STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8009

ORDER PROMULGATING AMENDMENTS TO THE MINNESOTA GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS

In a report dated December 28, 2022, the Minnesota Supreme Court Advisory Committee on General Rules of Practice (Advisory Committee) proposed amendments to the General Rules of Practice for the District Courts. *See* Recommendations of Minnesota Supreme Court Advisory Committee on General Rules of Practice, No. ADM09-8009 (filed Dec. 28, 2022). Most of the proposed amendments were addressed in our August 24, 2023, order. *See* Order Promulgating Amendments to the Minnesota General Rules of Practice for the District Courts, No. ADM09-8009 (Minn. filed Aug. 24, 2023). This order addresses two outstanding issues from the December 28, 2022, report: (1) creating a new rule on third-party custody and the Indian Child Welfare Act, Gen. R. Prac. 315; and (2) amending Gen. R. Prac. 14.01(b)(8) and 416(e) to make use of the MyMNGuardian system mandatory for submission of guardian annual personal well-being reports. We also make a housekeeping amendment to Gen. R. Prac. 370.02 and 371.02.

By order filed on January 24, 2023, we established a period for the public to file written comments in response to the report filed by the committee. *See* Order Establishing Public Comment Period on Proposed Amendments to the Minnesota General Rules of Practice for the District Courts, ADM09-8009 (Minn. filed Jan. 24, 2023). No comments were received

on the rule related to the Indian Child Welfare Act, although many were received regarding MyMNGuardian. Following the United States Supreme Court decision rejecting a constitutional challenge to the Indian Child Welfare Act, and recent modifications by the Legislature to the Minnesota Indian Family Preservation Act, the Advisory Committee filed revised comments to proposed Rule 315.

Having carefully considered the Advisory Committee's recommendations and the comments filed, we adopt proposed Rule 315 in full, adopt the proposed amendments to the MyMNGuardian-related rules as modified, and amend Rules 370.02 and 371.02.

Third-Party Custody and Application of the Indian Child Welfare Act

First, we adopt the proposed amendments to add a new Rule 315 covering third-party custody and the application of the Indian Child Welfare Act, along with the revised advisory committee comments submitted to our court on August 3, 2023.

We commend the committee for its thoroughness in responding to the petition and referral order from our court to consider whether the family court rules should be amended to address the impact of the Indian Child Welfare Act and related law on third-party custody proceedings. The committee has proposed a rule that accomplishes this task following a thorough vetting process that included creating a workgroup and review of drafts by child protection Indian Child Welfare Act experts, including judges and justices. The committee's proposed rule is modeled after a Washington state statute, Wash. Rev. Code § 11.130.250 (2022). The new Rule 315 has four parts. Part (a) of Rule 315 covers the "Petition" and provides that every petition shall contain a statement as to whether the child is an Indian child. Part (b) of the new rule applies to the "Court Inquiry" and provides that the court has an

affirmative obligation to inquire as to whether the participant knows that the child is an Indian child. Part (c) covers "Orders and Decrees" and requires that every such order or decree must contain a finding that the Indian Child Welfare Act and Minnesota Indian Family Preservation Act either do or do not apply. Finally, Part (d) covers "Public Access" regarding public access to certain third-party custody proceeding records. No public comments were received regarding new Rule 315, which we adopt as proposed by the Advisory Committee in its December 28, 2022, report.

The Advisory Committee has also provided extensive commentary through its comments, which it revised following the Legislature's recent amendments to the Minnesota Indian Family Preservation Act and the United States Supreme Court's decision in *Haaland v. Brackeen*, 599 U.S. __, 143 S. Ct. 1609 (2023), which rejected constitutional challenges to the Indian Child Welfare Act. These comments are thorough, have been updated to incorporate recent developments in the law, and will be helpful to practitioners. New Rule 315 will go into effect approximately 3 months from the date of this order, on January 15, 2024.

MyMNGuardian

The Advisory Committee, in its December 28, 2022, report, proposed amendments to Rules 14.01, 410, 416, 506, and 521, which were intended to be housekeeping amendments and uncontroversial in nature. In our August 24, 2023, order, we adopted those housekeeping amendments for which no public comments in opposition were received. Numerous public comments were received, however, regarding the proposed amendments

to Rules 14.01(b)(8) and 416(e), to make use of the MyMNGuardian system mandatory for submitting guardian annual personal well-being reports.

The MyMNGuardian system was developed in 2019. It is similar to technology implemented by the Minnesota Judicial Branch in 2013 for conservators, for which the E-Filing of annual conservator reports has been mandatory since 2015 under Rules 14.01(b)(8) and 416(e). These rules, however, were not revised following the development of the MyMNGuardian system to correspondingly require E-Filing of annual personal well-being reports for guardians.

The project leaders of the judicial branch's EP312 Advancement of MN Vulnerable Adult Care project—who support the amendment—informed the approximately 23,000 Minnesota guardians of the public comment period. More than 30 public comments were received expressing concern about mandatory use of the MyMNGuardian system.

We recognize that required electronic filing for guardians through the MyMNGuardian system, like the already-required use of the similar MyMNConservator system, will help the judicial branch and its EP312 project as part of its important work in increasing its capacity to detect fraud and potential abuse of persons subject to guardianship or conservatorship. We also, however, appreciate the concerns raised in the public comments that mandatory electronic filing through the MyMNGuardian system may impose a hardship on some individuals. To that end, we are modifying the amendment, as originally proposed, to allow non-attorney guardians to file their annual well-being reports conventionally with leave of court upon a showing of good cause. We are also setting the effective date for required use of the MyMNGuardian system approximately 6 months from

the date of this order, on April 15, 2024, instead of 3 months as originally proposed by the committee. This longer roll-out period will permit more time and opportunities for training for guardians regarding the MyMNGuardian system. We instruct the state court administrator to offer comprehensive training to guardians regarding use of the MyMNGuardian system during this interim period, as well as after the use of the MyMNGuardian system becomes mandatory. We further direct the state court administrator to ensure that resources are available after use of MyMNGuardian system becomes mandatory, including the ability to contact staff by phone or by email and receive timely support. We also direct the state court administrator to continue to explore and implement mechanisms that will simplify and clarify the process for non-attorney guardians. For example, although service by mail or in person for the person subject to guardianship may still be required, the affidavit of service form in MyMNGuardian should be updated to allow service in electronic form, with appropriate agreement, upon other interested persons, and training could similarly cover different methods of service. Likewise, non-attorney guardians would benefit from training and clear prompts in the MyMNGuardian system providing clear parameters as to the window of time during which the annual well-being report may be timely filed, consistent with applicable statutory requirements.

Lastly, we stress that it is not our intention that upon implementation, a non-attorney guardian's failure to timely or properly submit an annual well-being report through MyMNGuardian would immediately lead to an order to show cause with a threat of contempt, which was a concern raised in some of the public comments. Instead, consistent

with the assurances from the project leaders of the EP312 project, at any administrative hearing for a failure to properly file an annual well-being report through the MyMNGuardian system, a non-attorney guardian should be given an opportunity to receive assistance from court staff on the process of submitting their report through the MyMNGuardian system, or, consistent with the rule, be given an opportunity to move for leave from the court to file the report conventionally for good cause shown.

Housekeeping Amendment to Rules 370.02 and 371.02

General Rules 351–79 govern the Expedited Child Support Process under the Rules of Family Court Procedure. Comprehensive amendments to these rules were made in our court's August 24, 2023, order, following a review by the Child Support Unit of the State Court Administrator's Office and recommendations by child support magistrates. We have also identified an additional housekeeping amendment for newly promulgated Rule 370.02, subd. 4, and Rule 371.02, subd. 4. Both of those rules require that a supporting affidavit include all the information required by Minn. Stat. § 518A.46, subd. 3(a) (2022), if known. That statute is a cross-reference to information that must be included "[i]n cases involving establishment or modification of a child support order." Minn. Stat. § 518A.46, subd. 3(a). In 2015, a new subdivision 3a was added, paragraph (a) of which requires certain information to be included "[i]n cases involving modification of only the medical support portion of a child support order." Minn. Stat. § 518A.46, subd. 3a(a) (2022). Rule 370.02, subd. 4, and Rule 371.02, subd. 4, as amended in the court's August 24, 2023 order, are thus further amended to require that the supporting affidavit "provide all information required by Minn. Stat. § 518A.46, subd. 3, paragraph (a), and subd. 3a, paragraph (a), as

applicable and if known." This amendment will be effective November 22, 2023, when the other amendments from the August 24, 2023 order go into effect.

IT IS HEREBY ORDERED that the attached amendments to the Minnesota General Rules of Practice for the District Courts are prescribed and promulgated, with Rules 370.02 and 371.02 effective on November 22, 2023, Rule 315 effective on January 15, 2024, and Rules 14.01(b)(8) and 416(e) effective April 15, 2024.

Dated: October 12, 2023

BY THE COURT:

Natalie E. Hudson
Chief Justice

PROCACCINI, J., not having been a member of this court at the time of the court's consideration of the recommendations by the Minnesota Supreme Court Advisory Committee on the General Rules of Practice addressed in this order, took no part in the consideration or decision.

AMENDMENTS TO THE GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

* * *

RULE 315. THIRD-PARTY CUSTODY AND APPLICATION OF INDIAN CHILD WELFARE ACT

In third-party custody proceedings filed in family court, the following additional rules apply:

(a) **Petition.** Every petition shall contain a statement alleging whether the child is or may be an Indian child as defined in the federal Indian Child Welfare Act, 25 U.S.C. §§ 1901–1963 (ICWA) or the Minnesota Indian Family Preservation Act, Minn. Stat. §§ 260.751–.835 (MIFPA), and shall describe the due diligence used to determine whether the child is an Indian child under ICWA or MIFPA. Petitioner has an ongoing obligation to notify the court of any information that provides reason to know the child is or may be an Indian Child as defined by ICWA or MIFPA.

(b) **Court Inquiry.** The court has an affirmative obligation to inquire of every participant at the commencement of the proceeding whether the participant knows or has reason to know that the child is an Indian Child under either ICWA or MIFPA. Responses to the inquiry should be on the record. If the court is unable to determine that the child is or is not an Indian child but has reason to know as defined in 25 C.F.R. § 23.107(c) that the child is an Indian child, the court shall direct the petitioner to further investigate the child's ancestry or heritage and, pending the results of the investigation, shall treat the matter as if ICWA or MIFPA applies, as applicable.

(c) **Orders and Decrees.** Every order or decree shall contain a finding that ICWA and MIFPA do or do not apply. Where there is a finding that ICWA or MIFPA does apply, the decree or order must also contain findings that all notice, scheduling, appointment of counsel, active efforts, evidentiary requirements, consent, intervention rights, transfer obligations, and placement preference requirements under ICWA and MIFPA as applicable have been satisfied.

(d) **Public Access**. The following third-party custody proceeding records are not accessible to the public:

(1) notice of pending court proceedings provided by the petitioner pursuant to the Indian Child Welfare Act, 25 U.S.C.§ 1912, and any response to that notice from an Indian tribe or the Bureau of Indian Affairs as to whether the child is

eligible for tribal membership, including documents such as family ancestry charts, genograms, and tribal membership information; and

(2) records made inaccessible under other applicable law or court rule.

Advisory Committee Comment—2023 Amendments

Rule 315 is new in 2023 and applies to third-party custody proceedings in family court. Many family practitioners may be surprised to learn that the Indian Child Welfare Act, 25 U.S.C. §§ 1901–1963 (ICWA) and the Minnesota Indian Family Preservation Act, Minn. Stat. §§ 260.751–.835 (MIFPA) can apply to third-party custody matters.

In addition to ICWA and MIFPA applicability, note at the outset that pending child protection or permanency proceedings in juvenile court may preclude the family court from proceeding with a third-party custody petition. *Stern v. Stern*, 839 N.W.2d 96, 104 (Minn. App. 2013) (family court had no concurrent jurisdiction to consider third-party custody petition because of pending child protection and permanency proceedings in juvenile court); Minn. Stat. § 260C.101, subd. 1 (juvenile court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be in need of protection or services, or neglected and in foster care). The Minnesota Court of Appeals has also suggested that it would be appropriate to file a third-party custody proceeding in juvenile court under sections 260C.151 and .152. *See Matter of the Welfare of Child of F.J.V.*, A21-0522, 2021 WL 4944677, at *4 (Minn. App. Oct. 25, 2021) (holding that the matter was appropriately transferred to Tribal court under ICWA), *rev. denied* (Minn. Nov. 29, 2021); *cert. denied sub nom. Halvorson v. Hennepin Cnty. Children's Servs. Dep't*, 143 S. Ct. 2683 (2023).

Part (a) of Rule 315 requires a third-party custody petition to include important information on whether the child involved is an Indian child. If the issue is ignored and it turns out that the child is an Indian child, rulings may be subject to invalidation under 25 U.S.C. § 1914 or Minn. Stat. § 260.774, subd. 2 (effective Aug. 1, 2023; *see* Act of Mar. 16, 2023, ch. 16, § 28, 2023 Minn. Laws) for noncompliance with any of the numerous requirements of ICWA or MIFPA, for example.

ICWA and MIFPA have slightly different definitions of an Indian child. *Compare* 25 U.S.C. § 1903(4), *with* Minn. Stat. § 260.755, subd. 8. Both include a child who is a member of an Indian Tribe, but for a child who is eligible for membership in a Tribe, ICWA adds a requirement that the child is not only eligible for membership but must also be the biological child of a member of an Indian Tribe. The distinction may be irrelevant as MIFPA now provides that both MIFPA and ICWA are applicable without exception in any child placement proceeding involving an Indian child when custody is granted to someone other than a parent or an Indian custodian. Minn. Stat. § 260.752 (effective Aug. 1, 2023; *see* Act of Mar. 16, 2023, ch. 16, § 1, 2023 Minn. Laws). When both MIFPA and ICWA apply, note that ICWA dictates under 25 U.S.C. § 1921 that if MIFPA provides a higher standard of protection to the rights of the parent or custodian of an Indian Child, the MIFPA standard would be applied.

Federal regulations in 25 C.F.R. § 23.107(b) direct that the court must confirm due diligence efforts in determining whether the child is an Indian child. This regulation is the basis for the requirement in Part (a) of the rule directing that the petitioner must include a

description of their due diligence in the petition. The petitioner's ongoing obligation to keep the court informed regarding the child's status as an Indian child is derived from the directive in 25 C.F.R. § 23.107(a) that "[s]tate courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child," and from the statement in Minn. Stat. § 260.761, subd. 1 (effective Aug. 1, 2023, *see* Act of Mar. 16, 2023, ch. 16, § 16, 2023 Minn. Laws), that the petitioner's duty to inquire is ongoing.

Part (b) of Rule 315 recognizes that both case law and ICWA place a duty on the court to inquire of every participant at the commencement of the proceeding whether the participant knows or has reason to know that the child is an Indian child under either ICWA or MIFPA. *See In re M.R.P.-C.*, 794 N.W.2d 373, 379 (Minn. App. 2011). See 25 C.F.R. § 23.107 for details about how the in-court inquiry should be made, what it means for the court to have "reason to know" that a child is an Indian child, and details about how the court should proceed if there is "reason to know" the child is an Indian child but the court does not have sufficient evidence to determine whether the child is or is not an Indian child.

A continued inquiry by the court at subsequent proceedings can provide additional information about whether ICWA or MIFPA applies, especially from parties or participants who did not attend the initial hearing.

Part (c) of Rule 315 recognizes that there are numerous obligations imposed by ICWA and MIFPA on the parties and the court.

Notice under ICWA is extremely important. Under 25 U.S.C. § 1912(a) and 25 C.F.R. §§ 23.11 and 23.111, in any involuntary third-party custody proceeding when the court knows or has reason to know that an Indian child is involved, and when the identity and location of the child's parent or Indian custodian or Tribe is known, the petitioner seeking third-party custody must notify the child's parents, Indian custodian, and Tribe of the pending proceeding. 25 U.S.C. § 1912(a). Notice must be by registered or certified mail with return receipt requested. Copies of the notices must also be sent to the Bureau of Indian Affairs Regional Director in like manner. In addition to but not as a replacement for such mailed notice, the court may direct personal service on the parents and Indian custodian. If the identity or location of the parent or Indian custodian and the Tribe cannot be determined, notice must be given to the Bureau of Indian Affairs Regional Director in like manner, and the Bureau then has 15 days after receipt of the notice to make reasonable documented efforts to locate and notify the child's Tribe and the child's parent or Indian custodian. The required content of the notice is extensive and is included in the federal regulations cited above. Address and other information about the Bureau of Indian Affairs (BIA) Midwest Regional Office can be found on its website (https://www.bia.gov/regional-offices/midwest-region). Petitioners will want to file copies of the notices and receipts with the court to support findings under Rule 315(c).

Notice under MIFPA as applicable to third-party custody matters is less clear. Minn. Stat. § 260.761, subd. 1, 2(a), (b), places Tribal notice obligations on the local social service agency or private child-placing agency, which may not be involved in a third-party custody proceeding. MIFPA requires an individual petitioner to provide notice related to an admit/deny hearing or potential preadoptive or adoptive placement, neither of which appears to apply to a third-party custody proceeding. Minn. Stat. § 260.761, subd. 2(d) (effective Aug. 1, 2023, *see* Act of Mar. 16, 2023, ch. 16, § 16, 2023 Minn. Laws).

Nevertheless, MIFPA provides a general directive that sections 260.751 to 260.835 and ICWA are applicable without exception in any child placement proceeding involving an Indian child when custody is granted to someone other than a parent or an Indian custodian. Minn. Stat. § 260.752 (effective Aug. 1, 2023, *see* Act of Mar. 16, 2023, ch. 16, § 1, 2023 Minn. Laws). MIFPA also provides that the notice provisions in section 260.761 apply to involuntary child placement proceedings, and that an Indian child ten years of age or older, the Indian child's parents, the Indian custodian, and the Indian child's Tribe shall have notice of the right to participate in all hearings regarding the Indian child. Minn. Stat. § 260.771, subd. 1d (effective Aug. 1, 2023, *see* Act of Mar. 16, 2023 ch. 16, § 27, 2023 Minn. Laws).

Scheduling can be impacted under ICWA. Under 25 C.F.R. § 23.11(c), when notice is given to the Bureau of Indian Affairs Regional Director, the Department of the Interior has 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the Tribe. Further, under 25 U.S.C. § 1912(a) and 25 C.F.R. § 23.112(a), no involuntary third-party custody proceeding shall be held until at least 10 days after receipt of notice by the parent or Indian custodian and the Tribe, provided that the parent or Indian custodian or the Tribe shall, upon request, be granted up to 20 additional days to prepare for the proceeding.

Appointment of counsel is required by ICWA under 25 U.S.C. § 1912(b), in cases of indigency, for the child's parent or Indian custodian, and discretionary appointment of counsel for the child can also be made upon a finding that such appointment is in the best interests of the child. Although ICWA provides that the Secretary of the Interior pays reasonable fees and expenses when state law makes no provision for appointment of counsel in such proceedings, that is subject to availability of funds, which have not to date been made available to the Secretary. MIFPA requires appointment of counsel for the parent or parents of an Indian child or the Indian custodian who meets the requirements of section 611.17, and for any Indian child 10 years of age or older. Minn. Stat. § 260.771, subd. 2b (effective Aug. 1, 2023, *see* Act of Mar. 16, 2023, ch. 16, § 27, 2023 Minn. Laws).

"Active Efforts" are required by ICWA. Under 25 U.S.C. § 1912(d), a party seeking third-party custody of an Indian child must satisfy the court 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 proven unsuccessful. The petitioner's requirement to "satisfy" the court implies that the court must make findings regarding active efforts. 25 C.F.R. § 23.2 defines active efforts and includes examples of active efforts in the context of child protection proceedings. There is currently little guidance available regarding application of the ICWA active efforts requirement to third-party custody proceedings, where a social services agency is not typically a party to the case. One commentator suggests that examples of "active efforts" that can be utilized in private custody actions are:

1) Reintegration therapy with the child;
2) Drug and/or alcohol evaluations and/or rehabilitation services, including drug testing;
3) Mental health evaluations and subsequently recommended treatment or services;

4) Transportation of the parent or Indian custodian (or transportation of the child) if transportation is an issue for the parent or Indian custodian so that visits can occur during the pending of the proceeding;
5) Vocational rehabilitation services if obtaining or maintaining steady employment is an issue for the parent or Indian custodian;
6) Domestic violence classes for perpetrators; or
7) Domestic violence services for victims.

Lisa A. Schellenberger, *An Overview of the Applicability of ICWA in Colorado's Private Legal Actions Involving Non-Parents: A Guideline on Arguing for and Complying with the ICWA* 6, https://www.denbar.org/LinkClick.aspx?fileticket=qqOZVIEFY_8%3D&portalid=18 (undated). The commentator adds that any services provided should be offered, arranged, and paid for by the petitioning non-parent. *Id.*

MIFPA under Minn. Stat. §§ 260.762, subds. 1–3 (effective Aug. 1, 2023, *see* Act of Mar. 16, 2023, ch. 16, § 18, 2023 Minn. Laws), 260.771, subd. 1d (effective Aug. 1, 2023, *see* Act of Mar. 16, 2023, ch. 16, § 27, 2023 Minn. Laws), and 260.755, subd. 1a (effective Aug. 1, 2023, *see* Act of Mar. 16, 2023, ch. 16, § 4, 2023 Minn. Laws), has a slightly different definition of active efforts (including pointing out that "active efforts" sets a higher standard than reasonable efforts), and places the burden on the petitioner to satisfy the court 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.

The evidentiary standard in ICWA under 25 U.S.C. § 1912(e) and 25 C.F.R. § 23.121(a) for third-party custody is clear and convincing evidence, including required testimony of a qualified expert witness that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. Federal regulations in 25 C.F.R. §§ 23.121(c), (d) and 23.122 address the causal relationship of particular conditions in the home, and the qualifications of the required expert witness. MIFPA essentially repeats the ICWA standard in 25 U.S.C. § 1912(e). Minn. Stat. § 260.771, subd. 6 (effective Aug. 1, 2023, *see* Act of Mar. 16, 2023, ch. 16, § 27, 2023 Minn. Laws). Although ICWA and MIFPA under 25 U.S.C. § 1922, 25 C.F.R. § 23.113, and Minn. Stat. § 260.758 (effective Aug. 1, 2023, *see* Act of Mar. 16, 2023, ch. 16, § 15, 2023 Minn. Laws) allow an emergency removal or placement of an Indian child without a requirement of a qualified expert witness when removal is necessary to prevent imminent physical damage or harm to the child, the removal or placement must terminate immediately when it is no longer necessary to prevent the imminent damage or harm, and the court must promptly hold a hearing on whether the emergency removal continues to be necessary. MIFPA also directs that no such emergency removal or placement can extend beyond 30 days unless the court finds by a showing of clear and convincing evidence that: (1) continued emergency removal or placement is necessary to prevent imminent physical damage or harm to the Indian child; (2) the court has been unable to transfer the proceeding to the jurisdiction of the Indian child's Tribal court; and (3) it has not been possible to initiate a child placement proceeding with all of the protections of MIFPA including obtaining the testimony of a qualified expert witness. *Id.*

In evaluating the best interests of the child to determine issues of custody and parenting time, Minn. Stat. § 518.17 requires the court to consider and evaluate all relevant factors. If a child is an Indian child as defined by ICWA, in addition to evidentiary standards (including expert witnesses) and placement preferences, policy statements in 25 U.S.C. § 1902 explain that "it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs." If a child is an Indian child as defined by MIFPA, the "best interests of an Indian child" is defined in Minn. Stat. § 260.755, subd. 2a, to mean: "compliance with the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act to preserve and maintain an Indian child's family. The best interests of an Indian child support the child's sense of belonging to family, extended family, and tribe. The best interests of an Indian child are interwoven with the best interests of the Indian child's tribe." Policy statements in MIFPA also include that the state of Minnesota has long recognized the importance of Indian children to their Tribes, not only as members of Tribal families and communities, but also as the Tribe's greatest resource as future members and leaders of the Tribe. Minn. Stat. § 260.754 (effective Aug. 1, 2023, *see* Act of Mar. 16, 2023, ch. 16, § 3, 2023 Minn. Laws). MIFPA declares that the vitality of Indian children in the state of Minnesota is essential to the health and welfare of both the state and the Tribes and is essential to the future welfare and continued existence of the child's Tribe. *Id.*

Consent of any parent or Indian custodian to third-party custody under ICWA, 25 U.S.C. § 1913(a), or MIFPA, Minn. Stat. § 260.765, subd. 3a (effective Aug. 1, 2023, *see* Act of Mar. 16, 2023, ch. 16, § 23, 2023 Minn. Laws), shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction. In addition, the presiding judge must find that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also find that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given before, or within ten days after, the birth of the Indian child shall not be valid. Pursuant to ICWA, 25 U.S.C. § 1913(b), and MIFPA, Minn. Stat. § 260.765, subd. 4 (effective Aug. 1, 2023, *see* Act of Mar. 16, 2023, ch. 16, § 24, 2023 Minn. Laws), any parent or Indian custodian may withdraw consent at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

Placement preferences under ICWA are set forth in 25 U.S.C. § 1915(b)–(d) and in MIFPA in Minn. Stat. § 260.771, subds. 1b, 7(a) (effective Aug. 1, 2023, *see* Act of Mar. 16, 2023, ch. 16, § 27, 2023 Minn. Laws). Both ICWA regulations and MIFPA limit the factors to consider in deciding whether good cause exists to deviate from the placement preference order, with considerable overlap between the two legal sources. *Compare* 25 C.F.R. § 23.132, *with* Minn. Stat. § 260.771, subd. 7(j)(2) (effective Aug. 1, 2023, *see* Act of Mar. 16, 2023, ch. 16, § 27, 2023 Minn. Laws).

Intervention as of right at any point in the third-party custody proceedings is provided under ICWA, 25 U.S.C. § 1911(c), to the Indian custodian of the child and the

Indian child's Tribe. MIFPA's intervention rights apply to the Indian child's Tribe, parent or parents, and Indian custodian under Minn. Stat. § 260.771, subd. 2a (effective Aug. 1, 2023, *see* Act of Mar. 16, 2023, ch. 16, § 27, 2023 Minn. Laws).

Transfer obligations differ under ICWA depending on whether the child resides or is domiciled within the reservation of the Tribe. Under 25 U.S.C. § 1911(a), jurisdiction is exclusive with the Tribe (unless other federal law provides otherwise) when the child resides or is domiciled within the reservation, or is a ward of the Tribal court. Under 25 U.S.C. § 1911(b), when the Indian child's residence or domicile is not within the reservation, in the absence of good cause to the contrary, the court shall transfer the proceeding to the jurisdiction of the Tribe, absent objection by either parent, upon petition of either parent or the Indian custodian or the Tribe. Under 25 C.F.R. § 23.115, an Indian child's parent, Indian custodian, or Tribe may request, at any time, either orally on the record or in writing, that the court transfer the third-party custody proceeding to Tribal court. MIFPA essentially repeats these same provisions. Minn. Stat. § 260.771, subds. 1, 3.

Part (d)(1) of Rule 315 is meant to provide consistent access to notices provided by the petitioner to, and the responses from, Indian Tribes regarding membership or eligibility for membership in an Indian Tribe. These records are not public in juvenile child protection proceedings. Minn. R. Juv. Prot. P. 8.04, subd. 2(k). Parties must submit the notice and the response from the Tribe as non-public documents under a separate Form 11.2 Cover Sheet for Non-Public Documents or, if electronically filed using the E-Filing System, using a specific filing code in the E-Filing System which defaults the document to Confidential or Sealed, and designating the documents as confidential or sealed in the E-Filing System before transmitting it to the court as required by Minn. Gen. R. Prac. 11.03(a) and 14.06(a). This does not mean that a third-party custody petition discussing whether the child is an Indian child is itself non-public as Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court ("Access Rules") allow the parties and the court to mention the contents of certain otherwise non-public documents in their publicly accessible pleadings or documents such as motions and orders. Minn. R. Pub. Access 4, subd. 4. Under the Access Rules, notices to, and responses from, Indian Tribes also become accessible to the public upon formal admission into evidence in a testimonial-type proceeding that is open to the public. Minn. R. Pub. Access 8, subd. 5(a).

Part (d)(2) of Rule 315 is a catch-all intended to remind litigants that public access to judicial branch records is governed by the Access Rules. A table identifying non-public case records is posted on the main judicial branch website (www.mncourts.gov) alongside the Access Rules under the Court Rules tab.

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Rule 14.01(b)

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(8) **Guardians and Conservators.** This rule applies to guardians and c~~C~~onservators appointed by the court. ~~must electronically file their~~ Conservator annual accounts and inventories, guardian annual personal well-being reports, corresponding affidavits of service, and any other account or report designated by the state court administrator, must be electronically filed with the court using a computer application designated by the state court administrator; provided that non-attorney guardians may continue to file guardian annual well-being reports and corresponding affidavits of service conventionally with leave of the court for good cause shown. Directions for reporting and designations shall be posted on the judicial branch website (www.mncourts.gov).

Advisory Committee Comment—2023 Amendments

Rule 14.01(b)(8) is modified in 2023 to recognize implementation of the MyMNGuardian System to collect guardian annual personal well-being reports and corresponding affidavits of service. Detailed information on the system is posted by the state court administrator on the main state court website (www.mncourts.gov).

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Rule 416

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(e) Required E-Filing by Guardians and Conservators ~~Annual Accounts and Inventories; Effect of Allowance of Accounts~~. This rule applies to guardians and c~~C~~onservators appointed by the court. ~~must electronically file their~~ Conservator annual accounts and inventories, guardian annual personal well-being reports, corresponding affidavits of service, and any other account or report designated by the state court administrator, must be electronically filed with the court using a computer process designated by the state court administrator; provided that non-attorney guardians may continue to file guardian annual well-being reports and corresponding affidavits of service conventionally with leave of the court for good cause shown. Directions for reporting and designations shall be posted on the judicial branch website (www.mncourts.gov). The filing, examination and acceptance of an annual account, without notice of hearing, shall not constitute a determination or adjudication on the merits of the account, nor does it constitute the court's approval of the account.

Advisory Committee Comment—2023 Amendments

Rule 416(e) is modified in 2023 to recognize implementation of the MyMNGuardian System to collect Guardian annual personal well-being reports and corresponding affidavits of service. Detailed information on the system is posted by the state court administrator on the main state court website (www.mncourts.gov).

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Rule 370.02 Content of Notice of Motion, Motion, Supporting Affidavit, and Request for Hearing Form

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Subd. 4. Content of Supporting Affidavit. A supporting affidavit is required when the summons does not contain a hearing date. The supporting affidavit shall:

(a) state detailed facts supporting the request for relief;

(b) provide all information required by Minn. Stat. § 518A.46, subd. 3, paragraph (a), and subd. 3a, paragraph (a), as applicable and if known; and

(c) be either:

(1) signed and sworn to under oath; or

(2) signed under penalty of perjury pursuant to Minn. Stat. § 358.116, provided that the signature is affixed immediately below a declaration using substantially the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct." In addition to the signature, the date of signing and the county and state where the document was signed shall be noted on the document.

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Rule 371.02 Content of Summons, Complaint, Motion, and Supporting Affidavit

Subd. 4. Content of Supporting Affidavit. A supporting affidavit shall:

(a) state detailed facts supporting the request for relief, including the facts establishing parentage;

(b) provide all information required by Minn. Stat. § 518A.46, subd. 3, paragraph (a), and subd. 3a, paragraph (a), as applicable and if known; and

(c) be either:

(1) signed and sworn to under oath; or

(2) signed under penalty of perjury pursuant to Minn. Stat. § 358.116, provided that the signature is affixed immediately below a declaration using substantially the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct." In addition to the signature, the date of signing and the county and state where the document was signed shall be noted on the document.