

**Special Rules of Procedure
Governing Proceedings Under the
Minnesota Commitment and Treatment Acts**

Effective January 1, 2000
With amendments effective July 1, 2015

TABLE OF HEADNOTES

Rule

- 3. Service and Filing; Signing of Documents
- 6. Commencement
- 8. Summons
- 10. Attorney-Client Privilege
- 12. Examiner Reports
- 13. Medical Records
- 14. Location of Hearing, Rules of Decorum, Alternative Methods of Presenting Evidence
- 18. Recommitment
- 19. Termination of Early Intervention
- 21. Public Access to Records
- 23. Evaluation and Final Hearings in Cases Governed by Minnesota Statutes, Section 253B.18

TEXT OF RULES

Rule 3. Service And Filing; Signing of Documents

Whenever a person is required to give or serve any document under this chapter to any party, attorney, or entity other than the court, service shall be made in a manner provided under the Minnesota Rules of Civil Procedure and the General Rules of Practice for the District Courts. Attorneys for both parties must also be served whether or not service upon counsel is specifically required by statute.

Where electronic filing is authorized or required under Minnesota General Rules of Practice 14, documents shall be filed in accordance with that rule.

Notwithstanding Minnesota Statutes, section 253B.23, subdivision 3a, a signature on an electronic document filed in a proceeding subject to these rules is valid if it complies with General Rules of Practice 14.04.

(Amended effective July 1, 2015.)

Advisory Committee Comment - 1999

See comment to Rule 2.

Rule 6. Commencement

A proceeding for commitment or early intervention is commenced upon filing a petition with the District Court pursuant to Minnesota Statutes, chapter 253B or 253D.

(Amended effective September 18, 2013; amended effective July 1, 2015.)

Advisory Committee Comment - 1999

The committee has attempted to address concerns where conflicts occur between the county of financial responsibility (respondent's residence) and the county where respondent is present, regarding who shall file the petitions, and to provide guidance in light of short statutory time constraints. The committee did not intend to remove discretion from the county attorney in the county where the respondent is present. If statutory conditions

are present for commitment and the county attorney in the county where the respondent is present determines that a commitment is necessary and reasonable for the protection of the respondent or others, then the petition must be filed. Ultimate financial responsibility will be resolved in accordance with Minnesota Statutes, sections 256G.01 to 256G.12.

See also Minnesota Statutes, section 253B.07, subdivision 2a, when dealing with a person subject to Minn. R. Crim. P. 20.01 or 20.02. It is not the intent of the committee to affect venue when the person is subject to a proceeding governed by Minn. R. Crim. P. 20.01 or 20.02 or Minn. R. Juv. Del. P. 20.01 or 20.02.

A petition for commitment as a sexual psychopathic personality or a sexually dangerous person may also be filed in a county where a related criminal conviction was entered. See Minnesota Statutes, section 253B.185, subdivision 1.

Advisory Committee Comment - 2015 Amendments

Various statutes set forth where pre-petition screenings are conducted, where petitions are filed, and which county is the county of financial responsibility. See Minnesota Statutes, section 253B.23, subdivision 1b (2014). The committee determined the statute supersedes the second paragraph of Rule 6 and as such, the second paragraph of the former rule no longer serves a purpose.

Rule 8. Summons

Once a petition has been filed, the court shall issue a summons to be personally served upon the respondent. The summons shall direct the respondent to appear at the times and places stated in the summons for psychiatric, psychological, and medical examination and court hearing. The summons shall state in bold print that an order to apprehend and hold the respondent may be issued if the respondent does not appear as directed. The court need not issue a summons if the respondent is already under a medical or judicial hold.

The court shall direct that a copy of the pre-petition screening report, the petition, and the examiner's supporting statement be personally served upon the respondent with the summons if issued, and that a copy be distributed or electronically transmitted through the E-Filing System to the petitioner, the respondent's counsel, the county attorney, any person authorized by the respondent, and any other person as the court directs.

(Amended effective July 1, 2015.)

Rule 10. Attorney-Client Privilege

The content of attorney-client communications by telephone, mail, electronic means, or conference at the facility, shall not be monitored, censored, or made part of a respondent's medical record. The facility may open and inspect, but not read, a letter or package, and must do so in the respondent's presence.

(Amended effective July 1, 2015.)

Rule 12. Examiner Reports

Each court-appointed examiner shall examine the respondent and prepare and file with the court a separate report stating the examiner's opinion and the facts upon which the opinion is based. The report shall address:

- (a) Whether the respondent is mentally ill, developmentally disabled, chemically dependent, mentally ill and dangerous to the public, a sexually dangerous person, or a sexual psychopathic personality;
- (b) Whether the examiner recommends commitment;
- (c) The appropriate form, location, and conditions of treatment, including likelihood of the need for treatment with neuroleptic medication; and
- (d) The respondent's capacity to make decisions about neuroleptic medication, if needed.

If the petition alleges that the respondent is mentally ill and dangerous to the public, the report shall also address whether there is a substantial likelihood that respondent will engage in acts capable of inflicting serious physical harm on another.

If the petition alleges that the respondent is a sexual psychopathic personality and/or a sexually dangerous person, the report shall address each element set out in Minnesota Statutes, section 253D.02, subdivisions 15 and 16, respectively, including an opinion as to the likelihood that the respondent will engage in future dangerous behavior.

The court shall distribute or electronically transmit through the E-Filing System a copy of the examiner's report to the county attorney, the respondent, and respondent's attorney immediately upon receiving the report.

(Amended effective September 18, 2013; amended effective July 1, 2015.)

Rule 13. Medical Records

(a) Medical Records - Defined. For purposes of these rules, "medical records" are records and reports prepared by medical, healthcare, and/or scientific professionals that relate to the past, present, or future physical or mental health or condition of an individual including, but not limited to, medical histories, examinations, diagnoses and treatment, pre-petition screening reports, court-appointed examiner's reports prepared pursuant to Rule 12 of these rules, and any other records designated by the presiding judge as medical records for purposes of this rule.

(b) Access to Respondent's Medical Records. The county attorney, respondent, respondent's attorney, court-appointed examiner, guardian ad litem, substitute decision-maker, and their agents and experts retained by them shall have access to all of the respondent's medical records and the reports of the court-appointed examiners. The records and reports may not be disclosed to any other person without court authorization or the respondent's signed consent. Except for a preliminary hearing, each party shall disclose to the other party or parties as soon as possible in advance of the hearing which of the respondent's medical records the party intends to introduce at the hearing.

(Amended effective September 18, 2013; amended effective July 1, 2015.)

Advisory Committee Comment - 2015 Amendments

Rule 13(b) is language retained, substantially unchanged, from the former Rule 13. The only modification concerns the elimination of a specified time frame for the disclosure of all medical records that parties intend to introduce at the hearing. The advisory committee believes that parties should continue to aspire to meet the former 24-hour deadline whenever possible, but recognizes that frequently, in practice, attorneys and parties do not receive respondent's medical records until immediately before the hearing. Accordingly, the disclosures should be made as soon as possible after receiving the records.

*The amendments to Rule 13 are not intended to modify or limit the right of a respondent to request a protective order excluding from examiner review medical records which are not relevant or germane to the present mental and/or physical condition of the respondent in accordance with the procedures established in *In re D.M.C.*, 331 N.W.2d 236 (Minn. 1983).*

Rule 14. Location of Hearing, Rules of Decorum, Alternative Methods of Presenting Evidence

The judge or judicial officer shall assure the decorum and orderliness of any hearing held pursuant to Minnesota Statutes, chapter 253B or 253D. The judge or judicial officer shall afford to respondent an opportunity to be dressed in conformity with the dignity of court appearances.

A hearing may be conducted or an attorney for a party, a party, or a witness may appear by telephone, audiovisual, or other electronic means if the party intending to use electronic means notifies the other party or parties at least 24 hours in advance of the hearing and the court approves. If a witness will be testifying electronically, the notice must include the

name, address, and telephone number where the witness may be reached in advance of the hearing. This rule does not supersede Minnesota Statutes, sections 595.02 to 595.08 (competency and privilege). Respondent's counsel will be physically present with the respondent. The court shall insure that the respondent has adequate opportunity to speak privately with counsel, including, where appropriate, suspension of the audio recording or allowing counsel to leave the conference table to communicate with the client in private.

(Amended effective March 1, 2009; amended effective January 1, 2010; amended effective September 18, 2013; amended effective July 1, 2015.)

Advisory Committee Comment - 2008

Rule 14 is amended to lengthen the amount of notice required to be given by a litigant desiring to have a matter heard by electronic means, typically either telephone or interactive television. The seven days required by the rule can be adjusted by the court if necessary.

Advisory Committee Comment - 2009

Rule 14 is amended to change the amount of notice required to be given by a litigant desiring to have a matter heard by electronic means, typically either telephone or interactive television. The 24 hours required by the rule represents the bare minimum of what may be necessary to allow for necessary electronic equipment to be made available. This deadline can be adjusted by the court if necessary.

Rule 18. Recombitment

For recommitments pursuant to Minnesota Statutes, section 253B.13, the court shall reference the immediately preceding commitment file in the file on the new petition.

(Amended effective July 1, 2015.)

Rule 19. Termination of Early Intervention

Any petition for involuntary commitment filed at the termination of court-ordered early intervention under Minnesota Statutes, section 253B.065, shall be treated as a petition for initial commitment.

(Amended effective July 1, 2015.)

Advisory Committee Comment - 2015 Amendments

Rule 19 is amended for clarity only, and the amendment does not denote a change in law.

Rule 21. Public Access to Records

(a) Except as provided in these Special Rules, the Rules of Public Access to Records of the Judicial Branch, or as limited by court order, all court files relating to civil commitment shall be available to the public for inspection, copying, printing, or downloading.

(b) The pre-petition screening report, court-appointed examiner's report, and all medical records filed with or received by the court shall not be disclosed to the public except by express order of the district court. This provision shall not limit the ability of any party, witness, or the court to mention the contents of the pre-petition screening report, court-appointed examiner's report, and medical records in open court or in otherwise publicly accessible pleadings or documents. Any reference at a public hearing or in an otherwise public document to confidential reports or medical records shall not render the reports or medical records available to the public, or create a sufficient basis for making the reports or records available to the public.

(c) Where electronic filing is authorized or required under General Rules of Practice 14, the pre-petition screening report, court-appointed examiner's report, and all medical records filed with the court must be designated as confidential by the filing party. Upon discovery by court administration staff that any pre-petition screening reports, court-appointed examiner reports, or medical records have not been designated as confidential by the filing party, the

court administrator shall designate the document as confidential and notify the filer of the change in designation.

(d) The court may, sua sponte, or upon motion and hearing, issue an order prohibiting public access to civil commitment case records that are otherwise accessible to the public only if the court finds that exceptional circumstances exist.

(e) Except when authorized by order of the presiding judge or the Minnesota Supreme Court, there shall be no public access to case records of proceedings seeking commitment of a minor. The petition for commitment of a minor must be designated as confidential by the filing party. Upon discovery by court administration staff that the petition for the civil commitment of a minor has not been designated as confidential by the filing party, court administration staff shall designate the petition as confidential and notify the filer of the change in designation.

(Amended effective September 18, 2013; amended effective July 1, 2015.)

Advisory Committee Comment - 2015 Amendments

This rule is amended to clarify public access issues with civil commitment case records. Generally, civil commitment case records are publicly accessible. Rule 4, subdivision 2, of the Rules of Public Access to Records of the Judicial Branch sets forth the procedures for when a court may restrict access to public case records.

Rule 21(b) is amended to remove the requirement for the court administrator to maintain confidential documents in a separate section or file as this requirement is no longer applicable with electronic records. As authorized by these rules and Rule 8, subdivision 5(b) of the Rules of Public Access to Records of the Judicial Branch, all medical records, whether submitted to the court or admitted into evidence, are confidential and shall not be accessible to the public except by express order of the district court. Rule 21(c) establishes the duty of the filing party to properly classify medical records as confidential when filed in the E-Filing System. Medical records introduced and admitted into evidence during a hearing remain confidential even if referenced at a public hearing or in an otherwise public document.

There may be times when otherwise public documents should be kept confidential and Rule 21(d) reminds court users that an order restricting public access may be requested by motion or may issue upon the court's own initiative. However, an order granting such relief must include specific findings that support the order granting the request. Pursuant to Minnesota General Rules of Practice 14.06, a Registered User electronically filing a document that is not accessible to the public is responsible for designating that document as confidential in the E-Filing System at the time of filing. A Registered User is defined in Minnesota General Rules of Practice 14.01.

The Rules of Public Access to Records of the Judicial Branch clarify that civil commitment case records are publicly accessible at courthouses, to ensure that court administration can ensure confidentiality is preserved when appropriate. Rule 21(e) contains provisions intended to satisfy the public need for safety and oversight, while safeguarding the privacy interests of minors who may become or who are civilly committed. The collateral consequences of public accessibility to civil commitment records can have long-term impact on minor respondents and adversely impact treatment. Rule 21(e) clarifies that case records of any civil commitment of a minor respondent shall not be publicly accessible absent a district court order or order or directive of the Minnesota Supreme Court or its designee.

Rule 23. Evaluation and Final Hearings in Cases Governed by Minnesota Statutes, Section 253B.18

(a) For persons who have been committed as mentally ill and dangerous to the public, the head of the treatment facility shall file the report required by Minnesota Statutes, section 253B.18. The evaluation may be conducted at a secure treatment or at a correctional facility. If transport is needed, the court shall designate the agency responsible to do it.

(b) Prior to making the final determination with regard to a person initially committed as mentally ill and dangerous to the public, the court shall hold a hearing. The head of the treatment facility, or his or her designee, shall file the report required by Minnesota Statutes, section 253B.18, subdivision 2. The hearing for final determination shall be held within 14 days of the court's receipt of the report from the head of the treatment facility or within 90 days of the date of initial commitment, whichever is earlier, unless continued by agreement of the parties, or by the court for good cause shown. As its final determination, the court may, subject to Minn. R. Crim. P. 20.01 subd 4:

(1) Discharge the respondent's commitment;

(2) Commit the respondent as mentally ill only, in which case the respondent's commitment shall be deemed to have commenced upon the date of initial commitment, for purposes of determining the maximum length of the determinate commitment; or

(3) Commit the respondent for an indeterminate period as mentally ill and dangerous to the public.

(c) At the request of the respondent, the court shall appoint an examiner of the respondent's choice for purposes of the hearing required by this rule.

(d) The written report of the head of the treatment facility pursuant to Minnesota Statutes, section 253B.18, subdivision 2, shall address the criteria for commitment and whether there has been any change in the respondent's condition since the commitment hearing. The report shall provide the following information:

(1) the respondent's diagnosis;

(2) the respondent's present condition and behavior;

(3) the facts, if any, that establish that the respondent continues to satisfy the statutory requirements for commitment;

(4) a description of treatment efforts and response to treatment by the respondent during hospitalization;

(5) the respondent's prognosis;

(6) the respondent's individual treatment plan;

(7) an opinion as to whether the respondent is in need of further care and treatment;

(8) an opinion as to the program or facility best able to provide further care and treatment, if needed;

(9) an opinion as to whether respondent is dangerous to the public or himself. All supportive data and documentation shall be submitted with the report.

(e) At the hearing, the court shall consider all competent evidence relevant to the respondent's present need for continued commitment. The burden of proof at the hearing is upon the proponent of indeterminate commitment to establish by clear and convincing evidence that the statutory requirements for commitment under Minnesota Statutes, chapter 253B, continue to be met.

(Amended effective September 18, 2013; amended effective July 1, 2015.)

Advisory Committee Comment - 1999

This rule is intended to require final resolution, with due diligence, of the commitment process of a respondent who is mentally ill and dangerous to the public, a sexually dangerous person, or a sexual psychopathic personality. An initial hearing should not be "reviewed" years later. The rule is not intended to dictate where a committed person should be confined. If a commitment is sustained upon review and the individual is still subject to commitment to the Commissioner of Corrections the balance of the sentence is to be served in a correctional institution.

Advisory Committee Comment - 2015 Amendments

Rule 23 is amended to conform to the statutory abrogation of the initial commitment period and review hearing for respondents committed as sexually dangerous persons and/or persons with a sexual psychopathic personality. All such commitments are now for an indeterminate period of time under Minnesota Statutes, section 253D.07, subdivision 4. The amendment is not intended to modify or limit the rights of respondents committed under petitions filed prior to the statutory change of section 253B.18. See Minnesota Laws 2011, chapter 102, article 3, section 1 (effective May 28, 2011).