a form prepared by the State Court Administrator or included in the order resulting from the hearing.

(c) **Timing.** Unless otherwise ordered by the court, such notice shall be personally served by the close of the current hearing. If not served by the close of the current hearing, the notice shall be served as soon as possible after the hearing, but no later than five (5) days before the date of the next hearing or ten (10) days before the date of the next hearing if mailed to an address outside of the state.

(d) **Method of Service.** If not served by the close of the current hearing, the notice may be served by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as directed by the court.

(Added effective January 1, 2004; amended effective January 1, 2007; amended effective July 1, 2015.)

2015 Advisory Committee Comment

Rule 32.04 is amended in 2015 to encourage the best practice of personally serving the notice of hearing by the close of the current hearing. The Committee recognizes that in some instances the date of the next hearing cannot reasonably be set by the close of the current hearing because of scheduling difficulties. In those instances, the notice may be served by authorized alternative means following the current hearing.

[For text of 32.05, see M.S. 2014, Volume 15]

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 U.S. 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; amended effective July 1, 2015.)

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 confidential information or confidential documents as attachments that are inaccessible to the public under Rule 8.04 of these rules, the petitioner shall file the confidential information or confidential documents in the manner required under Rule 8.04, subdivision 5.

Subd. 2. Habitual Truant and Runaway Matters. A matter based solely on grounds that a child is a habitual truant or a runaway may be initiated by citation issued by a peace officer or school attendance officer. 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 a file separate from 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.515, subdivision 4, 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 a file separate from 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; amended effective July 1, 2014; amended effective July 1, 2015.)

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 an 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;

(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;

(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); and

(k) when appropriate under the circumstances of the case, notice that:

(1) a proceeding to establish a parent and child relationship or to declare the nonexistence of a parent and child relationship may be brought at the same time as the juvenile protection matter; and

(2) parents may apply for parentage establishment and child support services through the county child support agency.

If any information required by 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 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 an 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 permanent custody to the agency shall be entitled "Juvenile Protection Petition for Permanent Custody to the Agency."

(3) A request for temporary legal custody to the agency for a child adjudicated to be in need of protection or services solely on the basis of the child's behavior shall be entitled "Juvenile Protection Petition for Temporary Legal Custody to the Agency."

(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, parties, or participants, but it shall be accessible to the attorneys and guardian ad litem. Upon notice and motion, the court may disclose the name or address to others as it deems appropriate.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009; amended effective July 1, 2014; amended effective July 1, 2015.)

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.

2014 Advisory Committee Comment

Under Rule 33.02, subdivision 1(k), if appropriate under the circumstances of the case, the petitioner shall give notice to the child's parents that a parentage matter may be brought and of the availability of parentage establishment and child support services through the county child support agency. This notice can help introduce parents to the benefits of establishing the legal parent and child relationship and of the benefits to the child of partnership on financial issues. Unless prohibited by federal law, the county child support agency has the obligation to bring an action to establish the parent and child relationship when a parent, including an alleged father, or the responsible social services agency who has legal responsibility for the placement of a child applies for full child support services, unless good cause is claimed and substantiated under Minnesota Statutes, section 256.741, subdivisions 5 to 13.

[For text of 33.03 to 33.05, see M.S. 2014, Volume 15]

Rule 35. Admission or Denial

[For text of 35.01 and 35.02, see M.S. 2014, Volume 15]

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 Sexually Exploited Child Matters.** In addition to the questions set forth in subdivision 3(a), before accepting an admission in a child in need of protection or services matter or a matter alleging a child to be a habitual truant, a runaway, or a sexually exploited child, the court shall also determine on the record or by 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 or nonresident parent, 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 or nonresident parent.

Subd. 4. Basis for Admission. The court shall refuse to accept an admission unless there is a factual basis for the admission.

(a) **Full Admission.** A party may admit all of the statutory grounds set forth in the petition.

(b) **Partial Admission.** Pursuant to a Rule 19 settlement agreement, a 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; amended effective July 1, 2014; amended effective July 1, 2015.)

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

[For text of 37.01, see M.S. 2014, Volume 15]

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.

(a) **Generally.** 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.

(b) Child's Education, Health, and Mental Health Records in the Out-of-Home Placement Plan; When Accessible by Parties and Participants. The following portions of or attachments to the out-of-home placement plan shall be filed in the manner required for confidential information and confidential documents under Rule 8.04, subdivision 5, and shall be accessible only to the parties and participants of the particular juvenile protection matter as permitted under Rule 8.04 of these rules:

(1) the educational records of the child required under Minnesota Statutes, section 260C.212, subdivision 1, paragraph (c), clause (8);

(2) information pertaining to the oversight of the child's health as provided in Minnesota Statutes, section 260C.212, subdivision 1, paragraph (c), clause (9);

(3) the health records of the child required under Minnesota Statutes, section 260C.212, subdivision 1, paragraph (c), clause (10); and

(4) records of the child's diagnostic and assessment information, specific services relating to meeting the mental health care needs of the child, and treatment outcomes as provided in Minnesota Statutes, section 260C.212, subdivision 1, paragraph (c), clause (12).

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 serve written notice of the approval of the plan upon 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. If the court directs that written notice of the approval of the case plan be served, such notice may be served by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as directed by the court.

(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; amended effective July 1, 2015.)

[For text of 37.03 to 37.06, see M.S. 2014, Volume 15]

Rule 38. Reports to the Court

[For text of 38.01 to 38.06, see M.S. 2014, Volume 15]

38.07 Social Services Court Report - Child under State Guardianship

Subdivision 1. Timing. When a hearing is required under Minnesota Statutes, section 260C.607, to review the progress of the matter towards finalized adoption and the child's well-being, in addition to the requirements of Rules 38.01 and 38.02, and as appropriate to the stage of the matter, the agency shall file and serve a report addressing the elements of Minnesota Statutes, section 260C.607, subdivision 4.

Subd. 2. Content.

(a) **Information for Notice of Hearing.** In a document attached to the report, which shall be inaccessible to the public or to any parent of the child whose rights have been terminated or who has executed a consent to adopt the child, the agency shall include the following information required for the court to provide notice of the hearing:

- (1) the child's current address, if the child is age ten (10) and older;
- (2) the names and addresses of each relative of the child who has responded to the agency's notice under Minnesota Statutes, section 260C.221, paragraph (g), indicating a willingness to provide an adoptive home for the child unless the relative has been previously ruled out by the court as a suitable foster parent or permanency resource for the child;
- (3) the name and address of the current foster or adopting parent of the child;
- (4) the name and address of any foster or adopting parents of siblings of the child; and
- (5) the name and address of the Indian child's tribe.

(b) **Progress towards Finalized Adoption.** The report shall describe the agency's reasonable efforts to finalize the child's adoption as required in Minnesota Statutes, section 260C.605, including:

- (1) the steps taken to identify and place the child in a home that will timely commit to adopt the child, including:
 - (i) the status of any relative search under Minnesota Statutes, section 260C.221;
 - (ii) whether any relative of the child has expressed interest in adopting the child, and, if so, the agency's consideration of the relative according to the requirements of Minnesota Statutes, section 260C.212, subdivision 2, paragraphs (a) and (b);
 - (iii) the progress of any study required under Minnesota Statutes, section 260.851, the Interstate Compact on the Placement of Children; and

(iv) whether child-specific recruitment efforts are necessary and, if so, the nature and timing of those efforts; and

(2) if the child is placed with a prospective adoptive home, expected dates for the following:

(i) completion of the adoption study required under Minnesota Statutes, section 260C.611;

(ii) the execution of the adoption placement agreement;

(iii) the required notice under Minnesota Statutes, section 260C.613, subdivision 1, paragraph (c);

(iv) the execution of an agreement regarding adoption assistance under Minnesota Statutes, chapter 259A, or Northstar Adoption Assistance under Minnesota Statutes, chapter 256N, including the specific reasons for any delay in executing the agreement;

(v) the filing of the adoption petition; and

(vi) the final hearing on the adoption petition.

(c) **Child Well-being.** In addition to reporting on the agency's efforts to finalize adoption, the report shall address the child's well-being, including:

(1) how the child's placement is meeting the child's best interests;

(2) the quality and frequency of visitation and contact between the child and siblings and, if applicable, relatives;

(3) how the agency is meeting the child's medical, mental, and dental health needs;

(4) how the agency is planning for the child's education pursuant to Minnesota Statutes, section 260C.607, subdivision 4, paragraph (a), clause (2); and

(5) when the child is age sixteen (16) or older, progress in implementing each of the elements of the child's independent living plan required under Minnesota Statutes, section 260C.212, subdivision 1, paragraph (b), clause (11), while the agency continues to make reasonable efforts to finalize an adoption for the child.

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

Subd. 4. Adoption Placement Agreement.

(a) **Notice of Agreement.** When the agency has a fully executed adoption placement agreement under Minnesota Statutes, section 260C.613, subdivision 1, the agency shall report to the court that the adoptive placement has been made and the adoption placement agreement regarding the child is fully executed. The agency shall file and serve on the parties entitled to notice under Minnesota Statutes, section 260C.607, subdivision 2, a copy of the court report together with notice that there is a fully executed adoption placement agreement. The notice shall include a statement that if a relative or foster parent is requesting adoptive placement of the child, the relative or foster parent has thirty (30) days after receiving the notice to file a motion for an order for adoption placement of the child under Minnesota Statutes, section 260C.607, subdivision 6. Service of the report by a Registered User of the E-Filing System upon another Registered User shall be made in compliance with Rule 14.03 of the General Rules of Practice for the District Courts. All other service of the report shall be by personal service, U.S. mail, or e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

(b) **Notice of Termination of Agreement.** In the event an adoption placement agreement terminates, the agency shall report that the agreement and adoptive placement

have terminated. The agency shall file and serve a copy of the report upon the parties entitled to notice under Minnesota Statutes, section 260C.607, subdivision 2, and shall send a copy of the report to the commissioner of human services by U.S. mail. Service of the report by a Registered User of the E-Filing System upon another Registered User shall be made in compliance with Rule 14.03 of the General Rules of Practice for the District Courts. All other service of the report shall be by personal service, U.S. mail, or e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

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

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

(Added effective July 1, 2014; amended effective July 1, 2015.)

2014 Advisory Committee Comment

Rule 38.07 sets out required report elements for the agency regarding its duties to a child under guardianship of the commissioner of human services. These duties include:

1. Reasonable efforts to finalize adoption. Minnesota Statutes, section 260C.605, outlines required reasonable efforts to finalize the adoption of the child. The efforts to be made are different based on the amount of time the child has been under state guardianship and the particular needs and circumstances of the child. Some efforts are required to begin even prior to the child coming under the guardianship of the state, including consideration of who is going to be an appropriate adoptive home for the child in the event the child cannot return home and work on the child's social and medical history. Other efforts can only be made after the child is under state guardianship. The court report elements in Rule 38.07 are intended to organize required reasonable efforts into general topics to assist the court in conducting a meaningful review of progress towards adoption.

Under Minnesota Statutes, section 260C.613, subdivision 1, the agency has exclusive authority to make the adoptive placement of the child. Ideally, identification of a potential adoptive home begins as part of concurrent permanency planning as early as possible in the child's placement. The first review of efforts to find an adoptive home occurs after six months of placement in the permanency progress review hearing required under Rule 42 and Minnesota Statutes, section 260C.204. When the child cannot return home and is under guardianship of the commissioner of human services, the court continues to review the agency's efforts to make an adoptive placement until the adoption is finalized. Under Minnesota Statutes, section 260C.613, subdivision 1, the agency must report when it has made an adoptive placement through a fully executed adoption placement agreement. "Fully executed" means the document has been signed by the adopting parent, the responsible social services agency, and the commissioner of human services. The report and notice of the agreement are sent to all who had the right to participate in the reviews required under Rule 42. The notice gives relatives and foster parents who have not been selected by the agency for adoptive placement an opportunity to ask the court to override the agency's adoptive placement decision when the agency has been unreasonable in choosing the adoptive home. This standard is set out at Minnesota Statutes, section 260C.607, subdivision 6.

The agency's reasonable efforts to finalize the child's adoption include negotiating an agreement with the adopting parent regarding future benefits for the child. In this regard, Rule 38.07 references both adoption assistance under Minnesota Statutes, chapter 259A, in effect until December 31, 2014, and Northstar Adoption Assistance under Minnesota Statutes, chapter 256N, in effect for adoptions finalized on or after January 1, 2015.

Under Minnesota Statutes, section 260C.613, subdivision 1, the agency must also report in the event an adoption placement agreement is terminated.

2. Child Well-Being. Minnesota Statutes, section 260C.607, subdivision 4, requires the agency to report on its efforts to implement the child's Out-of-Home Placement Plan, which sets out the service plan for the child, focuses on the child's well-being, and, when the child is age 16 or older, the plan for helping the child achieve success in adulthood through the independent living planning required under Minnesota Statutes, section 260C.212, subdivision 1, paragraph (b), clause (11).

[For text of 38.08 and 38.09, see M.S. 2014, Volume 15]

38.10 Objections to Agency's Report or Recommendations

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

(Added effective July 1, 2014; amended effective July 1, 2015.)

38.11 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.

Subd. 2. Timing of Filing and Service. The guardian ad litem shall file the report with the court and serve it upon all parties at least five (5) business days prior to the hearing at which the report is to be considered, including a review hearing required under Rule 41.06, permanent placement review hearing under Minnesota Statutes, section 260C.204, review of a child under guardianship of the commissioner of human services under Minnesota Statutes, section 260C.607, any reviews conducted regarding a child in the permanent custody of the agency under Minnesota Statutes, section 260C.521, and as otherwise directed by the court.

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

Subd. 4. Certificate of Distribution. Each report shall contain or have attached the certificate of distribution required under Rule 31.07, subdivision 2.

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

- (a) be captioned in the name of the case and include the court file number;
- (b) include the following information:
 - (1) the name of the person submitting the report;
 - (2) the names of the child's parents or legal custodians;
 - (3) the date of the report;
 - (4) the date of the hearing at which the report is to be considered;
 - (5) the date the guardian ad litem was appointed by the court;

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

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

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

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

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

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

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

Subd. 6. Objections to Guardian Ad Litem's Report or Recommendations. Any party may object to the content or recommendations of the guardian ad litem by submitting a written objection either before or at the hearing at which the report is to be considered. The objection shall include a statement certifying the content as true based upon personal observation, first-hand knowledge, or information and belief. The certified objection shall be supported by a statement made under oath or penalty of perjury under Minnesota Statutes, section 358.116, stating the party's factual basis for the objection and may state other or additional facts on information and belief and argument that the court should consider in making its determinations or orders. An objection may also be supported by reports from collateral service providers or assessors. Objections to the guardian ad litem's report and recommendations may also be stated on the record, but the court shall give the guardian ad litem a reasonable opportunity to respond to the party's objection.

(Added effective July 1, 2014; amended effective July 1, 2015.)

Rule 39. Trial

[For text of 39.01 to 39.04, see M.S. 2014, Volume 15]

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 Sexually Exploited Child 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 and Minnesota Statutes, sections 260C.513 and 260C.515. 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 3(a), and Minnesota Statutes, section 260C.517, 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; amended effective July 1, 2014; amended effective July 1, 2015.)

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 or nonresident parent, and where reasonable efforts for reunification are required, the first order placing the child in foster care or the home of a noncustodial or nonresident parent shall set the date or deadline for:

(a) the 12-month admit/deny hearing commencing permanent placement determination proceedings required under Rule 42.01, subdivision 5(b); and

(b) the 6-month permanency progress review hearing required under Rule 42.01, subdivision 5(a).

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 or nonresident parent at the earlier of:

(a) the date of the child's placement in foster care or in the care of a noncustodial or nonresident 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 or nonresident 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.** 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 or nonresident parent.

(b) **Requirement of Twelve (12) Month Hearing.** The court shall commence permanent placement determination proceedings to determine the permanent status of the child not later than twelve (12) months after the child is placed in foster care or in the home of a noncustodial or nonresident 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 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; amended effective July 1, 2014; amended effective July 1, 2015.)

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.

[For text of 42.02 to 42.14, see M.S. 2014, Volume 15]

42.15 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.505, paragraph (a), 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 personally, by U.S. mail, through the E-Filing System, or by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

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; amended effective July 1, 2014; amended effective July 1, 2015.)

2008 Advisory Committee Comment

Rule 42.15, 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.

[For text of 42.16 and 42.17, see M.S. 2014, Volume 15]

Rule 43. Review of Children in Voluntary Foster Care for Treatment

[For text of 43.01 to 43.03, see M.S. 2014, Volume 15]

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 or penalty of perjury under Minnesota Statutes, section 358.116, 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 personally, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court, 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 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; amended effective July 1, 2015.)

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 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. Service of the report by a Registered User of the E-Filing System upon another Registered User shall be made in compliance with Rule 14.03 of the General Rules of Practice. All other service of the report shall be by personal service, U.S. mail, or e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court. 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 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. The notice may be served personally, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

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 and to conduct a genuine examination of whether there is another permanency disposition order under Minnesota Statutes, chapter 260C, including returning the child home, that would better serve the child's need for a stable and permanent home;

(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 (11), 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; amended effective July 1, 2014; amended effective July 1, 2015.)

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.227.

Subd. 2. Jurisdiction. The court assumes jurisdiction to review a voluntary foster care placement of a child pursuant to Minnesota Statutes, section 260C.227, 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; amended effective July 1, 2014; amended effective July 1, 2015.)

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 and shall schedule a hearing pursuant to subdivision 3. The petition may be served personally, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

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.227, 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.503, subdivision 1, 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; amended effective July 1, 2014; amended effective July 1, 2015.)

2008 Advisory Committee Comment

Rule 44.02, subdivision 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.

[For text of 44.03, see M.S. 2014, Volume 15]

Rule 47. Appeal

47.01 Applicability of Rules of Civil Appellate Procedure

Except as provided in Rule 47.02 and Rule 47.07, appeals of juvenile protection matters shall be in accordance with the Rules of Civil Appellate Procedure.

(Amended effective July 1, 2015.)

[For text of 47.02 to 47.07, see M.S. 2014, Volume 15]

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.** Any written objection by a Registered User of the E-Filing System shall be served upon another Registered User in compliance with Rule 14.03 of the General Rules of Practice for the District Court. All other service of the written objection shall be made by personal service, U.S. mail, or e-mail or other electronic means agreed upon in writing by the person to be served. Service of the written objection shall be accomplished by the parent's attorney or by the court administrator when the parent is not represented by counsel. 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; amended effective July 1, 2015.)

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).

[For text of 48.02, see M.S. 2014, Volume 15]

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 according to the requirements of Rule 10. The court administrator shall forward a certified copy of the complete court file personally, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the trial court official, as otherwise directed by the transferor court, or any other means reasonably calculated to ensure timely receipt of the file by the tribal court.

(Added effective August 1, 2009; amended effective July 1, 2015.)

Minnesota Rules of Adoption Procedure

Rules effective January 1, 2005
With amendments effective July 1, 2015

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TEXT OF RULES**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, subdivision 3, to be the biological father of the child.

(2) **"Adoption case records"** means all records regarding a particular adoption matter filed with or generated by the court, including orders, notices, the register of actions, the index, the calendar, and the official transcript. See also "records" defined in subdivision (30).

(3) **"Adult adoption"** means the adoption of a person at least 18 years of age.

(4) **"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, direct placement adoption, intercountry adoption, adoption resulting from a juvenile protection matter, proceeding under Minnesota Statutes, sections 260C.601 to 260C.637, and any other type of adoption proceeding.

(5) **"Adoption placement agreement"** has the meaning given under Minnesota Statutes, section 260C.603, subdivision 3.

(6) **"Adoptive placement"** has the meaning given under Minnesota Statutes, section 260C.603, subdivision 5.

(7) **"Affidavit"** is as defined in rule 15 of the General Rules of Practice for the District Courts.

(8) **"Agency,"** as defined in Minnesota Statutes, section 259.21, subdivision 6, and as referenced in Minnesota Statutes, sections 245A.02 to 245A.16 and 260C.007, 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.

(9) **"Birth relative,"** for purposes of entering into a communication or contact agreement pursuant to Rule 34.01, subdivision 2, 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).

(10) **"Child"** means a person under the age of eighteen (18) years.

(11) **"Child placing agency"** means a private agency making or supervising an adoptive placement.

(12) "**Commissioner**" means the Commissioner of Human Services of the State of Minnesota or any employee of the Department of Human Services to whom the commissioner has delegated authority regarding children under the commissioner's guardianship.

(13) "**Contested adoption**" means an adoption matter where:

- (a) there are two or more adoption petitions regarding the same child;
- (b) a party has filed a written challenge to the adoption; or
- (c) a legal custodian or legal guardian who is not a parent has withheld consent.

(14) "**Contested adoptive placement**" applies to children under the guardianship of the Commissioner of Human Services and means that portion of procedures under Rule 42.11 of the Rules of Juvenile Protection Procedure and Minnesota Statutes, section 260C.607, subdivision 6, which provides for motion and hearing to contest the adoptive placement of a child under guardianship of the Commissioner of Human Services.

(15) "**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.

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

(17) "**Father.**" See "adjudicated father" and "putative father" as defined in this rule.

(18) "**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.

(19) "**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.

(20) "**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).

(21) "**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(31).

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

(23) "**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.

(24) "**Local social services agency**" means the agency in the county of the petitioner's residence.

(25) "**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.

(26) **"Petitioner"** means a person, with a spouse, if any, petitioning for the adoption of any person pursuant to Minnesota Statutes, sections 259.20 to 259.89. "Petitioner" also means the responsible social services agency petitioning for the adopting parent to adopt a child under state guardianship pursuant to Minnesota Statutes, section 260C.623.

(27) **"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.

(28) **"Placement activities"** means any of the following:

- (a) placement of a child;
- (b) arranging or providing short-term foster care pending an adoptive placement;
- (c) facilitating placement by maintaining a list in any form of biological parents or prospective adoptive parents;
- (d) completing or updating a child's social and medical history as required under Minnesota Statutes, sections 259.41 and 260C.611;
- (e) conducting an adoption study;
- (f) witnessing consents to an adoption; or
- (g) 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, section 260.851.

(29) **"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:

- (a) is not married to the child's mother on or before the date that the child was or is to be born; and
- (b) 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
- (c) has not signed a recognition of parentage under Minnesota Statutes, section 257.75, which has not been revoked or vacated.

(30) **"Records"** is as defined in Rule 3 of the Rules of Public Access to Records of the Judicial Branch. See also "adoption case records" defined in subdivision (2).

(31) **"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(21).

(32) **"Responsible social services agency"** means the county agency acting as agent of the Commissioner of Human Services when the commissioner is legal guardian of the child.

(33) **"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.

(34) **"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; amended effective July 1, 2014; amended effective July 1, 2015.)

Rule 3. Applicability of Other Rules and Statutes

[For text of 3.01 to 3.08, see M.S. 2014, Volume 15]

3.09 General Rules of Practice for the District Courts

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

(Added effective July 1, 2015.)

3.10 Rules of Public Access to Records of the Judicial Branch

The Rules of Public Access to Records of the Judicial Branch apply to adoption case records.

(Added effective July 1, 2015.)

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.

2015 Advisory Committee Comment

Rule 3.09 is added to clarify the applicability of the General Rules of Practice to adoption matters.

Rule 5 of the General Rules of Practice provides, in part: "Lawyers who are admitted to practice in the trial courts of any other jurisdiction may appear in any of the courts of this state provided (a) the pleadings are also signed by a lawyer duly admitted to practice in the State of Minnesota, and (b) such lawyer admitted in Minnesota is also present before the court, in chambers or in the courtroom or participates by telephone in any hearing conducted by telephone." General Rule 5 is being amended in 2015 to provide an "out-of-state lawyer is subject to all rules that apply to lawyers admitted in Minnesota, including rules related to e-filing." Consistent with the letter and spirit of the Indian Child Welfare Act, the Juvenile Protection Rules Committee does not want to place any barriers to participation by Indian tribes in adoption matters. For that reason, Rule 3.09 is added to provide that the requirements of Rule 5 dealing with pro hac vice and electronic filing are not applicable to attorneys who represent Indian tribes.

2015 Advisory Committee Comment

Rule 3.10 is added to clarify the applicability of the Rules of Public Access to adoption case records.

Rule 4. Time; Timelines

[For text of 4.01, see M.S. 2014, Volume 15]

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

Whenever a person has the right or is required to do an act within a prescribed period after the service of a notice or other document served by U.S. mail, three (3) days shall be added to the prescribed period. If service is made by any means other than U.S. mail and

accomplished after 5:00 p.m. local time on the day of service, one (1) additional day shall be added to the prescribed period.

(Amended effective July 1, 2015)

Rule 7. Access to Adoption Case Records and Birth Record Information

[For text of 7.01, see M.S. 2014, Volume 15]

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 or through the E-Filing System if the Commissioner has the resources and technical capacity to accept electronic service. 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 or through the E-Filing System if the agency has the resources and technical capacity to accept electronic service.

(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.

(Amended effective July 1, 2015)

2004 Advisory Committee Comment

Rule 7.01, subdivision 4, sets forth the substantive law of the Indian Child Welfare Act.

[For text of 7.03 to 7.09, see M.S. 2014, Volume 15]

Rule 10. Orders

[For text of 10.01 and 10.02, see M.S. 2014, Volume 15]

10.03 Service

Subdivision 1. Court Orders - Persons to be Served and Method of Service. Service of court orders shall be made by the court administrator upon each party and such other persons as the court may direct. Service may be made personally at the hearing, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court. If a party is represented by counsel, service shall be upon such counsel. Filing and service 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 - Persons to be Served and Method of Service. The findings of fact, conclusions of law, order for judgment, and adoption decree issued pursuant to Rule 45 shall be served by the court administrator personally at the hearing, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court upon:

- (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 service 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; amended effective July 1, 2015.)

[For text of 10.04, see M.S. 2014, Volume 15]

Rule 13. Subpoenas

[For text of 13.01 and 13.02, see M.S. 2014, Volume 15]

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. Upon written agreement of the witness, a subpoena may be served by U.S. mail, through the E-Filing System, or by e-mail or other electronic means.

(Amended effective July 1, 2015.)

[For text of 13.04 to 13.08, see M.S. 2014, Volume 15]

Rule 15. Motions

[For text of 15.01, see M.S. 2014, Volume 15]

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 by a Registered User of the E-Filing System upon another Registered User shall be made in compliance with Rule 14.03 of the General Rules of Practice for the District Courts. In all other circumstances, service of a motion shall be made by personal service, U.S. mail, or e-mail or other electronic means agreed upon in writing by the person to be served.

Subd. 3. Time.

(a) **Motion.** Except for motions pursuant to Rule 29, no motion shall be heard until the moving party serves the following documents on the other parties and files them with the court 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 the following documents on the moving party and other interested parties and shall file them with the court 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; amended effective July 1, 2015.)

[For text of 15.03, see M.S. 2014, Volume 15]

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

16.01 Signing of Pleadings, Motions, and Other Documents

Subdivision 1. Party Represented by an Attorney. When a party is represented by an attorney, every pleading, motion, and other similar document 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, e-mail 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 similar document filed with the court and shall state the party's address, e-mail address if the party is a Registered User of the E-Filing System, and telephone number. If a party asserts that providing the address, e-mail address, and telephone number is not in the best interests of the child, the information 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, e-mail address, and telephone number as it deems appropriate. Service of a motion by a Registered User of the E-Filing System upon another Registered User shall be made in compliance with Rule 14.03 of the General Rules of Practice. All other service of a motion shall be made by personal service, U.S. mail, or e-mail or other electronic means agreed upon in writing by the person to be served.

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 document has been read;
- (b) to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, the pleading, motion, or other document 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.

The filing, serving, or submitting of a document through the E-Filing System constitutes certification of compliance with the signature requirements of Rule 16.

(Amended effective September 1, 2012; amended effective July 1, 2015.)

Advisory Committee Comment - 2012 Amendment

Rule 16.01, subdivision 3, is amended to add the last paragraph, which is intended to facilitate a pilot project on electronic filing and service, but is designed to be a model for the implementation of electronic filing and service if the pilot project is made permanent and statewide. The sole purpose of the amendment is to make explicit the status of "signatures" affixed to pleadings and other documents that are electronically filed and served. Whatever

means are used to sign these documents, whether pen and ink, facsimile of a signature, or an indication that the document is signed (such as a "/s/ Pat Smith" notation), each will be treated the same way and deemed to be signatures for all purposes under the rule.

16.02 Sanctions

If a pleading, motion, affidavit, or other similar document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, affidavit, or other similar document is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, including sanctions permitted pursuant to Rule 11 of the Minnesota Rules of Civil Procedure, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, affidavit, or other similar document, including reasonable attorney fees.

(Amended effective September 1, 2012; amended effective July 1, 2015.)

Rule 19. Settlement

[For text of 19.01 and 19.02, see M.S. 2014, Volume 15]

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) notarized signatures of all parties to the settlement.

(Amended effective July 1, 2015.)

[For text of 19.04, see M.S. 2014, Volume 15]

Rule 20. Parties

[For text of 20.01 and 20.02, see M.S. 2014, Volume 15]

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 or e-mail address; Registered Users of the E-Filing System shall also update any change of e-mail address in the E-Filing System. For good cause shown, the court may grant a party's request to keep the party's address confidential.

(Amended effective July 1, 2015.)

Rule 25. Methods of Filing and Service

25.01 Types of Filing

Subdivision 1. Generally; Electronic Filing. When a document is required to be filed electronically through the E-Filing System, the document shall be filed in accordance with Rule 14 of the General Rules of Practice for the District Courts. Otherwise, any document may be filed with the court personally, by U.S. mail, electronically through the E-Filing System, or by facsimile transmission.

Subd. 2. Filing by Facsimile Transmission. Any document not required to be filed electronically through the E-Filing System 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 document 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; amended effective September 1, 2012; amended effective July 1, 2015.)

25.02 Types of Service

Subdivision 1. Personal Service. Personal service means personally delivering the document to the person to be served or leaving it at the person's home or usual place of abode with a person of suitable age and discretion residing therein. Unless otherwise provided by these rules or ordered by the court, the sheriff 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. Any social services reports or guardian ad litem reports may be served directly by the social worker and guardian ad litem. Whenever personal service is required under these rules, the court may authorize alternative personal service pursuant to Rule 25.02, subdivision 5.

(a) **Personal Service Outside State.** Personal service of a summons outside the state, proved by the affidavit of the person making the same, 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 outside the United States:

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

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

(a) in the manner prescribed by the law of the foreign country for service in that 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 person to be served; or
- (3) by other means not prohibited by international agreement as may be directed by the court.

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

Subd. 3. Publication. Service by publication substitutes for personal service when authorized by the court. Service by publication means the publication in full of the summons, notice of hearing, or other documents in the regular issue of a qualified newspaper, once each week for the number of weeks specified pursuant to Rule 31.04, subdivision 2. The court shall authorize service by publication only if the petitioner has filed a written statement or affidavit describing diligent efforts to locate the person to be served. Service by publication shall be completed by the petitioner in a location approved by the court. The published summons shall be directed to the person for whom personal service was not accomplished and shall not include the child's name or initials. 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. Electronic Service. When authorized or required by Rule 14 of the General Rule of Practice, documents, except those required by these rules to be served personally or by registered U.S. mail return receipt requested, may, or where required, shall be served electronically by following the procedures of that rule and will be deemed served in accordance with the provisions of that rule.

Subd. 5. Alternative Personal Service. (a) Alternative personal service may be made by mailing by first-class U.S. mail, postage prepaid to the person to be served, a copy of the document to be served together with two copies of a notice and acknowledgment of service by mail conforming substantially to a form to be developed by the State Court Administrator, along with a return envelope, postage prepaid, addressed to the sender.

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

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

(d) The court may order the costs of personal service to be paid by the person served, if such person does not complete and return the notice and acknowledgment form within twenty (20) days of the date it is mailed.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective September 1, 2012; amended effective July 1, 2015.)

Advisory Committee Comment - 2012 Amendment

Rule 25.02, subdivision 5, is added to facilitate a pilot project on electronic filing and service, but is designed to be a model for the implementation of electronic filing and service if the pilot project is made permanent and statewide. The purpose of the amendment is to authorize electronic service by use of an authorized E-Filing and E-Service System if authorized by rule or order of the Minnesota Supreme Court. Service by electronic means is allowed for all documents except those required to be served personally or by registered mail return receipt requested.

2015 Advisory Committee Comment

Rule 25.02, subdivision 5, is based upon alternative personal service authorized under Rule 355.02, subdivision 1(c), of the General Rules of Practice for the District Courts.

25.03 Service by Electronic Means

Unless these rules require personal service or service through the E-Filing System, any document may be served by e-mail or other electronic means upon written or on the record agreement of the person to be served.

(Amended effective July 1, 2015.)

2015 Advisory Committee Comment

Rule 25.03 authorizes service by "electronic means." Pursuant to Rule 14.01(a)(7) of the General Rules of Practice for the District Courts, "electronic means" is defined as "transmission using computers or similar means of transmitting documents electronically, including facsimile transmission." Because "electronic means" includes "facsimile transmission," the reference in Rule 25.03 to "facsimile transmission" has been deleted.

[For text of 25.04 and 25.05, see M.S. 2014, Volume 15]

25.06 Completion of Service

Personal service is complete upon delivery of the document. Service by U.S. mail is complete upon mailing to the last known address of the person to be served. Completion of service by electronic means is governed by Rule 14.03(e) of the Minnesota Rules of General Practice for the District Courts.

(Amended effective July 1, 2015.)

2015 Advisory Committee Comment

With respect to completion of service, Rule 14.03(e) of the General Rules of Practice for the District Courts provides "service is complete upon completion of the electronic transmission of the document to the E-Filing System notwithstanding whether the document is subsequently rejected for filing by the court administrator. Service by facsimile transmission, where authorized, is complete upon the completion of the facsimile transmission." Similar to service by U.S. mail, which is complete when sent rather than when received, the intent of Rule 25.06 is that service through the E-Filing System is complete when the document is transmitted to the E-Filing System and service by e-mail is complete when the e-mail is sent.

[For text of 25.07, see M.S. 2014, Volume 15]

Rule 29. Direct Placement Adoption

[For text of 29.01 and 29.02, see M.S. 2014, Volume 15]

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) 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; amended effective July 1, 2015.)

[For text of 29.04, see M.S. 2014, Volume 15]

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 or IH-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 petition signed by the adoptive parent under oath or penalty of perjury under Minnesota Statutes, section 358.116:

- (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 or IH-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; amended effective July 1, 2015.)

[For text of 30.02, see M.S. 2014, Volume 15]

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, IH-3, IR-4, or

IH-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; amended effective July 1, 2015.)

Rule 31. Notice of Final Hearing or Trial

[For text of 31.01 to 31.03, see M.S. 2014, Volume 15]

31.04 Service of Notice of Hearing

Subdivision 1. Timing. A notice of hearing shall be served, within or without the state, at least fourteen (14) 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) Generally.

(1) **Personal Service.** The petitioner shall serve the notice of hearing upon the child's parents by personal service pursuant to Rule 25.02.

(2) **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 diligent 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 pursuant to Rule 25.02, subdivision 3, 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. Method of Service - Parties Where Child Under Guardianship of Commissioner of Human Services. For a child under the guardianship of the Commissioner of Human Services, the court administrator shall serve the notice of hearing and petition upon the parties personally, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

Subd. 4. Method of Service - Indian Tribe. The petitioner shall serve the notice of hearing by registered U.S. mail with return receipt requested upon the Indian tribe if the child is an Indian child.

Subd. 5. Method of Service - Others. (a) If the petitioner is a Registered User of the E-Filing System or required to electronically serve documents under Rule 14 of the General Rules of Practice for the District Courts, the petitioner shall serve the notice of hearing through the E-Filing System. This does not apply to service upon Indian tribes.

(b) 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.

(Amended effective January 1, 2007; amended effective July 1, 2015.)

2015 Advisory Committee Comment

Rule 31.04, subdivision 1, is amended to require that the notice of hearing must be served at least fourteen (14) days, rather than ten (10) days, prior to the date of the hearing in an uncontested matter, which is consistent with the requirements of Minnesota Statutes, section 259.49, subdivision 2.

Rule 34. Communication or Contact Agreement

[For text of 34.01 to 34.05, see M.S. 2014, Volume 15]

34.06 Service of Order

The court administrator shall serve a certified copy of the communication or contact agreement order upon the parties to the agreement or their legal representatives by U.S. mail at the addresses provided by the parties to the agreement.

(Amended effective July 1, 2014; amended effective July 1, 2015.)

[For text of 34.07 to 34.09, see M.S. 2014, Volume 15]

Rule 35. Petition

[For text of 35.01, see M.S. 2014, Volume 15]

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 U.S. mail to the local social services agency.

(Amended effective January 1, 2007; amended effective July 1, 2015.)

[For text of 35.03 and 35.04, see M.S. 2014, Volume 15]

35.05 Content

Subdivision 1. Case Caption.

(a) **Generally.** 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 _____)."

(b) **Child Under Guardianship of Commissioner of Human Services.** The petition shall be captioned in the legal name of the child as that name is reflected on the child's birth record prior to adoption and shall be entitled "Petition to Adopt Child under the Guardianship of the Commissioner of Human Services." The actual name of the child shall be supplied to the court by the responsible social services agency if unknown to the individual with whom the agency has made the adoptive placement.

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 adopting parent, except as provided in Rule 7;

(b) if married, the date and place of marriage of the adopting parents, 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(19), 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 adopting parent 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 agency responsible for the child's adoptive placement. 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 and Minnesota Statutes, section 259.41;

(b) any biological parent social and medical history required under Minnesota Statutes, sections 259.43 and 260C.609, 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;

(d) in the case of a child under the guardianship of the Commissioner of Human Services, a document prepared by the petitioner that establishes who must be given notice of the proceeding under Minnesota Statutes, section 260C.627, subdivision 1, that includes the names and mailing addresses of those to be served by the court administrator;

(e) proof of service, except in the case of a petition for a child under the guardianship of the Commissioner of Human Services under Minnesota Statutes, section 260C.623; and

(f) in the case of a child under the guardianship of the Commissioner of Human Services, the adoption placement agreement required under Minnesota Statutes, section 260C.613, subdivision 1.

Subd. 5. Other Documents to be Filed. The petitioner, or the responsible social services agency in the case of a child under the guardianship of the Commissioner of Human Services, shall file the following documents 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, or an order accepting the parent's consent to adoption and for guardianship to the Commissioner of Human Services under Minnesota Statutes, section 260C.515, subdivision 3;

(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, if any, unless the original was filed in the permanency proceeding conducted under Minnesota Statutes,

section 260C.515, subdivision 3, and the order filed under clause (b) has a copy of the consent attached; 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 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; amended effective July 1, 2014; amended effective July 1, 2015.)

[For text of 35.06 to 35.08, see M.S. 2014, Volume 15]

Rule 37. Adoption Study and Background Study

[For text of 37.01 and 37.02, see M.S. 2014, Volume 15]

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 an 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; amended effective July 1, 2015.)

[For text of 37.04 to 37.07, see M.S. 2014, Volume 15]

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, subdivision 5, 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 of the time and place of the hearing.

(Amended effective January 1, 2007; amended effective July 1, 2014; amended effective July 1, 2015.)

[For text of 38.02 to 38.05, see M.S. 2014, Volume 15]

Rule 49. Venue

[For text of 49.01 and 49.02, see M.S. 2014, Volume 15]

49.03 Transfer of Venue Procedures

(a) Transfer of Venue. If the court grants a motion to transfer venue to another county, the court shall do so by ordering a continuance and providing all documents filed in the adoption proceeding to the other court through the court information system. 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.

(b) Transfer of Jurisdiction. If the court grants a motion to transfer jurisdiction to another state or tribal court, the court shall do so by ordering a continuance and sending to the court administrator of the appropriate court a copy of all documents filed, together with a certification that all documents are true and accurate copies of the originals. In the alternative, all documents may be transferred to the receiving court electronically if the receiving court consents and both courts have the resources and technical capacity to accommodate the electronic transfer. The transferring court shall also provide copies of the order of transfer to the Commissioner of Human Services and any agency participating in the proceedings.

(Added effective January 1, 2007; amended effective July 1, 2015.)