

STATE OF MINNESOTA
IN SUPREME COURT
ADM10-8041



**ORDER ESTABLISHING DEADLINE FOR SUBMITTING COMMENTS
ON PROPOSED AMENDMENTS TO THE MINNESOTA RULES
OF JUVENILE PROTECTION PROCEDURE AND RULES OF ADOPTION
PROCEDURE**

The Advisory Committee on the Rules of Juvenile Protection Procedure has recommended amendments to the Minnesota Rules of Juvenile Protection Procedure and Rules of Adoption Procedure to address: reports to the court by social workers and guardians ad litem; the procedures for establishing paternity in juvenile protection matters; the procedures for adoption of children under the guardianship of the commissioner of human services; and technical amendments to conform the rules to recent statutory amendments. The committee's report and proposed rule amendments are attached to this order. The court will consider the proposed amendments after soliciting and reviewing written comments on the proposal.

IT IS HEREBY ORDERED THAT any individual wishing to provide comments in support of or in opposition to the proposed amendments shall file by mail one copy of the written comments with AnnMarie O'Neill, Clerk of the Appellate Courts, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, Minnesota 55155, no later than May 9, 2014.

Dated: April 9, 2014

BY THE COURT:

/s/
Lorie S. Gildea
Chief Justice



OFFICE OF
APPELLATE COURTS

APR 07 2014

FILED

STATE OF MINNESOTA
IN SUPREME COURT
ADM10-8041 (formerly C1-01-927)

**ADVISORY COMMITTEE ON THE RULES OF
JUVENILE PROTECTION PROCEDURE**

**Final Report Recommending Amendments to
Rules of Juvenile Protection Procedure and
Rules of Adoption Procedure**

April 7, 2014

MINNESOTA JUDICIAL BRANCH
STATE COURT ADMINISTRATOR'S OFFICE
COURT SERVICES DIVISION
105 MINNESOTA JUDICIAL CENTER
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INTRODUCTION

COMMITTEE MEMBERSHIP

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INTRODUCTION

REQUEST FOR EXCEPTION TO SUSPENSION OF RULES COMMITTEE ACTIVITIES

In June 2013, Judge Kevin Eide submitted to the Supreme Court a request for an exception to the Court's ongoing suspension of the activities of the Advisory Committee on the Rules of Juvenile Protection Procedure to allow the Committee to address:

- procedures for establishing paternity in juvenile protection proceedings as authorized under Minnesota Statutes Chapter 260C;
- revisions to Rule 38 dealing with reports to the court by social workers and guardians and litem in juvenile protection, permanency, and adoption matters;
- procedures for adoption of children under the guardianship of the commissioner of human services; and
- technical amendments that would conform the Juvenile Protection and Adoption Rules to the statutes due to significant statutory revisions over the last few years.

In July 2013, the Court granted Judge Eide's request.

COMMITTEE DELIBERATIONS

The Committee met in December 2013, January 2014, and February 2014 to develop proposed amendments related to the four topics authorized by the Supreme Court. In March 2014, the Committee's recommendations were submitted for public comment. A total of 142 comments were received from fourteen individuals, including judges, county attorneys, child protection workers, guardians ad litem, attorneys for parents, Ombudspersons for Families, and staff at the Department of Human Services. In late March 2014, the Committee held a final meeting to review the public comments, make additional changes as necessary, and finalize the proposed amendments. Following is an overview of the Committee's deliberations and proposed amendments.

New Rule 50: Procedures for Establishing Paternity in Juvenile Protection Proceedings

Background

The lack of involvement of noncustodial parents (usually fathers) in juvenile protection matters has been documented in Minnesota's federal and state Child and Family Service Reviews (CFSR). Involvement of fathers in juvenile protection matters is desired as it may result in better outcomes for children, the fathers may be able to serve as placements for children who are removed from their mothers, and fathers' relatives may be able to provide placements or other resources if neither parent is able to do so.

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As a result of the increasing recognition of the importance of fathers' involvement for children in foster care, in 2009 the Legislature promulgated [Minnesota Statutes § 260C.150](#) requiring the county agency to make diligent efforts to identify and locate both parents of any child involved in a juvenile protection proceeding and to offer services to both parents in an effort to achieve timely permanency for the child. To enhance the parent-child relationship, the statute also permits establishment of paternity under procedures set forth in the Minnesota Rules of Juvenile Protection. But, no such rule exists, so the Committee drafted a new rule (Rule 50) setting forth procedures for establishing paternity for children involved in juvenile protection matters.

Principles Guiding Committee's Work

In drafting Rule 50, the Committee worked from these principles:

- Parentage (family court) and juvenile protection (juvenile court) processes should be kept separate, but there should be coordination between the two court processes to help ensure timely decisions.
- Provide a solid procedural framework for establishment of paternity for children in foster care, but give counties flexibility to do what works best in each jurisdiction.
- To accommodate local practice, parentage and juvenile protection matters may be calendared together or separately and may be assigned to the same judicial officer or separate judicial officers. Co-calendar and judicial assignment can help accommodate families and enhance coordinated decision-making.
- Because of the juvenile court's original and exclusive jurisdiction under Minnesota Statutes § 260C.101, it is legally appropriate for the family court to determine paternity but to "hold off" on making decisions regarding custody, parenting time, and child support – which are required to complete a parentage matter – pending outcome of the juvenile protection matter. When the parentage and juvenile protection matters are not calendared together or assigned to the same judicial officer, the rule should enhance communication between judicial officers to support coordinated decision-making. Upon finalization of the juvenile protection matter, the rules should provide a "trigger" to resolve the remaining decisions in the family court parentage matter.
- If juvenile protection and parentage matters regarding the same child are not assigned to the same judicial officer, the judicial officers may communicate as permitted under the Code of Judicial Conduct.
- Child support will continue to be established in family court, not in juvenile court.
- When appropriate, juvenile protection petitions should include notice that a parentage matter may be brought at the same time as the juvenile protection matter and that parents can apply

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for parentage establishment and child support services through the county child support agency.

- Emphasize that juvenile protection matters and parentage matters are governed by different rules and have different confidentiality requirements.
- When appropriate, juvenile protection petitions should include notice that a parentage matter may be brought at the same time as the juvenile protection matter and that parents can apply for parentage establishment and child support services through the county child support agency.
- The rules should require sharing of the juvenile protection petition and orders by the child protection agency with the child support agency when there is a parentage issue in the juvenile protection matter.

Overview of Rule 50 and Related Proposed Amendments

- **Rule 2 – Definitions:** Added definitions for “child support,” “parentage matter,” and “presumed father.”
- **Rule 10 – Orders:** Added subdivision regarding notification to family court regarding filing of juvenile protection order.
- **Rule 8 – Access to CHIPS court Files:** Added provisions dealing with access to juvenile protection court files by family court judicial officers, family court parties, and family court GALs.
- **Rule 33 – Petitions:** Added provision that CHIPS petition may include notice that juvenile protection proceeding may include process to establish parentage.
- **Rule 50 – Parentage Matter:** New rule specifying procedure for establishing parentage as part of juvenile protection proceeding.

Rule 38: Reports to the Court by Social Workers and Guardians ad Litem

Background

Over the past several years, there have been significant revisions to Minnesota Statutes Chapter 260C required by the federal Fostering Connections Act, including:

- continued jurisdiction over youth who remain in foster care past age 18;
- expanded judicial oversight responsibility for educational stability and progress of children in foster care;
- expanded judicial oversight for the child’s physical, medical, and dental health; and
- increased attention to early and thorough relative searches.

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Principles Guiding Committee's Work

Rule 38, dealing with reports to the court by social workers and guardians ad litem, is in need of significant revision because it is no longer consistent with the requirements of Minnesota Statutes Chapter 260C. In drafting the proposed revisions to Rule 38, the Committee worked from the following principles:

- There should be a clear connection between the case plan and reports to the court to support the court's oversight role in CHIPS cases, help the court make better decisions, and improve outcomes for children.
- Organize the rule based upon whether the child is or is not in foster care and care and based upon the different types of statutory requirements, including reports regarding reasonable efforts, identification and location of parents, identification and notification of relatives, etc.
- Permit reports on multiple subjects or to meet multiple statutory requirements to be combined into a single report.
- Substantive statutory requirements should be referenced, but not repeated, in the rule.

Overview of Proposed Amendments to Rule 38

The following topics were added to address requirements for new or additional court findings required under Minnesota Statutes Chapter 260C:

- The agency's efforts to identify and locate both parents of the child.
- The agency's efforts to identify and notify relatives of the child.
- The six-month Permanency Progress Review Hearing and several required findings to help achieve timely permanency for the child.
- The agency's efforts to finalize an adoptive home for children under the guardianship of the commissioner of human services. In the case of reports for children under the guardianship of the commissioner, the rule organizes lengthy statutory requirements regarding reasonable efforts to finalize an adoption into a shorter outline format.

The following provisions from the predecessor rule continue without revision or with minor revisions as noted:

- The process for reports between required hearings (added a five day timeframe to request hearing).
- The process for objections to the agency's report.
- The content of the report of the child's guardian ad litem (added additional hearings for required report by cross-referencing statute).

Technical Amendments to Conform the Juvenile Protection Rules and Adoption Rules to the Statutes

Background

Over the past several legislative sessions there has been significant reorganization and renumbering of large portions of Minnesota Statutes Chapters 259 and 260C. As a result, many references to statute citations, and some procedural content, in the Juvenile Protection Rules and Adoption Rules are no longer accurate and require updating. The Committee recommends revising the rules to conform them to the revised statutes.

Principles Guiding Committee's Work

In recommending technical amendments, the Committee worked from the principle that substantive statutory requirements should be referenced, but not repeated, in the rules.

Overview of Proposed Technical Amendments to Juvenile Protection Rules

- **Rule 1 – Scope and Purpose:** Update scope and purpose consistent with statutes
- **Rule 2 – Definitions:** Add or amend definitions of “child,” “child support,” “foster care,” “juvenile protection matter,” “non-resident parent,” “parent,” “parentage matter,” “voluntary foster care”
- **Rule 4 – Timeline:** Correct citations and update rule consistent with statutes
- **Rule 5 – Continuances:** Correct citations and update rule consistent with statutes
- **Rule 10 – Orders:** Delete rule stating that order is no longer in effect if juvenile court jurisdiction is terminated
- **Rule 16 – Signing of Pleadings:** Clarify access to names and addresses of parties and participants
- **Rule 20 – Alternative Dispute Resolution:** Add rule authorizing use of ADR as permitted by statute
- **Rule 21 – Parties:** Correct citations and update rule consistent with statutes, and clarify access to names and address of parties
- **Rule 22: Participants:** Clarify access to names and address of participants
- **Rule 25 – Appointment of Counsel:** Revise appointment of counsel for parents consistent with statute
- **Rule 30 – EPC Hearing:** Clarify that reasonable efforts are required except in CHIPS bypass cases
- **Rule 31 – Methods of Filing and Service:** Add option for “alternative personal service” authorizing service by US mail in lieu of personal service and directing that party being served may be ordered to pay for cost of personal service

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- Rule 32 – Summons and Notice: Amend rule to require personal service of summons and petition on all parents except alleged fathers
- Rule 33 – Petition: Amend rule to specify that TPR and permanency petitions shall be filed in a file separate from the CHIPS file, revise titles of petitions to reflect statutory revisions (e.g., replace “long term foster care” with “permanent custody to agency”), and specify permanency petition must be filed by month 11
- Rule 34 – Admit/Deny Hearing: Clarify that timing of admit/deny hearing in CHIPS bypass cases is within 10 days of the filing of the petition; require ICWA determinations if Admit/Deny Hearing is the first hearing or if not made at EPC hearing
- Rule 35 – Admission or Denial: Delete reference to children under age 8
- Rule 39 – Trial: Trial following a permanency progress review hearing commences within 60 days of the filing of the petition for TPR or transfer of legal custody
- Rule 41 – Disposition: Delete reference to dispositions for review of voluntary foster care
- Rule 42 – Permanent Placement Matters: Clarify that permanent placement determination hearings must commence at month 12 and permanency progress review hearings must be held at month 6; permanency progress review hearings must be held for all children regardless of age, deleted procedures for hearings because they are specified in the reference statute, clarified timing and circumstances under which someone other than the agency may file a permanency petition, specified where motions to modify TLC orders must be filed and heard, specifies timing of reviews when child is under guardianship of commissioner of human services resulting from TPR or consent of both parents, and new rule dealing with review when child is under guardianship of commissioner and contested adoptive placements
- Rule 43 – Review of Children in Voluntary Foster Care for Treatment: Correct statutory citations and emphasize purpose is to continue to look for permanent placement for child
- Rule 44 – Review of Voluntary Placement Matters: Correct statutory citations
- Rule 51 – Jurisdiction to age 18 and continued review after age 18: New rule dealing with jurisdiction and child’s age

Overview of Proposed Technical Amendments to Adoption Rules

- Rule 1 – Scope and Purpose: Redefine scope related to children under guardianship of commissioner of human services
- Rule 2 – Definitions: Amend definitions to include “adult adoption,” “adoption matter,” “commissioner,” “contested adoption,” “contested adoptive placement,” and “petitioner”
- Rule 3 – Applicability of other Rules and Statutes: Identify the requirements for review of progress toward adoption for child under guardianship of commissioner
- Rule 10 – Orders: Delete rule stating that order is no longer in effect if juvenile court jurisdiction is terminated

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- Rule 17 – Discovery: Add language regarding discovery in adoption for child under guardianship of commissioner
- Rule 24 – Guardians Ad Litem: Confirm role of GAL in post-TPR and adoption matters
- Rule 26 – Commencement of Adoption: Add language regarding commencement of adoption matter when child is under guardianship of commissioner
- Rule 31 – Notice of Hearing: Clarify that court administrator serves notice of hearing and petition for child under guardianship of commissioner and petitioner serves notice of hearing and petition for other adoption types
- Rule 33 – Consent to Adoption: Identify requirements for consent to adopt when child under guardianship of commissioner, including timing, form, and content of consent
- Rule 34 – Communication or Contact Agreement: Identify requirements for contact or communication agreements when child under guardianship of commissioner
- Rule 35 – Petition: Clarify who may file adoption petitions for each type of adoption including state wards, residency requirements, timing of filing of petition, petition content, petition case caption, other documents that need to be filed along with petition or before final hearing, and verification and signatures
- Rule 38 – Post-Placement Assessment Report: Confirm that background studies are always required and cannot be waived and specifying process for contested placements for child under guardianship of commissioner
- Rule 41 – Final Hearing in Uncontested Matter: Clarify timing of issuance of findings, order and decree
- Rule 42 – Consolidation and Bifurcation: Clarify that consolidation and bifurcation do not apply in cases where child under guardianship of commissioner
- Rule 45 – Findings of Fact, Order and Decree: Clarify when court can dismiss or deny adoption petitions

Respectfully submitted,

MINNESOTA SUPREME COURT ADVISORY
COMMITTEE ON RULES OF JUVENILE
PROTECTION PROCEDURE

PROPOSED AMENDMENTS TO RULE 38 – COURT REPORTS

RULE 38. REPORTS TO THE COURT

Rule 38.01. Social Services Court Reports - Generally

Subd. 1. Periodic Reports Required. The responsible social services agency shall submit periodic certified reports to the court regarding the child and family. Whenever possible and appropriate, the agency may combine required reporting provisions under this Rule into a single report.

Subd. 2. Timing of Filing and Service. The agency 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.

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, subd. 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 demographic information:
 - (i) the name of the person submitting the report;
 - (ii) the date of the report;
 - (iii) the date of the hearing at which the report is to be considered;
 - (iv) the child's name and date of birth and, in the case of an Indian child, the tribe in which the child is enrolled or eligible for membership;
 - (v) a statement about whether the child is an Indian child and whether the Indian Child Welfare Act applies;
 - (vi) the names of both of the child's parents or the child's legal custodian; and
 - (vii) the dates of birth of the child's parents who are minors.
- (c) include the date the case was most recently opened for services in the responsible social services agency;

PROPOSED AMENDMENTS

(d) include the date and a brief description of the nature of all other previous case openings for this child and the child's siblings with the responsible social services agency and, if known, case openings for this child and the child's siblings with any other social services agency responsible for providing public child welfare or child protection services;

(e) identify progress made on the out-of-home placement plan or case plan;

(f) address the safety, permanency, and well-being of the child, including the child's:

(1) educational readiness, stability, and achievement; and

(2) physical and mental health; and

(g) request orders related to:

(1) the child's need for protection or services;

(2) implementing requirements of the out-of-home placement plan or case plan; and

(3) the health, safety, and welfare of the child;

Subd. 6. Reports Regarding Siblings. The agency may submit in a single document reports regarding siblings who are subjects of the same juvenile protection matter.

Subd. 7. Information from Collateral Sources. The agency may submit written information from collateral sources, including, but not limited to, physical and mental health assessments, parenting assessments, or information about the delivery of services or any other relevant information regarding the child's safety, health, or welfare in support of the report or as a supplement to the report.

2014 Advisory Committee Comment

Subdivision 1 permits the agency to submit a single report to the court which addresses a number of requirements under this Rule. For instance, when the agency is reporting to the court about the progress being made on the out-of-home placement plan as required in Rule 38.02, subd. 1(b), the agency may also report on its efforts to identify and locate both parents of the child under Rule 38.03 and its identification and search for relatives under Rule 38.04.

Rule 38.02. Social Services Court Report - Child in Foster Care

Subd. 1. Content. In addition to the requirements of Rule 38.01, each certified report regarding a child in foster care shall include:

(a) the child's placement history, including:

(1) the date the child was removed from the home and the agency's legal authority for removal;

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(2) the date the child was ordered placed in foster care, if the child has been ordered in foster care;

(3) the total length of time the child has been in foster care, including all cumulative time in foster care the child may have experienced within the previous five (5) years;

(4) the number of times, if any, the child reentered foster care prior to age 21;

(5) the number of foster care placements the child has been in prior to age 21;

(6) if the child's foster care home has changed since the last court hearing:

(i) the reason for the change in foster care home; and

(ii) how the child's new foster care home meets the child's best interests under Minnesota Statutes § 260C.212, subd. 2 (a) and (b), or, in the case of an Indian child, how the placement complies with placement preferences established in 25 U.S.C. § 1915; and

(7) if the child is not placed with siblings who are in placement, the efforts the agency has made to place the siblings together; and

(b) services under the out-of-home placement plan, including, as appropriate to the stage of the matter:

(1) a description of the agency's efforts to implement the out-of-home placement plan; and

(2) the parent's progress in complying with the out-of-home placement plan, including anything the parent has done to alleviate the child's need for protection or services; and

(c) a description of:

(1) the case worker visits required under Minnesota Statutes § 260C.212, subd. 4a, that occurred since the last court hearing; and

(2) as applicable, the quality and frequency of visitation between the child and the child's:

(i) parents or custodian;

(ii) siblings; and

(iii) relatives; and

(d) 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 § 260C.212, subd. 1(b)(11), and the agency's continued efforts to identify and make the most legally-permanent placement that is in the child's best interest.

PROPOSED AMENDMENTS

Subd. 2. Requested Court Action. The report shall include recommendations to the court for:

(a) modification of the out-of-home placement plan or for actions the parents or legal custodian must take to make changes necessary to alleviate the child's need for protection or services; and

(b) orders necessary for the child's safety, permanency, and well-being, including any orders necessary to promote the child's:

(1) educational readiness, stability, and achievement;

(2) physical and mental health; and

(3) welfare and best interests.

Subd. 3. Reports under Minnesota Statutes Chapter 260D. Reports under Minnesota Statutes Chapter 260D must meet the requirements of Minnesota Statutes § 260D.06 and Rule 43.02.

Rule 38.03. Social Services Court Report – Reasonable Efforts to Identify and Locate Both Parents of the Child

If both parents of the child have not been identified and located at the time of the first review hearing under Rule 41.06, the agency shall report to the court regarding the diligent efforts required of the agency to identify and locate the parents pursuant to Minnesota Statutes § 260C.150, subd. 3. The agency shall continue to report to the court, on a schedule set by the court, until:

(a) both parents of the child are identified and located; or

(b) the court finds the agency has made diligent efforts to identify and locate the parent as required under Minnesota Statutes § 260.012, 260C.178, § 260C.201, and § 260C.301, subd. 8, regarding any parent who remains unknown or cannot be located. The court may also find that further reasonable efforts for reunification with the parent who cannot be identified or located would be futile.

2014 Advisory Committee Comment

The agency's report of efforts to locate a parent whose identity or location remains unknown should include the efforts listed in Minnesota Statutes § 260C.150, subd. 3. Minnesota Statutes 260C.150, subd. 7 permits the finding that reasonable efforts to identify and locate a parent fulfill the required reasonable efforts under Minnesota Statutes § 260.012, § 260C.178, § 260C.201, and § 260C.301, subd. 8. When the agency has made diligent and reasonable efforts,

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then either both parents have been identified and located or there is a sufficient basis to determine that additional efforts are futile.

One of the steps the responsible social services agency can take to locate a parent is to ask for assistance from the county and state of Minnesota child support enforcement system. See Minnesota Statutes § 13.46, subd. 1(a)(30); 42 U.S.C. § 653(a), (b), and (c); and 42 U.S.C. § 654(8). This step can be an important and productive source of information about a parent whose identity and location are unknown.

Rule 38.04. Social Services Court Report – Due Diligence to Identify and Notify Relatives

Subd. 1. Timing.

(a) Within three (3) months of the child’s placement, the agency shall report to the court regarding the agency’s due diligence to identify and notify relatives under Minnesota Statutes § 260C.221 and, in the case of an Indian child, describe the agency’s active efforts to meet the placement preferences of 25 U.S.C. § 1915.

(b) If the court orders continued efforts to identify and locate relatives, the agency shall periodically report on its continuing efforts on a schedule set by the court.

(c) If an Indian child is not placed according to the placement preferences of 25 U.S.C. § 1915, the agency shall periodically report on its efforts to meet the placement preferences until the court makes a finding of good cause under 25 U.S.C. § 1915.

Subd. 2. Content.

(a) **Identification and notice to relatives.** The report shall include information about identification and notice to relatives, including:

(1) a description of the procedures the agency used to identify relatives, including the names of persons who were asked to provide information about the child’s relatives and the use of any internet or other resource to identify and locate relatives;

(2) the names of all identified relatives and how the person is related or known to the child or child’s family;

(3) whether the agency has an address or other contact information for the relative and the results of using the address or contact information, if any; and

(4) whether the relative was sent the notice and information required under Minnesota Statutes § 260C.221(a) and the nature of any resulting contact from the relative back to the agency.

(b) **Consideration of relatives for placement.** The report shall include information about how the agency considered relatives for placement, including:

PROPOSED AMENDMENTS

(1) whether identified relatives were considered for placement under Minnesota Statutes § 260C.212, subd. 2 (a) and (b), and the result of that consideration;

(2) a description of the process the agency used to consider relatives for placement, including who was consulted, whether the agency used family group decision-making or a family conference, or any other process to assist with consideration of relatives;

(3) in the case of an Indian child, the efforts the agency made to work with the child's tribe to identify relatives and the results of those efforts;

(4) a copy of or reference to the documentation from the out-of-home placement plan regarding how the relative with whom the child is placed meets the placement factors at Minnesota Statutes § 260C.212, subd. 2(b), or, if placement is not with a relative, why a relative placement was not appropriate; and

(5) what future consideration for placement of the child will be given to relatives.

(c) **Engagement in planning.** The report shall include a description of how the agency will engage relatives in continued support for the child and family and involvement in permanency planning for the child as required under Minnesota Statutes § 260C.221(a)(3).

Subd. 3. Requested Findings; Plan for Active Efforts; Orders.

(a) **Reasonable Efforts.** Pursuant to Minnesota Statutes § 260C.221(e), the agency may request a finding that the agency has made reasonable efforts to identify and notify relatives.

(b) **Active Efforts.** In the case of an Indian child, if the child's placement is not according to the preferences of 25 U.S.C. § 1915, the agency shall report its plan for continued efforts to place the child according to the preferences or request a finding of good cause under 25 U.S.C. § 1915.

(c) **Orders.** When appropriate to assist the agency in its duties for reasonable and active efforts, the agency may ask the court for orders that assist in the identification and location of relatives.

2014 Advisory Committee Comment

Subdivision 2 of Rule 38.04 reflects provisions of Minnesota Statutes § 260C.221(d), which permits disclosure of a relative's data – notwithstanding provisions in Minnesota Statutes Chapter 13 that make the data private data on the individual – for purposes of the court's review of the agency's efforts to identify, search for, and contact relatives. If relative placement is not made, this statutory provision permits disclosure of data regarding the reason for not making a relative placement.

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Rule 38.05. Social Services Court Report – Permanency Progress Review Hearing

Subd. 1. Content.

(a) Progress towards permanency. In addition to the requirements of Rules 38.01 and 38.02 regarding the permanency progress review hearing, the report shall address the elements in Minnesota Statutes § 260C.204(a).

(b) Concurrent efforts on adoption and referrals under the Interstate Compact on the Placement of Children. As appropriate, the report shall also address any concurrent reasonable efforts required under Minnesota Statutes § 260C.605 and information on any referrals that have been made or will be made under Minnesota Statute § 260.851, the Interstate Compact on the Placement of Children.

Subd. 2. Requested Court Order Regarding Permanency Progress. The report shall include a request for appropriate orders under Minnesota Statutes § 260C.204(c) to:

- (a) return the child home;**
- (b) continue reasonable efforts for reunification or active efforts to prevent the breakup of the Indian family; or**
- (c) plan for the legally permanent placement of the child away from the parent, identify permanency resource homes that will be the legally permanent home if the child cannot return to the parent, and file a permanency petition under Minnesota Statutes § 260C.204(d)(2) or (3).**

2014 Advisory Committee Comment

A permanency progress review hearing was formerly required only for children under age 8. Minnesota Statutes § 260C.204 now requires this hearing at month six for all children continuing out of the care of the parent from whom the child was removed.

Rule 38.06. Social Services Court Report – Child on Trial Home Visit

Subd. 1. Timing and Content. In addition to the requirements of Rules 38.01 and 38.02, when a hearing is required under Minnesota Statutes § 260C.503, subd. 3(c), and Rule 42.13 because the child is on a trial home visit at the time for required permanency hearing or pursuant to Rule 41.06, subd. 2(b)(3), the agency shall serve and file a report regarding the child's and parent's progress during the trial home visit and the agency's reasonable efforts to finalize the child's safe and permanent return to the care of the parent. When a trial home visit is terminated, the agency shall report to the court as required under Minnesota Statutes § 260C.201, subd. 1(a)(3)(v) and (vi), and Rule 41.06, subd. 2(b)(1) and (2).

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Subd. 2 . Requested Court Orders. The report shall include recommendations, if any, for modification to the services and supports in place, and for any orders necessary for the safety, protection, well-being, or best interests of the child during the trial home visit. The agency shall also recommend whether the trial home visit should continue as provided in Minnesota Statutes § 260C.201, subd. 1(a)(3).

2014 Advisory Committee Comment

Provisions of Rule 38.06, subd. 1, that reference requirements of Rule 38.02 requiring updating the Out-of-Home Placement Plan are appropriate when the child is on a trial home visit because the agency continues to have legal custody of the child, which makes the Out-of-Home Placement Plan a continued requirement even though the child is at home with the parent.

When a child is on a trial home visit at the time for the required permanency hearing under Minnesota Statutes § 260C.503, subd. 3(c), and Rule 42, a permanency petition under Minnesota Statutes § 260C.505 is not required.

Rule 38.07. Social Services Court Report – Child under State Guardianship

Subd. 1. Timing. When a hearing is required under Minnesota Statutes § 260C.607 to review the progress of the matter towards finalized adoption and the child’s well-being, in addition to the requirements of Rule 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 § 260C.607, subd. 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 § 260C.221(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;

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(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 Statute § 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 § 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 Statute § 260C.212, subd. 2(a) and (b);

(iii) the progress of any study required under the Minnesota Statutes § 260.851, 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 § 260C.611;

(ii) the execution of the adoption placement agreement;

(iii) the required notice under Minnesota Statutes § 260C.613, subd. 1(c);

(iv) the execution of an agreement regarding adoption assistance under Minnesota Statutes § 259A or Northstar Adoption Assistance under Minnesota Statutes § 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;

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(4) how the agency is planning for the child's education pursuant to Minnesota Statutes § 260C.607, subd. 4(a)(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 § 260C.212, subd. 1(b)(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 § 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 § 260C.613, subd. 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 § 260C.607, subd. 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 § 260C.607, subd. 6.

(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 on the parties entitled to notice under Minnesota Statutes § 260C.607, subd. 2, a copy of the report and shall send a copy of the report to the commissioner of human services.

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 § 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

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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 § 260C.613, subd. 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 § 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 § 260C.613, subd. 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 § 260C.607, subd. 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 § 259A, in effect until December 31, 2014, and Northstar Adoption Assistance under Minnesota Statutes § 256N, in effect for adoptions finalized on or after January 1, 2015.

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

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2. *Child Well-Being.* Minnesota Statutes § 260C.607, subd. 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 § 260C.212, subd. 1(b)(11).

Rule 38.08. Social Services Court Report – Child Not in Foster Care

In addition to the requirements of Rule 38.01, a certified report for a child not in foster care shall include the following:

(a) the child's residence and whether the child's residence has changed since the last court hearing;

(b) as applicable, a description of:

(1) the services provided to the child and parent and the agency's efforts to implement the case plan; and

(2) the parents' or legal custodian's and child's progress in complying with the plan, including anything the parents or legal custodian, and child, if appropriate, have done to alleviate the child's need for protection or services; and

(c) recommendations to the court for modification of the plan or for actions the parent or legal custodian must take to provide adequate protection or services for the child.

Rule 38.09. Social Services Court Report – Between Disposition Review Hearings

Once disposition has been ordered pursuant to Minnesota Statutes § 260C.201 and Rule 41, the responsible social services agency, through the county attorney, may ask the court for orders related to meeting the safety, protection, and best interests of the child based upon a certified report that states the factual basis for the request. Such reports shall be filed with the court, together with proof of service upon all parties, by the responsible social services agency. Within five (5) days of service of the report, any party may request a hearing regarding the agency's report. Pending hearing, if any, upon two (2) day's actual notice and, based upon the report, the court may issue an order that is in the best interests of the child. Upon a finding that an emergency exists, the court may issue a temporary order that is in the best interests of the child.

Rule 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

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based upon personal observation, first-hand knowledge, or information and belief. The certified objection shall be supported by a sworn statement of the party's factual basis for the objection and may state other or additional facts on information and belief and argument that the court should consider in making its determinations or orders. An objection may also be supported by reports from collateral service providers or assessors. Objections to the agency's report and recommendations may also be stated on the record, but the court shall give the agency a reasonable opportunity to respond to the party's objection.

Rule 38.11. Reports to the Court by Child's Guardian ad Litem

Subd. 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 § 260C.204, review of a child under guardianship of the commissioner of human services under Minnesota Statutes § 260C.607, any reviews conducted regarding a child in the permanent custody of the agency under Minnesota Statutes § 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, subd. 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;

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(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;

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

(101) 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 sworn statement of the party's factual basis for the objection and may state other or additional facts on information and belief and argument that the court should consider in making its determinations or orders. An objection may also be supported by reports from collateral service providers or assessors. Objections to the guardian ad litem's report and recommendations may also be stated on the record, but the court shall give the guardian ad litem a reasonable opportunity to respond to the party's objection.

Rule 38.01. Social Services Court Reports -- Generally

Subd. 1. Periodic Reports Required. ~~After an out-of-home placement plan or case plan is approved or ordered by the court pursuant to Rule 37 or Rule 41, the responsible social services agency shall make periodic certified reports to the court regarding progress made on the plan. When the report relates to plans for siblings who are in foster care, the agency may combine information related to each child's plan into one report as long as the report addresses each child's individual needs and circumstances. The agency may also submit written information from collateral sources regarding assessments or the delivery of services or any other relevant information regarding the child's safety, health, or welfare in support of the report or as a supplement to the report. Such reports may be supplemented at or before the hearing either orally or in writing.~~

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~~**Subd. 2. Content.** Although pursuant to Rule 16 a report is not required to be signed, each report shall include the name of the person submitting the report; a statement certifying the content as true based upon personal observation, first hand knowledge, or information and belief; and shall include the case caption, the date of the report, and the date of the hearing at which the report is to be considered. Each report shall contain or have attached the certificate of distribution required under Rule 31.07, subd. 2.~~

~~**Subd. 3. Timing of Reports.** Periodic reports required under this Rule shall be filed with the court and served upon the parties by the responsible social services agency not later than five (5) business days prior to each review hearing required under Rule 41.06, permanent placement determination hearing required under Rule 42.04, and as otherwise directed by the court.~~

~~**Subd. 4. Objections to Guardian Ad Litem's Report or Recommendations.** Any party objecting to the content or recommendations of the guardian ad litem may submit a written objection to the report either before or at the hearing at which the report is to be considered. The objection shall include a statement certifying the content as true based upon personal observation, first hand knowledge, or information and belief. The certified objection shall be supported by a sworn statement of the party's factual basis for the objection and may state other or additional facts on information and belief and argument that the court should consider in making its determinations or orders. An objection may also be supported by reports from collateral service providers or assessors. Objections to the guardian ad litem's report and recommendations may also be stated on the record as long as the court gives the guardian ad litem a reasonable opportunity to respond to the party's objection.~~

Rule 38.02. Social Services Court Reports—Child Ordered into Foster Care

~~**Subd. 1. Content.** In addition to the requirements of Rule 38.01, subd. 2, each certified report regarding a case plan or out-of-home placement plan shall include the name of the person submitting the report and the following:~~

~~(a) **Identifying Information.** Identifying and baseline placement information regarding the child shall be included as follows:~~

- ~~(1) — the child's name and date of birth and, in the case of an Indian child, the Tribe in which the child is enrolled or eligible for membership;~~
- ~~(2) — the names of the child's parents or legal custodians;~~
- ~~(3) — the dates of birth of the child's parents who are minors;~~
- ~~(4) — the date the child was first placed in foster care;~~
- ~~(5) — the date the child was ordered placed in foster care;~~

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~~(6) — the total length of time the child has been in foster care, including all cumulative time the child may have experienced within the previous five (5) years;~~

~~(7) — the number of moves the child has experienced while in foster care, including all moves during the previous five (5) years;~~

~~(8) — if the child's placement has changed since the out-of-home placement plan was approved or ordered, a description of how the child's placement meets the child's best interests as set out in the modified out-of-home placement plan, or in the case of an Indian child, whether the placement complies with placement preferences established in 25 U.S.C. § 1915; and~~

~~(9) — when the child has siblings, the names and ages of the child's siblings, the residence or placement status of each sibling and, where appropriate, the efforts the agency has made to place the children together; and~~

~~(b) — **Review of Out-of-Home Placement Plan.** As applicable, a description of:~~

~~(1) — the agency's efforts to implement the out-of-home placement plan requirements;~~

~~(2) — the parent's or legal custodian's compliance with the plan requirements;~~

~~(3) — services provided to the child;~~

~~(4) — the child's adjustment in placement;~~

~~(5) — visitation between the parents or legal custodian and the child and between the child and any siblings; and~~

~~(6) — the agency's efforts to finalize adoption; and~~

~~(c) — **Placement with Relatives.** At least once during the first six (6) months the child is in placement or until placement is made with a relative or the court finds the agency's efforts adequate under Minnesota Statutes § 260C.212, subd. 5, the report shall describe the efforts the agency has made to identify and notify relatives, or in the case of an Indian child the report shall describe how the placement complies with requirements of 25 U.S.C. § 1915; and~~

~~(d) — **Independent Living Plan.** When the child is age sixteen (16) or older, the report shall include a description of the elements of the child's independent living plan and how the child is progressing on that plan; and~~

~~(e) — **Child with Emotional Disturbance.** For a child in placement due solely or in part to the child's emotional disturbance, the report shall include diagnostic and assessment information, specific services relating to meeting the mental health care needs of the child, and treatment outcomes; and~~

~~(f) — **Recommendations.** The report shall include recommendations to the court for modification of the plan or for actions the parents or legal custodian must take to provide protection or services for the child.~~

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~~**Subd. 2. Reports Between Disposition Review Hearings.** Once disposition has been ordered pursuant to Rule 41, the responsible social services agency, through the county attorney, may ask the court for orders related to meeting the safety, protection, and best interests of the child based upon a certified report that meets the requirements of Rule 38.01, subd. 2, and states the child's identifying and baseline placement information and the factual basis for the request including, where appropriate, other relevant reports or data. Such reports shall be filed with the court together with proof of service upon all parties by the responsible social services agency. Any party may request a hearing regarding the agency's report. Pending hearing, if any, upon two (2) day's actual notice and based upon the report the court may issue an order that is in the best interests of the child. Upon a finding that an emergency exists, the court may issue a temporary order that is in the best interests of the child.~~

Rule 38.03. Social Services Court Reports—Child Not in Foster Care

~~In addition to the requirements of Rule 38.01, subd. 2, each certified report regarding the case plan shall include the name of the person submitting the report and the following:~~

~~(a) — **Identifying Information.** Identifying information regarding the child shall be included as follows:~~

~~(1) — the child's name and date of birth and, in the case of an Indian child, the Tribe in which the child is enrolled or eligible for membership;~~

~~(2) — a statement about whether the child is an Indian child, whether or not the Indian Child Welfare Act applies, and in the case of an Indian child the Tribe in which the child is enrolled or eligible for membership;~~

~~(3) — the names of the child's parents or legal custodians;~~

~~(4) — the dates of birth of the child's parents who are minors;~~

~~(5) — the child's residence and, if the child's residence has changed since the case plan was ordered, the date of the change;~~

~~(6) — the date the case was most recently opened for services in the responsible social services agency;~~

~~(7) — the date of all other case openings for this child and the child's siblings with the responsible social services agency and, if known, case openings for this child or the child's siblings with any other social services agency responsible for providing child welfare or child protection services to this child; in addition to the date of other case openings, the report should contain a brief description of the nature of the contact with the responsible or other social services agency; and~~

~~(b) — **Review of Plan.** As applicable, a description of:~~

~~(1) — the agency's efforts to implement the case plan;~~

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~~(2) — the parents’ or legal custodian’s and child’s compliance with plan requirements; and~~

~~(3) — the services provided to the child; and~~

~~(e) — **Recommendations.** The report shall include recommendations to the court for modification of the plan or for actions the parent or legal custodian must take to provide adequate protection or services for the child.~~

Rule 38.04. Objections to Agency’s Report or Recommendations

~~Any party objecting to the content or recommendations of the responsible agency’s report may submit a written objection to the report either before or at the hearing at which the report is to be considered. The objection shall include a statement certifying the content as true based upon personal observation, first hand knowledge, or information and belief. The certified objection shall be supported by a sworn statement of the party’s factual basis for the objection and may state other or additional facts on information and belief and argument that the court should consider in making its determinations or orders. An objection may also be supported by reports from collateral service providers or assessors. Objections to the agency’s report and recommendations may also be stated on the record as long as the court gives the agency a reasonable opportunity to respond to the party’s objection.~~

Rule 38.05. Reports to the Court by Child’s Guardian ad Litem

~~Subd. 1. Periodic Reports Required. The guardian ad litem for the child shall submit periodic certified written reports to the court which may be supplemented at or before the hearing either orally or in writing.~~

~~**Subd. 2. Content.** Although pursuant to Rule 16 a report is not required to be signed, each report shall include the name of the person submitting the report, a statement certifying the content as true based upon personal observation, first hand knowledge, or information and belief and shall include the following:~~

~~(a) — the child’s name, date of birth, and age at the time the report is filed;~~

~~(b) the names of the child’s parents or legal custodians;~~

~~(c) the case caption;~~

~~(d) the date of the report;~~

~~(e) the date of the hearing at which the report is to be considered;~~

~~(f) the date the guardian ad litem was appointed by the court;~~

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

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

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

~~(j) — a list of all documents relied upon when generating the court report;~~

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

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

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

~~Each report shall contain or have attached the certificate of distribution required under Rule 31.07, subd. 2.~~

~~**Subd. 3. Timing of Reports.** Except for an emergency protective care hearing for which no written report is required, reports required under this rule shall be filed with the court and served upon the parties by the guardian ad litem not later than five (5) business days prior to each review hearing required under Rule 41.06, permanent placement determination hearing required under Rule 42, and as otherwise directed by the court.~~

~~**Subd. 4. Objections to Guardian Ad Litem's Report or Recommendations.** Any party objecting to the content or recommendations of the guardian ad litem may submit a written objection to the report either before or at the hearing at which the report is to be considered. The objection shall include a statement certifying the content as true based upon personal observation, first-hand knowledge, or information and belief. The certified objection shall be supported by a sworn statement of the party's factual basis for the objection and may state other or additional facts or information and belief and argument that the court should consider in making its determinations or orders. An objection may also be supported by reports from collateral service providers or assessors. Objections to the guardian ad litem's report and recommendations may also be stated on the record as long as the court gives the guardian ad litem a reasonable opportunity to respond to the party's objection.~~

PROPOSED RULE 50 AND RELATED AMENDMENTS

RULE 2. DEFINITIONS

* * * * *

(6) "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 §§ 257.51 to 257.74;

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

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

* * * * *

(20) "Parentage matter" means an action under Minnesota Statutes §§ 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.

* * * * *

(2248) "Presumed father" means an individual who is presumed to be the biological father of a child under Minnesota Statutes § 257.55, subd. 1, or § 260C.150, subd. 2.

2014 Advisory Committee Comment

The definition of "child support" in Rule 2.01 () is adapted from Minnesota Statutes § 518A.26, subd. 20.

RULE 10. ORDERS

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

Subd. 1. Persons to be Served and Method of Service. Service of court orders shall be made by the court administrator upon each party, county attorney, and such other persons as the court may direct, and may be made by delivery at the hearing, by U.S. mail, or as otherwise directed by the court. If a party is represented by counsel, delivery or service shall be upon counsel.

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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, subd. 2.

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.

RULE 8. ACCESSIBILITY OF JUVENILE PROTECTION CASE RECORDS

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Rule 8.09. Access to Juvenile Protection Record by Family Court Judicial Officer

In any family court matter involving custody or parenting time regarding a child who has been or is the subject of a juvenile protection matter, the assigned judicial officer shall, upon notice to the parties, have access to the entire juvenile protection court record. Upon request of a party made within ten (10) days of the court’s notice to the parties, the parties shall have an opportunity to be heard after the court accesses the file.

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Rule 8.10. Access to Juvenile Protection Record by Parties and Child's Guardian ad Litem in Family Court Matter

The parties to a family court matter involving a determination of custody or parenting time regarding a child who has been or is the subject of a juvenile protection matter, including any person established as a parent in a parentage matter and any guardian ad litem appointed in the family court matter, shall have access to the juvenile protection case record to the same extent as a party to the juvenile protection matter has access under Rule 8. If the juvenile court has issued a protective order under Rule 8.07, the portions of the juvenile protection case record subject to the protective order continue to be subject to the protective order when accessed by any party to the family court matter.

2014 Advisory Committee Comment

Rules 8.09 and 8.10 serve the child's best interests and judicial economy by permitting access by the family court judicial officer to information in the juvenile court case record when the two courts are hearing or have heard matters regarding the same child. After giving the parties notice, the family court judicial officer court may have the same access to the juvenile protection file as the juvenile court judicial officer. A legal parent in a family matter has access to the juvenile protection case record to the same extent as a party to the juvenile protection matter. If the juvenile court has issued a protective order regarding the content of the juvenile protection case record, that order remains in effect regarding access by any party to the family court matter.

RULE 33. PETITION

Rule 33.02. Content

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

- (a) a statement of facts that, if proven, would support the relief requested in the petition;
- (b) the child's name, date of birth, race, gender, current address unless stating the address would endanger the child or seriously risk disruption of the current placement, and, if the child is believed to be an Indian child, the name of the child's tribe;
- (c) the names, race, dates of birth, residences, and post office addresses of the child's parents when known, ~~and, if the child is believed to be an Indian child, the name of the child's tribe;~~
- (d) the name, residence, and post office address of the child's legal custodian, the person having custody or control of the child, the nearest known relative if no parent or legal

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custodian can be found, and, if the child is believed to be an Indian child, the name and post office address of the child's Indian custodian, if any, and the Indian custodian's tribal affiliation;

(e) the name, residence, and post office address of the spouse of the child;

(f) the statutory grounds on which the petition is based, together with a recitation of the relevant portion of the subdivision(s);

(g) a statement regarding the applicability of the Indian Child Welfare Act;

(h) the names and addresses of the parties identified in Rule 21, as well as a statement designating them as parties;

(i) the names and addresses of the participants identified in Rule 22, as well as a statement designating them as participants; ~~and~~

(j) if the child is believed to be an Indian child, a statement regarding:

(1) the specific actions that have been taken to prevent the child's removal from, and to safely return the child to, the custody of the parents or Indian custodian;

(2) whether the residence of the child is believed to be on an Indian reservation and, if so, the name of the reservation;

(3) whether the child is a ward of a tribal court and, if so, the name of the tribe; and

(4) whether the child's tribe has exclusive jurisdiction pursuant to 25 U.S.C. section 1911(a); 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 sworn affidavit, or by amended petition. If presented orally on the record, the court shall annotate the petition to reflect the updated information.

2014 Advisory Committee Comment

Under Rule 33.02, subd. 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

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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 § 256.741 subds. 5 to 13.

RULE 50. PARENTAGE MATTER

Rule 50.01. Scope

Subd. 1. Parentage Matter and Juvenile Protection Matter Brought at the Same Time. The establishment of a parent and child relationship or the declaration of the nonexistence of the parent and child relationship shall occur pursuant to the requirements of Minnesota Statutes §§ 257.51 to 257.74 in a separate file in family court. A parentage matter regarding the child may be brought at the same time as a juvenile protection matter.

Subd. 2. Original and Exclusive Jurisdiction in Juvenile Court. The juvenile court has original and exclusive jurisdiction under Minnesota Statutes § 260C.101 over any determinations or decisions under Minnesota Chapter 260C, including:

(a) removal of the child from the care of a parent and placement of the child on a temporary basis under Minnesota Statutes § 260C.178 or § 260C.201, subd. 1;

(b) removal of the child from the care of a parent and placement on a permanent basis under Minnesota Statutes § 260C.515; and

(c) review of any orders under Minnesota Statutes § 260C.519 and § 260C.521 or Minnesota Statutes § 260C. 325, including review of the child's progress towards adoption and finalization of adoption under Minnesota Statutes §§ 260C.603 to 637.

Subd. 3. Family Court Jurisdiction. When a parentage matter and a juvenile protection matter regarding the same child are pending at the same time, the family court has jurisdiction to determine parentage, the child's name, and child support. The family court shall not make determinations regarding custody or parenting time until the juvenile court makes an order under Rule 50.06, subd. 2.

2014 Advisory Committee Comment

Children involved in juvenile protection matters who have two known, legal parents have significant advantages. When a child does not have a legal relationship with a parent, timely establishment of parentage helps ensure:

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(1) that the rights and obligations of both parents are considered throughout the juvenile protection matter, including the agency's obligation, when the child is removed from one parent, to consider the other parent for day-to-day care of the child (see Minnesota Statutes § 260C.219);

(2) that maternal and paternal relatives are considered for placement in a timely manner when the child is in foster care (see Minnesota Statutes § 260C.212, subd. 2, and § 260C.221); and

(3) a timely permanency decision for a child in foster care through required planning and services for both parents and involvement of relatives (see Minnesota Statutes § 260.012; § 260C.001, subd. 2(b)(7)(ii); § 260C.219; and § 260C.221).

The purpose of Rule 50 is to help expedite decision-making in parentage matters in family court when a juvenile protection matter is pending. But, there are differences between juvenile protection and parentage matters. Judges, professionals, and families involved in both should understand the differences between the two, recognize the benefits to the child in making the two systems work together, and work to deliver known advantages of having two legal parents for the child. Significant dissimilarities in the two types of matters include:

(1) confidentiality and access to information under Minnesota Statutes § 257.70 (parentage matters) and access to information under Minnesota Statutes § 260C.171, subd. 2, and Rule 8 (juvenile protection matters);

(2) parties under Minnesota Statutes § 257.57 or § 257.60 (parentage matters) and Rules 21 and 22 (juvenile protection matters);

(3) the right to appointed counsel under Minnesota Statutes § 257.69 (parentage matters) and Minnesota Statutes § 260C.163, subd. 3 (juvenile protection matters); and

(4) procedural rules, including rules of discovery and rules governing appeals. The Rules of Civil Procedure apply to parentage matters under Minnesota Statutes § 257.65, but do not apply in Juvenile Protection Matters under Rule 3.01. The Rules of Civil Appellate Procedure apply to both types of matters, but are modified for juvenile protection matters under Rule 47.

Note that Rule 50.01 cites the entire Parentage Act, Minnesota Statutes § § 257.51 to 257.74. However, provisions in Minnesota Statutes § 257.74 relating to adoption do not apply to children under state guardianship whose matters are governed by Minnesota Statutes §§ 260C.601 to 260C.637.

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Rule. 50.02. Judicial Assignment and Calendaring

Subd. 1. Assignment and Calendaring. With the consent of the judicial officer assigned to the juvenile protection matter, a parentage matter commenced in family court under Minnesota Statutes §§ 257.51 to 257.74 may be assigned to the same judicial officer assigned to the juvenile protection matter regarding the same child. Hearings in the parentage matter may be calendared at the same time as hearings on the juvenile protection matter.

Subd. 2. Communication between Judicial Officers. When different judicial officers are assigned to handle a juvenile protection matter and a parentage matter regarding the same child, the judicial officers may communicate with each other as permitted under the Code of Judicial Conduct.

2014 Advisory Committee Comment

The Committee recognizes that juvenile protection matters and parentage matters are assigned and calendared differently in different counties and that the assignment of such matters to the same judicial officer as contemplated in Rule 50.02, subd. 1, may not be feasible in counties with separate family and juvenile divisions.

When the matters cannot be calendared together and are assigned to different judicial officers, subdivision 2 supports communication between the judicial officers responsible for handling each matter so decision-making is coordinated and timely.

In implementing the permission to communicate under subdivision 2, Rule 2.9 (3) of the Code of Judicial Conduct provides the following parameters:

A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

Rule 50.03. Applicable Statutes and Rules

Parentage matters under Minnesota Statutes §§ 257.51 to 257.74 calendared at the same time as juvenile protection matters regarding the same child continue to be governed by:

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- (a) the provisions of Minnesota Statutes § 257.70 limiting access to hearings and records;
- (b) the right to appointed counsel under Minnesota Statutes § 257.69;
- (c) the Rules of Civil Procedures; and
- (d) the Rules of Civil Appellate Procedure.

2014 Committee Comment

Rule 50.03 alerts judges, professionals, and others involved in juvenile protection matters and parentage matters of some of the major differences between juvenile protection and parentage matters.

Rule 50.04. Responsible Social Services Agency to Provide Copy of Petition and Orders to County Child Support Enforcement Agency

Subd. 1. Copy of Petition and Interim Orders Provided to Child Support Agency.

The responsible social services agency shall provide a copy of the juvenile protection petition and any orders related to the status and progress of the case plan in the juvenile protection matter to the appropriate county child support enforcement agency whenever parentage is an issue in the juvenile protection matter.

Subd. 2. Copy of Orders to be Provided to County Child Support Enforcement Agency. The responsible social services agency shall provide a copy of any order listed in Rule 50.06, subd. 2 to the appropriate county child support enforcement agency when the order is issued regarding a child who is the subject of both a juvenile protection matter and a parentage matter.

2014 Advisory Committee Comment

Rule 50.04 assists the responsible social services agency to fulfill its obligation under Minnesota Statutes § 260C.219(a)(1) to require the nonadjudicated parent to cooperate with paternity establishment procedures as part of a required case plan. Requiring the responsible social services agency to provide a copy of the petition and orders from juvenile court to the appropriate county child support enforcement agency whenever there is a parentage issue in a juvenile protection matter will support the responsible social services agency and the county child support enforcement agency to work together with the family to resolve parentage issues.

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Rule 50.05. No Extension of Permanency Timelines

The pendency of a parentage matter shall not extend the permanency timelines set forth in these rules and Minnesota Statutes § 260C.503.

Rule 50.06. Notification to Family Court of Juvenile Protection Orders.

Subd. 1. Required Notification. When a parentage matter is pending regarding a child who is the subject of a juvenile protection matter and the family court has not issued an order regarding child support, legal and physical custody, or parenting time, the court administrator shall send notification to the family court administrator and the assigned family court judicial officer of the filing of any order listed subdivision 2.

Subd. 2. Types of Juvenile Protection Orders for Which Notification to Family Court Required. When a parentage matter is pending regarding a child who is the subject of a juvenile protection matter, the court administrator shall send notification of the filing of any of the following juvenile protection orders to the family court administrator and the family court judicial officer:

(a) an order for guardianship to the commissioner of human services under Minnesota Statutes § 260C.515, subd. 3, or § 260C.325, in which case the family court may close the parentage file;

(b) an order for permanent legal and physical custody to a relative, including an order for one of the child's parents to be the permanent legal and physical custodian pursuant to Minnesota Statutes § 260C.515, subd. 4, in which case the family court may make a determination regarding child support in the parentage matter;

(c) an order for permanent custody to the agency pursuant to Minnesota Statutes § 260C.515, subd. 5, or temporary custody to the agency under Minnesota Statutes § 260C.515, subd. 6, in which case the family court may make a determination of child support in the parentage matter;

(d) unless preceded by an order under paragraphs (a) to (c):

(1) an order for dismissal of the child from the only or last pending juvenile protection matter under Minnesota Statutes § 260C.193, subd. 1, in which case the family court may make determinations regarding child support, legal and physical custody, and parenting time; or

(2) an order for termination of juvenile court jurisdiction over the child in the only or last pending juvenile protection matter under Minnesota Statutes § 260C.193, subd. 6(b) or (c), in which case the family court may make determinations regarding child support, legal and physical custody, and parenting time; and

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(e) any other order required by the juvenile court judicial officer to be filed in a pending parentage matter in family court.

2014 Advisory Committee Comment

Rule 50.06 is intended to facilitate completion of a parentage matter when the family court judicial officer has deferred decisions in the parentage matter regarding child support, legal and physical custody, and parenting time during a pending juvenile protection matter. When these decisions have been deferred, the parentage matter is not considered complete (see Minnesota Statutes § 257.66, subd. 3). So that the parentage matter can be completed, Rule 50.06, subd. 2, requires notification of the specified orders issued in the juvenile protection file to be given to the family court administrator and family court judicial officer assigned to the matter. Local practice will dictate how this notification is made by juvenile court to family court. See also the 2014 Advisory Committee Comment to Rule 10.03, subd. 4.

The orders listed in Rule 50.06, subd. 2, are orders which:

(1) dispose of all issues in the pending parentage matter (an order for guardianship to the commissioner of human services based on termination of parental rights or consent to adopt);

(2) dispose of some of the issues in the pending parentage matter (an order for permanent legal any physical custody to a relative, including a parent, or permanent or temporary custody to the agency that resolves custody and parenting time issues but does not address child support); or

(3) do not dispose of any of the pending issues in the parentage matter (an order for termination or dismissal of jurisdiction).

The required filing of the juvenile protection orders listed in Rule 50.06, subd. 2, and notice to the judicial officer hearing the parentage matter, permits the family court judicial officer to decide any remaining issues regarding child support, legal and physical custody, or parenting time in the parentage matter.

**PROPOSED TECHNICAL AMENDMENTS TO RULES OF
JUVENILE PROTECTION PROCEDURE**

RULE 1. SCOPE AND PURPOSE

Rule 1.01. Scope

These rules govern the procedure for juvenile protection matters in the juvenile courts in Minnesota. Juvenile protection matters include all matters defined in Rule 2.01(~~16~~14).

Rule 1.02. Purpose

These rules establish uniform practice and procedure for juvenile protection matters in the juvenile courts of Minnesota. The purpose of these rules is to: . . .

1999 Advisory Committee Comment (amended 2014)

The purpose statement is not intended to be a rule of construction. Rather, it is intended as a guide for judges, attorneys, social services personnel, families, and other judicial system stakeholders to articulate that the overall objective of juvenile court is to move expeditiously toward a resolution of the matter in such a way as to secure that which is in the best interests of the child while ensuring due process for all of the parties.

The purpose statement reflects the policy set forth in the federal Adoption and Safe Families Act of 1997, 42 U.S.C. § § 601, 603, 622, 629, 653, 675, 670-679, and 1320, which emphasizes that the overriding objective in any juvenile protection matter is to timely provide a safe, permanent home for the child. The purpose statement also reflects the policy set forth in Minnesota Statutes § 260C.001, subd. 2, which provides, in pertinent part, as follows:

The paramount consideration in all juvenile protection proceedings ~~concerning a child alleged or found to be in need of protection or services~~ is the health, safety, and best interests of the child. . . .

The purpose of the laws relating to juvenile protection proceedings ~~courts~~ is to:

- (1) secure for each child ~~alleged or adjudicated in need of protection or services~~ and under the jurisdiction of the court, the care and guidance, preferably in the child's own home, as will best serve the spiritual, emotional, mental, and physical welfare of the child;

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(2) ___ to provide judicial procedures that ~~which~~ protect the welfare of the child;

(3) ___ to preserve and strengthen the child's family ties whenever possible and in the child's best interests, removing the child from the custody of parents only when the child's welfare or safety cannot be adequately safeguarded without removal; ~~and~~,

(4) ___ to ensure that when removal from the child's own family is necessary and in the child's best interests, the responsible social services agency has legal responsibility for the child's removal . . . ;

(5) ___ to ensure that, when placement is pursuant to court order, the court order removing the child or continuing the child in foster care contains an individualized determination that placement is in the best interests of the child that coincides with the actual removal of the child;

(6) ___ to ensure that when the child is removed, secure for the child's ~~custody,~~ care and discipline is, as nearly as possible, equivalent to that which should have been given by the parents . . . ; ~~and~~

(7) ___ to ensure appropriate permanency planning for children in foster care

Rule 1.02(h) calls for coordinated decision-making in those cases where one family is involved in simultaneous juvenile, criminal, and family court matters. The parties and the court should coordinate the separate proceedings to assure a consistent outcome that is in the best interests of the child.

RULE 2. DEFINITIONS

Rule 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 § 257.75 to be the biological father of the child.

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

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

~~(4-3)~~ **"Child placing agency"** means any agency licensed pursuant to Minnesota Statutes § 245A.02 to § 245A.16 or § 252.28, subd. 2.

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(~~5~~-4) **“Child custody proceeding,”** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(1), and Minnesota Statutes § 260.755, subd. 3, means and includes:

(a) “foster care placement” which means any action removing an Indian child from the child’s parent or Indian custodian for temporary placement in a foster home, institution, or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(b) “termination of parental rights” which means any action resulting in the termination of the parent-child relationship;

(c) “preadoptive placement” which means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(d) “adoptive placement” which means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime, or an award of custody to one of the parents in a divorce proceeding.

(6) **“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 §§ 257.51 to 257.74;

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

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

(~~7~~-5) **“Emergency protective care”** means the placement status of a child when:

(a) taken into custody by a peace officer pursuant to Minnesota Statutes § 260C.151, subd. 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.

(~~8~~-6) **“Extended family member,”** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(2), shall be as defined by the law or custom of the Indian child’s tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen (18) and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

(~~9~~-7) **“Foster care”** means the 24-hour-a-day substitute care for a child placed away from the child’s parents or guardian and for whom a responsible social services agency has placement and care responsibilities under Minnesota Statutes § 260C.007, subd. 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

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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 punishment or consequence for a child’s behavior.

(~~10~~-8) **“Independent living plan”** is a plan for a child age sixteen (16) or older who is in placement as a result of a permanency disposition which includes the objectives set forth in Minnesota Statutes § 260C.212, subd. 1(c)(~~11~~-8).

(~~11~~-9) **“Indian child,”** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(4), and modified by Minnesota Statutes § 260.755, subd. 8, means any unmarried person who is under age eighteen (18) and is either (a) a member of an Indian tribe or (b) eligible for membership in an Indian tribe.

(~~12~~-10) **“Indian custodian,”** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(6), and Minnesota Statutes § 260.755, subd. 10, means an Indian person who has legal custody of an Indian child under tribal law or custom or under state law, or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

(~~13~~-11) **“Indian child’s tribe,”** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(5), and Minnesota Statutes § 260.755, subd. 9, means:

(a) the Indian tribe in which an Indian child is a member or eligible for membership; or

(b) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the most significant contacts.

(~~14~~-12) **“Indian tribe,”** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(8), and Minnesota Statutes § 260.755, subd. 12, means an Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. § 1602(c), and exercising tribal governmental powers.

(~~15~~-13) **“Juvenile protection case records”** means all records of the juvenile court regarding a particular case or controversy, including all records filed with the court and the

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official transcript. Juvenile protection case records do not include reporter's notes and tapes, electronic recordings, and unofficial transcripts of hearings and trials. See also "records" defined in subdivision ~~(26-24)~~.

~~(16-14)~~ **"Juvenile protection matter"** means any of the following types of matters:

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

(b) neglected and in foster care matters as defined in Minnesota Statutes § 260C.007, subd. 24;

(c) review of voluntary foster care matters as defined in Minnesota Statutes § 260C.141, subd. 2;

(d) review of out-of-home placement matters as defined in Minnesota Statutes § 260C.212;

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

(f) permanent placement matters as defined in Minnesota Statutes §§ ~~260C.503 to 521 260C.201, subd. 11~~, including matters involving termination of parental rights, guardianship to the commissioner of human services, transfer of permanent legal and physical custody to a relative, matters; termination of parental rights matters; long-term foster care matters; permanent custody to the agency, and temporary legal custody to the agency, foster care for a specified period of time matters; and guardianship and legal custody to human services matters; and matters involving voluntary placement pursuant to Minnesota Statutes 260D.07.

~~(17-15)~~ **"Legal custodian"** means a person, including a legal guardian, who by court order or statute has sole or joint legal or physical custody of the child.

~~(18)~~ **"Nonresident parent"** means a parent who was not residing with the child at the time the child was removed from the home.

~~(19-16)~~ **"Parent"** is defined in as adapted from Minnesota Statutes § 260C.007, subd. 25, means the birth, legally adjudicated, or adoptive parent of a minor child. For an Indian child, pursuant to Minnesota Statutes § 260.755, subd. 14, parent also includes any Indian person who has legally adopted an Indian child including a person who has adopted a child by tribal law or custom, but "parent" does not include an unmarried father whose paternity has not been acknowledged or established.

~~(20)~~ **"Parentage matter"** means an action under Minnesota Statutes §§ 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

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

~~(21-17)~~ **“Person,”** as defined in Minnesota Statutes § 260C.007, subd. 26, includes any individual, association, corporation, partnership, and the state or any of its political subdivisions, departments, or agencies.

~~(22-18)~~ **“Presumed father”** means an individual who is presumed to be the biological father of a child under Minnesota Statutes § 257.55, subd. 1, or § 260C.150, subd. 2.

~~(23-19)~~ **“Protective care”** means the right of the responsible social services agency or child-placing agency to temporary physical custody and control of a child for purposes of foster care placement, and the right and duty of the responsible social services agency or child-placing agency to provide the care, food, lodging, training, education, supervision, and treatment the child needs.

~~(24-20)~~ **“Protective supervision,”** as referenced in Minnesota Statutes § 260C.201, subd. 1(a)(1), means the right and duty of the responsible social services agency or child-placing agency to monitor the conditions imposed by the court directed to the correction of the child’s need for protection or services while in the care of the child’s parent or legal custodian.

~~(25)~~ **“Putative Father”** has the meaning set forth in Minnesota Statutes § 259.21.

~~(26-21)~~ **“Qualified expert witness,”** as defined in Minnesota Administrative Rule 9560.0221, subp. 3G, 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.

~~(27-22)~~ **“Reasonable efforts to prevent placement,”** as defined in Minnesota Statutes § 260.012(d) means:

(a) the agency has made reasonable efforts to prevent the placement of the child in foster care; or

(b) given the particular circumstances of the child and family at the time of the child’s removal, there are no service 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.

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(~~28-23~~) **“Reasonable efforts to finalize a permanent plan for the child,”** as defined in Minnesota Statutes § 260.012(e) means due diligence by the responsible social services agency:

(a) to reunify the child with the parent or guardian from whom the child was removed;

(b) to assess a noncustodial parent’s ability to provide day-to-day care for the child and, where appropriate, provide services necessary to enable the noncustodial parent to safely provide the care, as required by Minnesota Statutes § 260C.212, subd. 4;

(c) to conduct a relative search as required under Minnesota Statutes § 260C.212, subd. 5; and

(d) when the child cannot return to the parent or guardian from whom the child was removed, to plan for and finalize a safe and legally permanent alternative home for the child, and consider permanent alternative homes for the child inside or outside of the state, preferably through adoption or transfer of permanent legal and physical custody of the child.

“Reasonable efforts” are made upon the exercise of due diligence by the responsible social services agency to use culturally appropriate and available services to meet the needs of the child and the child’s family.

(~~29-24~~) **“Records”** means any recorded information that is collected, created, received, maintained, or disseminated by a court or court administrator, regardless of its physical form or method of storage, and specifically excludes judicial work product and drafts as defined in the Rules of Public Access to Records of the Judicial Branch. See also “juvenile protection case records” defined in subdivision (~~15-13~~).

(~~30-25~~) **“Relative”** as defined in Minnesota Statutes § 260C.007, subd. 27, means a person related to the child by blood, marriage, or adoption, or an individual who is an important friend with whom the child has resided or had significant contact. For an Indian child, relative includes members of the extended family as defined by the law or custom of the Indian child’s tribe or, in the absence of laws or custom, nieces, nephews, or first or second cousins, as provided in the Indian Child Welfare Act of 1978, 25 U.S.C. § 1903(2).

(~~31-26~~) **“Removed from home”** means the child has been taken out of the care of the parent or legal custodian, including a substitute caregiver, and placed in foster care or in a shelter care facility.

(~~32-27~~) **“Reservation,”** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(10), means Indian country as defined in 18 U.S.C. § 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.

(~~33-28~~) **“Shelter care facility,”** as adapted from Minnesota Statutes § 260C.007, subd. 30, means a physically unrestricting facility, including but not limited to, a hospital, a group home, or a

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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.

(~~34-29~~) **“Trial home visit,”** as defined in Minnesota Statutes § 260C.201, subd. 1(a)(3), means the child is returned to the care of the parent or legal custodian from whom the child was removed for a period not to exceed six months, with agency authority and responsibilities set forth in the statute.

(~~35-30~~) **“Tribal court,”** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(12), means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(~~36-31~~) **“Voluntary foster care”** means placement of a child in foster care based on a written agreement between the responsible social services agency or child placing agency and the child’s parent, guardian, or legal custodian 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 § 260C.227, § 260C.229, ~~260C.212, subd. 8,~~ and § 260D.02, subd. 5.

(~~37-32~~) **“Voluntary foster care of an Indian child,”** as defined in Minnesota Statutes § 260.755, subd. 22, means a decision in which there has been participation by a local social services agency or private child-placing agency resulting in the temporary placement of an Indian child away from the home of the child’s parent or Indian custodian in a foster home, institution, or the home of a guardian, and the parent or Indian custodian may have the child returned upon demand.

RULE 4. TIME; TIMELINE

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Rule 4.03. Timeline

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Subd. 2. Permanent Placement Matters – Notice of Timeline for Permanency Proceedings. In the case of a child who is alleged or found to be in need of protection or services and ordered into foster care or the home of a noncustodial or nonresident parent, and where reasonable efforts for reunification are required, pursuant to Rule 42.01, subd. 1, the court in its first order placing the child in foster care or the home of a noncustodial or nonresident parent shall set the date or deadline for the admit/deny hearing commencing permanent placement determination proceedings and the permanency progress review hearing ~~required for a~~

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~~child who is under age eight (8) at the time the petition is filed alleging the child to be in need of protection or services. Pursuant to Rule 42.01, subd. 5, not later than when the court sets the date or deadline for the admit/deny hearing commencing the permanent placement determination proceedings and the permanency progress review hearing, the court shall notify the parties and participants of the following requirements:~~

(a) ~~**Requirement of Six (6) Month Permanency Progress Review Hearing, for Child Under Eight (8) Years of Age.**~~ For a child who is under eight (8) years of age at the time a petition is filed ~~alleging the child to be in need of protection or services,~~ Pursuant to Rule 42.01, subd. 5(a), and Minnesota Statute § 260C.204, the court shall conduct a permanency progress review hearing not later than six (6) months after the child is placed in foster care or in the home of a noncustodial or nonresident parent to review the progress of the case, the parent's progress on the out-of-home placement plan, and the provision of services.—~~At the hearing required under this paragraph, the court may conduct a permanency progress review hearing for any sibling of the child, regardless of age, when the sibling is also in foster care or in the home of a noncustodial parent.~~

(b) ~~**Requirement of Twelve (12) Month Hearing.**~~ Pursuant to Rule 42.01, subd. 5(b), and Minnesota Statutes § 260C.503, the court shall commence permanent placement determination proceedings to determine the permanent status of the child, ~~regardless of age,~~ not later than twelve (12) months after the child is placed in foster care or in the home of a noncustodial or nonresident parent.

~~**Subd. 3. Permanent Placement Petition and Trial for Child Under Eight (8) Years of Age.**~~ In the case of a child under eight (8) years of age at the time the child in need of protection or services petition is filed, if the court determines at the permanency progress review hearing required under Rule 42.01, subd. 1(b), that the parent or legal custodian has not maintained regular contact with the child as outlined in the visitation plan or is not complying with the case plan or out-of-home placement pursuant to Rule 42.04(a) a petition supporting the permanency plan shall be filed and served within thirty (30) days of the hearing under this paragraph. Pursuant to Rule 39.02, subd. 1(b), a trial on the petition shall be commenced within thirty (30) days of the filing of a petition in the case of a transfer of legal custody or within ninety (90) days of the filing of the petition in the case of a petition for termination of parental rights, and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and whenever possible should be over consecutive days. Pursuant to Rule 39.05, subd. 1, within fifteen (15) days of the conclusion of the testimony, during which time the court may require simultaneous written arguments to be filed and served, the court shall issue its findings and order regarding whether the statutory grounds set forth in the petition have or have not been proved. The court may extend the period for issuing an order for an additional fifteen

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~~(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. ~~3~~–4. Termination of Parental Rights and Other Permanent Placement Matters at Twelve (12) Months.

****** [No changes to this subdivision other than renumbering of the title.]*

Subd. ~~4~~–5. Hearing for Child on a Trial Home Visit. Pursuant to Rule 42.01, subd. 2, when the child has been ordered on a trial home visit which continues at the time the court is required to commence permanent placement determination proceedings under Rule 42.01, within twelve (12) months of the date a child is placed in foster care the court shall hold a hearing pursuant to Rule 42.13 to determine the continued status of the child.

Subd. ~~5~~–6. Cases Where Reasonable Efforts For Reunification Are Not Required. Pursuant to Rule 42.01, subd. 6, when the court finds that the petition states a prima facie case that at least one or more of the ~~five (5)~~ circumstances under Minnesota Statutes § 260.012(a) and Rule 30.09, subd. 3, exist~~s~~ 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.

RULE 5. CONTINUANCES

Rule 5.03. Existing Orders; Interim Orders

Unless otherwise ordered, existing orders shall remain in full force and effect during a continuance. When a continuance is ordered, the court may make any interim orders it deems to be in the best interests of the child in accordance with the provisions of Minnesota Statutes § 260C.001 to § ~~260C.451~~ 260C.637.

RULE 10. ORDERS

Rule 10.01. Written or Oral Orders; Timing

Court orders may be written or stated on the record. An order stated on the record shall also be reduced to writing by the court. Except for orders issued following a trial pursuant to

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Rule 39.05, all orders shall be filed with the court administrator within fifteen (15) days of the conclusion of the testimony, unless the court finds that a fifteen (15)-day extension is required in the interests of justice or the best interests of the child. Each order issued following a hearing shall include the name and contact information of the court reporter. Failure to include the court reporter contact information does not extend the timeline for appeal. An order shall remain in full force and effect pursuant to law or until the first occurrence of one of the following:

- (a) issuance of an inconsistent order; or
- (b) the order ends pursuant to the terms of the order; ~~or~~
- (c) ~~jurisdiction of the juvenile court is terminated.~~

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

Rule 16.01. Signature

Subd. 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 paper shall state the signer's name, address, and telephone number, and attorney registration number if signed by an attorney. If providing a party's or participant's address and telephone number would endanger the party or participant, the address and telephone number may be provided to the court in a separate information statement that and shall not be accessible to the public, ~~or to the 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 and telephone number as it deems appropriate. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned document shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party. When authorized by order of the Minnesota Supreme Court, the filing, serving, or submitting of a document using an E-Filing System established by order of the court constitutes certification of compliance with the signature requirements of these rules.

RULE 20. ALTERNATIVE DISPUTE RESOLUTION

~~[Reserved for future use.]~~ The court may authorize alternative dispute resolution pursuant to Minnesota Statutes § 260C.163, subd. 12.

~~1999 Advisory Committee Comment~~

~~The Committee recommends the appointment of a separate advisory committee to research, draft, and recommend rules for alternative dispute resolution in juvenile protection matters. In the meantime, the absence of a rule is~~

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~~not intended to imply that parties may not use mediation or other alternative dispute resolution to achieve results in the best interests of the child.~~

RULE 21. PARTIES

Rule 21.01. Party Status

Subd. 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(19-46), 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.

* * * * *

Rule 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. 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.

RULE 22. PARTICIPANTS

* * * * *

Rule 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. 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

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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.

RULE 25. RIGHT TO REPRESENTATION; APPOINTMENT OF COUNSEL

* * * * *

Rule 25.02. Appointment of Counsel

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

~~(a) — **Juvenile Protection Matters.** Appointment of counsel for a child who is the subject of a juvenile protection matter shall be pursuant to Minnesota Statutes § 260C.163, subd. 3(a) – (e). Appointment of counsel for an Indian child who is the subject of a juvenile protection matter shall be pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1912(b). Except in proceedings where the sole basis for the petition is habitual truancy, if the child desires counsel but is financially unable to employ it, the court shall appoint counsel to represent the child who is ten (10) years of age or older and may appoint counsel to represent a child under age ten (10) in any case in which the court determines that such appointment is appropriate.~~

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

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

~~(d) — **Request; Timing.** The court may sua sponte appoint counsel for the child, or may do so upon the request of any party or participant. Any such appointment of counsel for the child shall occur as soon as practicable after the request is made. For purposes of appeal, appointment of counsel in a juvenile protection matter shall be made within three (3) days of the request for counsel. When possible, the trial court attorney should be appointed as appellate counsel.~~

~~**Subd. 2. Parent, Legal Custodian, or Indian Custodian.** Each parent, legal custodian, or Indian custodian has the right to effective assistance of counsel in connection with a juvenile court proceeding. Appointment of counsel for a parent or legal custodian whose child is the subject of a juvenile protection matter shall be pursuant to Minnesota Statutes § 260C.163, subd. 3(a) – (g). Appointment of counsel for a parent or Indian custodian of an Indian child who is the~~

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subject of a juvenile protection matter shall be pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1912(b).

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

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

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

~~(d) — **Timing.** The appointment of counsel for the parent, legal custodian, or Indian custodian shall occur as soon as practicable after the request is made. For purposes of appeal, appointment of counsel in a juvenile protection matter shall be made within three (3) days of the request for counsel. When possible, the trial court attorney should be appointed as appellate counsel.~~

Subd. 3. Guardian Ad Litem. The court may appoint separate counsel for the guardian ad litem if necessary. A public defender may not be appointed as counsel for a guardian ad litem. For purposes of appeal, appointment of counsel in a juvenile protection matter shall be made within three (3) days of the request for counsel. When possible, the trial court attorney should be appointed as appellate counsel.

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

* * * * *

Rule 25.04. Notice of Right to Representation

Any child, parent, ~~or~~ legal custodian, or Indian custodian who appears in court and is not represented by counsel shall be advised by the court on the record of the right to representation pursuant to Rule 25.

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RULE 30. EMERGENCY PROTECTIVE CARE HEARING

Rule 30.09. Factors

Subd. 3. Cases Permitting By-Pass 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 260C.012(a) exists.~~At the emergency protective care hearing, or at any time prior to adjudication, and upon notice and request of the county attorney, the court shall determine whether a petition has been filed stating a prima facie case that:~~

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

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

~~(3) — the child is presumed to be an abandoned infant under Minnesota Statutes § 260C.301, subd. 2(a);~~

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

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

(b) **Permanency Hearing Required.** If ~~Once~~ the court makes a determination required in subdivision 3(a), the court shall bypass the child in need of protection or services proceeding and shall proceed directly to permanency by scheduling schedule a permanent placement determination hearing pursuant to Rule 42 within thirty (30) days.

Rule 30.10. Protective Care Findings and Order

***** [no changes to rule, except for advisory committee comment]

2006 Advisory Committee Comment (2014 amendment)

When the court orders a child into “protective care,” the court is ordering the child placed in foster care. That means the responsible social services agency has the right to temporary physical custody and control of the child. *See Rule*

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2.01(23-19); *Minn. Stat. §§ 260C.178, subd. 1; and 260C.007, subd. 18.* The responsible social services agency must make an individualized determination that the placement selected is in the best interests of the child using the eight factors set out in the statute. *Minn. Stat. § 260C.201, subd. 1(a)(2)(ii), and § 260C.212, subd. 2.* The agency documents its use of the eight best interest factors in the Out-of-Home Placement Plan required under *Minn. Stat. § 260C.212, subd. 1, and Rule 37.02.* The court reviews the agency's use of the eight statutory best interest factors during the hearing required under *Rule 41 and Minn. Stat. § 260C.193, subd. 3.*

RULE 31. METHODS OF FILING AND SERVICE

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Rule 31.02. Types of Service

Subd. 1. Personal Service. Personal service means personally delivering the original document to the person to be served or leaving it at the person's home or usual place of abode with a person of suitable age and discretion residing therein, unless the court authorizes service by publication. Unless otherwise provided by these rules or ordered by the court, the sheriff or other person not less than eighteen (18) years of age and not a party to the action may make personal service of a summons or other process. The social services reports and guardian ad litem reports required under Rule 38 may be served directly by the social worker and guardian ad litem. Whenever personal service is required under these rules, the court may authorize alternative personal service pursuant to Rule 31.02, subd. 6.

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

(b) **Service Outside United States.** Unless otherwise provided by law, service upon an individual, other than an infant or an incompetent person, may be effected in a place not within the state:

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

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

(a) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

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- (b) as directed by the foreign authority in response to a letter rogatory or letter of request; or
- (c) unless prohibited by the law of the foreign country, by:
 - (i) delivery to the individual personally of a copy of the summons and the complaint; or
 - (ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the court administrator to the party to be served; or
- (3) by other means not prohibited by international agreement as may be directed by the court.

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

Subd. 3. Publication. Service by publication means the publication in full of the summons, notice, or other papers in the regular issue of a qualified newspaper, once each week for the number of weeks specified pursuant to Rule 32.02. Service by publication substitutes for personal service where authorized by the court. The court shall authorize service by publication only if the petitioner has filed a written statement or affidavit describing unsuccessful efforts to locate the party to be served.

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

Subd. 5. Electronic Service. When authorized by order of the Minnesota Supreme Court, documents, except those required by these rules to be served personally or by registered mail return receipt requested, may be served, by electronic means other than facsimile transmission by following the procedures of that order and will be deemed served in accordance with the provisions of that order.

Subd. 6. 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.

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(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 subdivision 2.

(d) The judge 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.

Advisory Committee Comment-2012 Amendment

Rule 31.02, subd. 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.

2014 Advisory Committee Comment

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

RULE 32. SUMMONS AND NOTICE

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Rule 32.02. Summons

Subd. 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 3(b), the The court shall serve a summons and petition upon each party identified in Rule 21; the child's custodial and nonresident parents, except alleged fathers who shall be served a notice of hearing pursuant to Rule 32.03; except as provided in subdivision 3(b), and upon any other person whose presence the court deems necessary to a determination concerning the best interests of the child. The cost

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of service of a summons and petition filed by someone other than a non-profit 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 custodian, 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 § 259.21, who has failed to timely register with the Minnesota Fathers' Adoption Registry under Minnesota Statutes § 259.52, unless that individual also meets the requirements of Minnesota Statutes § 257.55 or is required to be given notice under Minnesota Statutes § 259.49, subd. 1.

Subd. 3. Service.

(a) ~~Generally.~~ Unless the court orders service by publication pursuant to Rule 31.02, subd. 3, the summons and petition shall be personally served upon the child's custodial and nonresident parents or legal guardian custodian, and the summons shall be served personally or by U.S. mail upon all other parties and attorneys. Alleged parents and participants shall be served a notice of hearing pursuant to Rule 32.03. The court may authorize alternative personal service pursuant to Rule 31.02, subd. 6.

RULE 33. PETITION

Rule 33.01. Drafting; Filing; Service

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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 § 260C.007, subd. 14;

(2) is the sibling of another child who was subjected to egregious harm by the parent;

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(3) is an abandoned infant as defined in Minnesota Statutes § 260C.301, subd. 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 § 260C.515, subd. 4 ~~260C.201~~, subd. 44, or similar law of another jurisdiction.

* * * * *

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.

Rule 33.02. Content

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Subd. 4. Permanent Placement Matters.

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

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

(2) A request for permanent custody to the agency ~~long-term foster care~~ shall be entitled “Juvenile Protection Petition for Permanent Custody to the Agency ~~Long-Term Foster Care~~.”

(3) A request for temporary legal custody to the agency ~~foster care for a specified period of time~~ for a child adjudicated to be in need of protection or services solely on the basis of the child’s behavior shall be entitled “Juvenile Protection Petition for Temporary Legal Custody to the Agency ~~Foster Care for a Specific Period of Time~~.”

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Subd. 6. Disclosure of Name and Address – Endangerment. If there is reason to believe that an individual may be endangered by disclosure of a name or address required to be provided pursuant to this rule, that name or address may be provided to the court in a separate informational statement and shall not be accessible to the public, ~~or to the parties, 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.

* * * * *

Rule 33.05. Timing of Filing of Petition

Subd. 1. Child in Need of Protection or Services. If a child is in emergency protective care pursuant to Rule 28, the petition shall be filed at or prior to the time of the emergency protective care hearing held pursuant to Rule 30.

Subd. 2. Permanency or Termination of Parental Rights. A permanency or termination of parental rights petition must be filed at or prior to the time the child has been in foster care or in the care of a noncustodial or nonresident parent for eleven (11) months or in the expedited manner required in Minnesota Statutes § 260C.503, subd. 2(a). A petition is not required if the responsible social services agency intends to recommend, at or prior to the time the court is required to hold the admit-deny hearing pursuant to Rule 34.02, that the child be returned to the care of the parent from whom the child was removed.

RULE 34. ADMIT/DENY HEARING

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Rule 34.02. Timing

Subd. 1. Child in Placement.

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

(b) **Termination of Parental Rights Matters.** Except as otherwise provided in this paragraph, in a termination of parental rights matter the admit/deny hearing shall be held not less than ten (10) days after service of the summons and petition is complete upon the party. In a termination of parental rights matter that bypasses the child in need of protection or services proceeding, the admit/deny hearing shall be held within ten (10) days of the filing of the petition.

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

(d) **Indian Child Welfare Act Matters.**

(1) **Parent's, Indian Custodian's or Tribe's Identity Known.** In matters governed by the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., the admit/deny hearing on a petition requesting the foster care placement of an Indian child, the permanent placement of an Indian child, or the termination of parental rights to an Indian child shall not be held until at least ten (10) days after receipt of the notice required under Rule 32.06, 25 U.S.C. § 1912(a), and Minnesota Statutes § 260.761, subd. 3. The parent, Indian custodian, or tribe shall, upon request, be granted up to twenty (20) additional days from receipt of the notice to prepare for the admit/deny hearing.

(2) **Parent's, Indian Custodian's, or Tribe's Identity Unknown.** If the identity or location of the parent or Indian custodian and the tribe cannot be determined, the notice required under Rule 32.06, 25 U.S.C. § 1912(a), and Minnesota Statutes § 260.761, subd. 3, shall be sent to the Secretary of the Interior who shall have fifteen (15) days to provide the requisite notice to the parent or Indian custodian and the tribe. The admit/deny hearing shall be held at least twenty-five (25) days after receipt of the notice by the Secretary. The parent, Indian custodian, or tribe shall, upon request, be granted up to twenty (20) additional days from receipt of the notice to prepare for the admit/deny hearing.

Subd. 2. Child Not in Placement.

(a) **Generally.** When the child is not placed outside the child's home by court order, an admit/deny hearing shall be held no sooner than three (3) days and no later than twenty (20) days after the filing of the parties have been served with the summons and petition.

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

Rule 34.03. Hearing Procedure

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

(a) verify the child's name, date of birth, race, gender, current address unless stating the address would endanger the child or seriously risk disruption of the current placement, and, if the child is believed to be an Indian child, the name of the child's tribe;

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

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

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

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

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

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

(h) explain the purpose of the hearing and the possible transfer of custody of the child from the parent or legal custodian to another, when such transfer is permitted by law and the permanency requirements of Minnesota Statutes § ~~260C.503 – 521-260C.201, subd. 11~~;

(i) if the Admit/Deny Hearing is the first hearing in the juvenile protection matter, and if the court knows or has reason to know that the child is an Indian child, determine whether notice has been sent pursuant to Rule 32.06; 25 U.S.C. § 1912(a); and Minnesota Statutes § 260.761, subd. 3.

(j) if the Admit/Deny Hearing is not the first hearing and the determination that the child is an Indian child has not been made as required in Rule 30.08, subd. 2, attempt to determine whether the child is an Indian child through review of the petition, other documents, and an on-the-record inquiry. If the court is unable to determine whether the child is an Indian child, the court shall direct the petitioner to make further inquiry and provide to the court and parties additional information regarding whether the child is an Indian child; and

(k) if the district court finds from review of the petition or other information that an Indian child is a ward of tribal court, pursuant to Rule 48.02, subd. 1, adjourn the hearing to consult with the tribal court regarding the safe and expeditious return of the child to the jurisdiction of the tribe and dismiss the juvenile protection matter; and

(l) attempt to determine the applicability of the Indian Child Welfare Act, 25 U.S.C. § 1901 et al, based on the information received from the tribe or tribes required to receive notice pursuant to 25 U.S.C. § 1912(a). The court shall order the petitioner to make further inquiry of the tribe or tribes until the court can determine whether the Indian Child Welfare Act applies.

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

(a) In each child in need of protection or services matter, after completing the initial inquiries set forth in subdivision 1, the court shall determine whether the petition establishes a

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prima facie showing that a juvenile protection matter exists and that the child is the subject of the matter, unless the prima facie determination was made at the emergency protective care hearing pursuant to Rule 30.08. The court shall dismiss the petition if it finds that the petition fails to establish a prima facie showing that a juvenile protection matter exists and that the child is the subject of the matter.

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

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

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

1999 Advisory Committee Comment (amended 2003, ~~and 2008, and 2014)~~

Rule 34.03, subd. 2, is consistent with Minnesota Statutes § 260C.204 ~~260C.201, subd. 11~~, which provides that a permanency progress review hearing must be held within six (6) months of a child's removal from the home ~~if the child is under eight (8) years of age at the time the petition is filed~~. The requirements of Rule 34.03, subs. 3 and 4, are consistent with federal requirements regarding the timing of reasonable efforts determinations and permanency hearings.

2014 Advisory Committee Comment

With respect to subdivision 1(j) and (l), in cases where the application of the Indian Child Welfare Act (ICWA) is unclear, such as when it is not yet known whether the child is or is not an Indian child, it is advisable to proceed pursuant to the requirements of the ICWA unless or until a determination is otherwise made in order to fulfill the Congressional purposes of the ICWA, to ensure that the child's Indian tribe is involved, and to avoid invalidation of the action pursuant to 25 U.S.C. § 1914 and Rule 46.03.

RULE 35. ADMISSION OR DENIAL

Rule 35.03. Admission

Subd. 3. Questioning of Person Making Admission.

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

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

(b) **Child in Need of Protection or Services Matters, and Habitual Truant, Runaway, and Prostitution Matters.** In addition to the questions set forth in subdivision 3(a), before accepting an admission in a child in need of protection or services matter or a matter alleging a child to be a habitual truant, a runaway, or engaged in prostitution, the court shall also determine on the record or by written document signed by the person admitting and the person's counsel, if represented, whether the person admitting acknowledged an understanding that:

- (1) a possible effect of a finding that the statutory grounds are proved may be the transfer of legal custody of the child to another or other permanent placement option including termination of parental rights to the child; and
- (2) if the child is in out-of-home placement, a permanency progress review hearing will be held within six (6) months of the date the child is ordered placed in foster care or in the home of a noncustodial or nonresident parent ~~if the child was under eight (8) years of age at the time of the filing of the petition~~, and a permanent placement determination hearing will be held within twelve (12) months of the date the child is ordered placed in foster care or in the home of a noncustodial or nonresident parent.

RULE 39. TRIAL

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Rule 39.02. Timing

Subd. 1. Trial.

(a) **Child in Need of Protection or Services Matters.** A trial regarding a child in need of protection or services matter shall commence within sixty (60) days from the date of the emergency protective care hearing or the admit/deny hearing, whichever is earlier, and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and whenever possible should be over consecutive days.

(b) **Trial Following Permanency Progress Review Hearing ~~for Child Under Age 8.~~** A trial required by Rule 42.04(c) and Minnesota Statutes § 260C.204(d)(2) or (3) following a Permanency Progress Review Hearing shall be commenced within sixty (60) ~~thirty (30)~~ days of the filing of a petition ~~in the case of a~~ for transfer of legal custody or ~~within ninety (90) days of the filing of the petition in the case of a~~ petition for termination of parental rights, and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and whenever possible should be over consecutive days.

(c) **Termination of Parental Rights and Other Permanent Placement Matters.** Unless otherwise provided by these rules, a trial regarding a termination of parental rights matter or other permanent placement matter shall commence within sixty (60) days of the first scheduled admit/deny hearing, and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and whenever possible should be over consecutive days.

Rule 39.03. Procedure

Subd. 1. Initial Procedure. At the beginning of the trial the court shall on the record:

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

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

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

(d) determine whether any child or the child's parent or legal custodian is present without counsel and, if so, explain the right to representation pursuant to Rule 25;

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

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

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

(h) explain the purpose of the hearing and the possible transfer of custody of the child from the parent or legal custodian to another when such transfer is permitted by law and the permanency requirements of Minnesota Statutes § ~~260C.503 – 521260C.201~~, ~~subd. 11~~.

* * * * *

Rule 39.05. Decision

Subd. 1. Timing. Within fifteen (15) days of the conclusion of the testimony, during which time the court may require simultaneous written arguments to be filed and served, the court shall issue its findings and order regarding whether one or more statutory grounds set forth in the petition have been proved. The court may extend the period for issuing an order for an additional fifteen (15) days if the court finds that an extension of time is required in the interests of justice and the best interests of the child.

Subd. 2. Child in Need of Protection or Services Matters and Habitual Truant, Runaway, and Prostitution Matters. The court shall dismiss the petition if the statutory grounds have not been proved. If the court finds that one or more statutory grounds set forth in the petition have been proved, the court shall either enter or withhold adjudication pursuant to Rule 40 and schedule the matter for further proceedings pursuant to Rule 41. The findings and order shall be filed with the court administrator who shall proceed pursuant to Rule 10.

Subd. 3. Termination of Parental Rights and Other Permanency Matters.

(a) **Generally.** If the court finds that the statutory grounds set forth in the petition are not proved, the court shall either dismiss the petition or determine that the child is in need of protection or services. If the court determines that the child is in need of protection or services, the court shall either enter or withhold adjudication pursuant to Rule 40 and schedule further proceedings pursuant to Rule 41. If the court finds that one or more statutory grounds set forth in the termination of parental rights petition are proved, the court may terminate parental rights. If the court finds that any other permanency petition is proved, the court may order relief consistent with that petition and Minnesota Statutes § 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 § 260C.517, the court shall also make findings regarding the following as appropriate:

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(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 § 260.012(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. § 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.

RULE 41. DISPOSITION

Rule 41.01. Disposition

After an adjudication that a child is in need of protection or services pursuant to Rule 40.01, the court shall conduct a hearing to determine disposition. ~~Dispositions in regard to review of voluntary foster care matters shall be pursuant to Minnesota Statutes § 260C.205 and § 127A.47.~~

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Rule 41.05. Disposition Order

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Subd. 2. Content.

(a) **Mandatory Provisions.** The court shall enter an order making one of the following dispositions for the child:

(1) **Protective Supervision.** Place the child under the protective supervision of the responsible services agency or child-placing agency in the home of a parent or legal custodian under conditions directed to correction of the child's need for protection or services:

(i) the court may order the child into the home of a parent who does not otherwise have legal custody of the child, however, an order under this section does not confer legal custody on that parent;

(ii) if the court orders the child into the home of a father who has not been adjudicated as such, the order shall require the alleged or presumed father to cooperate with paternity establishment proceedings regarding the child in the appropriate jurisdiction as one of the conditions prescribed by the court for the child to continue in his home; and

(iii) the court may order the child into the home of a noncustodial parent with conditions and may also order both the noncustodial and the custodial parent to comply with the requirements of a case plan under subdivision 2; or

* * * * *

(b) **Additional Provisions.** As part of the disposition order the court shall also:

(1) approve or modify the plan for supervised or unsupervised visitation for the child's parent or legal custodian, relatives, and siblings of the child, if siblings are not in out-of-home placement together, as set out in the out-of-home placement plan; the court may set reasonable rules for visitation that contribute to the objectives of the court order and the maintenance of the familial relationship; the court may deny visitation when visitation would act to prevent the achievement of the court's disposition order or would endanger the child's physical or emotional well-being;

(2) review the case plan, make modifications supported by the evidence appropriate, and approve the plan;

(3) order all parties to comply with the approved case plan;

(4) incorporate into the order by reference the approved case plan and attach a copy of the plan only if it has been modified;

(5) give notice to the parent on the record and in writing of the requirements of Minnesota Statutes § 260C.204 and § 260C.503 ~~260C.201, subds. 11 and 11a~~; and

(6) set the date and time for the admit/deny hearing pursuant to Rule 42.

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Rule 41.06. Hearings to Review Disposition

Subd. 2. Procedure in Reviewing Disposition.

(a) **Legal Custody to Agency With Foster Care.** When the disposition is transfer of legal custody to the responsible social services agency, the court shall conduct a hearing at least every ninety (90) days to review whether foster care is necessary and continues to be appropriate or whether the child should be returned to the home of the parent or legal custodian from whom the child was removed. The review shall include the following:

(1) whether the out-of-home placement plan is relevant to the safety and best interests of the child;

(2) whether the agency is making reasonable or, in the case of an Indian child, active efforts to implement the requirements of the out-of-home placement plan;

(3) the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement;

(4) whether the parents or legal custodian of the child are visiting the child and, if not, what barriers exist to visitation;

(5) whether the agency has made diligent efforts to identify both parents of the child as required under Minnesota Statutes § 260C.219 ~~260C.212, subd. 4~~, and whether the case plan or out-of-home placement plan addresses the need for services of both parents;

(6) whether the child is receiving appropriate services under the out-of-home placement plan;

(7) when a child has siblings in foster care:

(i) whether the child resides with the siblings;

(ii) when the child and siblings are not placed together, whether further efforts are appropriate to place the siblings together; and

(iii) when the child and siblings are not placed together, whether there is visitation amongst siblings;

(8) when a child is not placed with a relative, whether the agency's efforts under Minnesota Statutes § 260C.221 ~~260C.212, subd. 5~~, are adequate; in the case of an Indian child, whether the placement preferences of 25 U.S.C. § 1915 are met;

(9) when the agency is utilizing concurrent permanency planning, the agency's efforts to place the child with a relative or a foster parent who has committed to providing the child's legally permanent home in the event reunification efforts are not successful; and

(10) whether the parent or legal custodian understands the requirements of Minnesota Statutes § 260C.503, subs. 1 and 3 ~~260C.201, subd. 11~~, related to the required

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permanency placement determination hearing, including the projected date by which the child will be returned home or the hearing will be held.

(b) **Legal Custody to Agency with Trial Home Visit.** When the disposition is a trial home visit:

(1) the responsible social services agency shall advise the court and parties within three (3) days of the date a trial home visit is terminated by the responsible social services agency without a court order;

(2) the responsible social services agency shall prepare a report for the court when the trial home visit is terminated, whether by the agency or court order, which describes the child's circumstances during the trial home visit and recommends appropriate orders, if any, for the court to enter to provide for the child's safety and stability. In the event a trial home visit is terminated by the agency by removing the child to foster care without prior court order or authorization, the court shall conduct a hearing within ten (10) days of receiving notice of the termination of the trial home visit by the agency and shall order disposition under this subdivision or conduct a permanency hearing under Rule 42. The time period for the hearing may be extended by the court for good cause shown and if it is in the best interests of the child as long as the total time the child spends in foster care without a permanent placement determination hearing does not exceed twelve (12) months;

(3) while the child is in trial home placement the matter shall be reviewed in court at least every ninety (90) days to determine whether the trial home visit continues to be necessary. At least five (5) business days prior to the hearing, the responsible social services agency shall file with the court and serve upon the parties a report describing the services provided to the child and parent and the parent's progress on the case plan; and

(c) **Protective Supervision in Home of Parent.** When the disposition is protective supervision of the child in the home of a custodial parent, the court shall conduct a review hearing at least every six (6) months. When the disposition is protective supervision of the child in the home of a noncustodial or nonresident parent, the court shall conduct a review hearing at least every ninety (90) days. At the hearing, the court shall review:

(1) whether the agency has submitted a case plan for the parents or legal custodian and child as required under Rule 37;

(2) after the agency has submitted a plan to the court as required under Rule 37, whether the plan continues to be relevant to the safety and best interests of the child;

(3) whether the agency is making appropriate efforts to implement the plan;

(4) whether the agency, child's attorney and the guardian ad litem have reasonable access to the child to determine the child's safety, health, and well-being;

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(5) whether the parents or legal custodian are able to utilize the services set out in the plan to correct the conditions which led to the court's determination that the child is in need of protection or services, and if not, what other services might be appropriate; and

(6) whether the child is receiving necessary services identified in the plan and whether those services are meeting the best interests of the child.

Subd. 3. Procedure. Any party or the county attorney may seek modification of a disposition order by motion made pursuant to Rule 15. The motion may be heard at the scheduled review hearing or at an earlier date or may be considered by the court without hearing if no party objects.

Subd. 4. Modification of Disposition; Modification of Case Plan or Out-of-Home Placement Plan.

(a) **Agreement.** The court, on its own motion or that of any party, may modify the disposition or order the case plan or out-of-home placement plan modified when all parties agree the modification is in the best interests of the child and:

(1) a change of circumstances requires a change in the disposition or modification of the case plan or out-of-home placement plan; or

(2) the original disposition or case plan or out-of-home placement plan is inappropriate.

(b) **Objection.** If a party objects to a proposed modification, or if the child does not have a guardian ad litem at the time the motion is made, the court shall schedule a hearing for the next available date. A party has a right to request a court review of the reasonableness of the case plan or out-of-home placement plan upon a showing of a substantial change in circumstances. The court may also:

(1) order the agency to make further efforts to identify and place a child with a relative if the court finds the agency has failed to perform duties required under Minnesota Statutes § 260C.212, subds. 2, and ~~5~~ § 260C.221; or

(2) find that the agency has performed required duties under Minnesota Statutes § ~~260C.221~~ ~~260C.212, subd. 5~~, and no further efforts to locate relatives are required; or

(3) in the case of an Indian child, unless good cause is found under 25 U.S.C. § 1915, order the agency to make additional efforts to comply with the placement preferences of 25 U.S.C. § 1915.

RULE 42. PERMANENT PLACEMENT AND TERMINATION OF PARENTAL RIGHTS MATTERS; POST-PERMANENCY REVIEW REQUIREMENTS

Rule 42.01. Timing

Subd. 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, subd. 5(b); and

(b) the 6-month permanency progress review hearing required under Rule 42.01, subd. 5(a) ~~required for a child who is under age eight (8) at the time the petition alleging the child to be in need of protection or services is filed.~~

Subd. 2. Timing of Hearing for Child on a Trial Home Visit. When the child has been ordered on a trial home visit which continues at the time the court is required to commence permanent placement determination proceedings under Rule 42.01, within twelve (12) months of the date a child is placed in foster care the court shall hold a hearing pursuant to Rule 42.13 to determine the continued status of the child.

Subd. 3. Calculating Time Period. The child shall be considered placed in foster care or the home of a noncustodial 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 years under one or more previous petitions, the lengths of all prior time periods during which the child was

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placed in foster care within the previous five years are accumulated. If a child under this clause has been in foster care for twelve (12) months or more, the court, if it is in the best interests of the child and for compelling reasons, may extend the total time the child may continue out of the home under the current petition up to an additional six (6) months before making a permanency determination; and

(c) time spent on a trial home visit under Minnesota Statutes § 260C.201, subd. 1(a)(3), counts toward the requirement that the court commence permanency proceedings under this rule. However, if the child is on a trial home visit at the time the court is required to commence permanency proceedings, the court may conduct the hearing under Rule 42.13. If a trial home visit is ordered or continued at the time set for the court to commence permanency proceedings or if the child is ordered returned to the parent's home as a trial home visit at the conclusion of permanency proceedings under this rule, and the child is subsequently returned to foster care, the court shall re-commence proceedings to determine an appropriate permanent order for the child not later than thirty (30) days after the child returns to foster care.

Subd. 5. Notification of Timing. Not later than when the court sets the date or deadline for the admit/deny hearing commencing the permanent placement determination proceedings and the permanency progress review hearing, the court shall notify the parties and participants of the following requirements:

(a) **Requirement of Six (6) Month Hearing.** ~~for Child Under Eight (8) Years of Age.~~ For a child who is under eight (8) years of age at the time a petition is filed alleging the child to be in need of protection or services, ~~the~~ court shall conduct a permanency progress review hearing to review the progress of the case, the parent's progress on the case plan or out-of-home placement plan, and the provision of services not later than six (6) months after the child is placed in foster care or in the home of a noncustodial or nonresident parent. ~~At the hearing required under this paragraph, the court may conduct a permanency progress review hearing for any sibling of the child, regardless of age, when the sibling is also in foster care or in the home of a noncustodial parent.~~

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

Rule 42.02. Purpose of Permanency Progress Review Hearing and Permanent Placement Determination Proceeding and Permanency Progress Review Hearing

Subd. 1. Permanency Progress Review Hearing: Child Under Eight (8) Years of Age. The purpose of the permanency progress review hearing is to review the progress of the

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case, the parent's progress on the case plan or out-of-home placement plan, and the provision of services by the responsible social services agency. The court shall determine whether the parents or legal custodian have maintained regular contact with the child, whether the parents are complying with the court-ordered case plan or out-of-home placement plan, and whether the child would benefit from continuing this relationship.

Subd. ~~2-1~~. Permanent Placement Determination Proceeding ~~Any Child in Foster Care or in Home of a Noncustodial Parent~~. The purpose of permanent placement determination proceedings is to determine the permanent status of a child, including a review of the progress of the case and the parent's progress on the case plan or out-of-home placement plan, the services provided by the responsible social services agency, and whether or not the conditions that led to the child's placement in foster care or in the home of a noncustodial or nonresident parent have been corrected so that the child can return to the care of the parent or custodian from whom the child was removed. The court shall determine whether the child shall be returned home or, if not, order permanent placement of the child consistent with the child's best interests and the pleadings and proof presented to the court.

Subd. ~~2~~. Permanency Progress Review Hearing: Child Under Eight (8) Years of Age. ~~The purpose of the permanency progress review hearing is to review the progress of the case, the parent's progress on the case plan or out-of-home placement plan, and the provision of services by the responsible social services agency. The court shall determine whether the parents or legal custodian have maintained regular contact with the child, the parents are complying with the court-ordered case plan or out-of-home placement plan, and the child would benefit from continuing this relationship.~~

Rule 42.03. Procedures for Permanency ~~Permanent~~ Progress Review Hearing and Permanent Placement Determination Hearing

The ~~following purpose and~~ procedures governing a permanency progress review hearing required within six (6) months of removal from the care of a parent ~~placement~~ are set out at Minnesota Statutes § 260C.204 ~~for a child under the age of eight (8) at the time the petition was filed alleging the child to be in need of protection or services and may also apply to any sibling of the child, regardless of age, when the sibling also is in foster care or the home of a noncustodial parent.~~

(a) ~~—~~ **Written Report.** Not later than ten (10) days prior to the hearing, the county attorney shall file with the court and serve upon the parties a written report prepared by the

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~~responsible social services agency describing the progress of the case and the case plan or out-of-home placement plan including the services provided to the parents.~~

~~(b) — **Court Determination.**~~

~~———— (1) — **Regular Contact Maintained and Parent Complying.** If the court determines that the parent or legal custodian has maintained regular contact with the child, the parent is complying with the court-ordered case plan or out-of-home placement plan, and the child would benefit from continuing this relationship, the court may either:~~

~~———— (i) — return the child home, if the conditions which led to the out-of-home placement have been sufficiently mitigated and it is safe and in the child's best interests to return home; or~~

~~———— (ii) — continue the matter up to a total of six (6) additional months.~~

~~———— (2) **Regular Contact Not Maintained or Parent Not Complying.** If the court determines that the parent or legal custodian has not maintained regular contact with the child as outlined in the visitation plan required under the case plan or out-of-home placement plan or the parent is not complying with the case plan or out-of-home placement plan, the court may order the responsible social services agency to develop a plan for permanent placement of the child away from the parent and to file a petition to support an order for the permanent placement plan within thirty (30) days of the hearing. A trial on the petition shall be held as provided in subdivision (c).~~

~~(c) — **Responsible Agency's or County Attorney's Duties.** Following the review under this subdivision:~~

~~———— (1) — if the court either returns the child home or continues the matter up to a total of six (6) additional months, the agency shall continue to provide services to support the child's return home or continue to make reasonable efforts to achieve reunification of the child and the parent as ordered by the court under an approved case plan;~~

~~———— (2) — if the court orders the agency to develop a plan for the transfer of permanent legal and physical custody of the child to a relative, a petition supporting the plan shall be filed with the court within thirty (30) days of the hearing required under this subdivision and a trial on the petition shall be held within thirty (30) days of the filing of the petition; or~~

~~———— (3) — if the court orders the agency to file a termination of parental rights petition, unless the county attorney can show cause why a termination of parental rights petition should not be filed, a petition for termination of parental rights shall be filed with the court within thirty (30) days of the hearing required under this subdivision and a trial on the petition shall be held within ninety (90) days of the filing of the petition.~~

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Rule 42.04. Procedures for Permanent Placement Determination Proceedings for a Child Eight (8) Years of Age or Older or a Child Under Age Eight (8) for Whom Permanency Has Not Been Ordered; Admit/Deny Hearing Required at Month 12

The following procedures govern permanent placement determination proceedings: ~~for a child eight (8) years of age or older, or a child under age eight (8) for whom permanency has not been ordered, who has not been returned home within twelve (12) months of an order placing the child in foster care or in the home of a noncustodial parent:~~

(a) **Petition.** Unless the responsible social services agency recommends return of the child to the custodial parent or files a petition and motion pursuant to Rule 42.14, not later than thirty (30) days prior to the admit/deny hearing required in paragraph (b) the responsible social services agency shall file with the court a petition required under Rule 33.01 to establish the basis for the juvenile court to order permanent placement of the child according to Rules 42.06 to 42.12. A party other than the responsible social services agency may file a petition to transfer permanent legal and physical custody to a relative, but the petition must be filed not later than the date for the required admit-deny hearing under Minnesota Statutes § 260C.507; or if the agency's petition is filed under Minnesota Statutes § 260C.503, subd. 2, the petition must be filed not later than thirty (30) days prior to the trial required under Minnesota Statutes § 260C.509.

(b) **Admit/Deny Hearing on Permanency Petition.** The court shall commence and complete an admit/deny hearing pursuant to Rule 34 on the permanency petition, termination of parental rights petition, or petition for alternative permanent placement relief under Rule 33.01 not later than twelve (12) months after the child is placed in foster care or in the care of a noncustodial or nonresident parent.

(c) **Trial.** The court shall commence and complete any trial on the permanency petition within the time specified in Rule 39.

Rule 42.05. Permanent Placement Findings and Order

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Subd. 2. Order. At the conclusion of the permanent placement determination proceedings the court shall order one of the following permanency dispositions:

- (a) Return the child home pursuant to Rule 42.06;
- (b) Terminate parental rights pursuant to Rule 42.08;
- (c) Transfer permanent legal and physical custody to a relative pursuant to Rule 42.07;
- (e) ~~Terminate parental rights pursuant to Rule 42.08;~~

(d) Guardianship and legal custody to the commissioner of human services upon consent by the child's parent to adopt pursuant to Rule 42.09;

- (e) Permanent custody to the agency ~~Long term foster care~~ pursuant to Rule 42.11; or

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(f) Temporary legal custody to the agency ~~Foster care~~ for a specified period of time pursuant to Rule 42.12.

* * * * *

Rule 42.07. Transfer of Permanent Legal and Physical Custody to a Relative

Subd. 1. Order. The court may order transfer of permanent legal and physical custody to a fit and willing relative pursuant to Minnesota Statutes § 260C.515, subd. 4 ~~260C.201, subd. 11(d)(1)~~.

Subd. 2. Jurisdiction Terminated Unless Retained. If the court transfers permanent legal and physical custody to a relative, juvenile court jurisdiction is terminated unless specifically retained by the court.

Subd. 3. Further Hearings If Jurisdiction Retained. If the court retains jurisdiction, the court may order further in-court hearings at such intervals as it determines to be in the best interests of the child pursuant to subdivision 7.

Subd. 4. Modification of Order. An order transferring permanent legal and physical custody of a child to a relative may be modified using the standards under Minnesota Statutes § 518.18 and § 518.185. The motion shall be filed in the court file in the county where the order was issued and, if appropriate, a party may file a motion to transfer venue. If the order was filed prior to August 1, 2012, the motion to modify shall be filed in family court. If the order was filed on or after August 1, 2012, the motion to modify shall be filed in juvenile court. When juvenile court jurisdiction is terminated, the court shall include an order directing the juvenile court administrator to file the order with the family court. Any further proceedings for modification of the order transferring permanent legal and physical custody to a relative shall be brought in the family court of the county where the original order was filed. The review shall be pursuant to Minnesota Statutes § 518.18 and § 518.185. Notice of any family court proceedings any motion to modify an order for permanent legal and physical custody issued under this rule and Minnesota Statutes § 260C.515, subd. 4, shall be provided by the court administrator to the responsible social services agency which shall be a party to the family court proceeding pursuant to Minnesota Statutes § 260C.521, subd. 4 ~~260C.201, subd. 11(j)~~.

Subd. 5. Voluntary Transfer of Custody. A parent or legal custodian may voluntarily agree to transfer permanent legal and physical custody of the child to a fit and willing relative by either filing a petition to transfer permanent legal and physical custody pursuant to Rule 33.01 and establishing that such transfer is in the child's best interests under Minnesota

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Statutes § ~~260C.515, subd. 4~~ ~~260C.201, subd. 11~~, or by entering an admission to such a petition filed by another party and stating, under oath, that the parent or legal custodian believes such a transfer is in the child's best interests and establishes good cause for the transfer on the record before the court.

Subd. 6. Order Requirements. In addition to the findings required under Rule 42.05, the order transferring permanent legal and physical custody shall address parental and sibling visitation and ongoing services to be delivered to the child while the juvenile court has jurisdiction, and shall state whether the transfer was voluntary or involuntary. The order shall state whether a child support order exists or if the issue is reserved for future determination.

Subd. 7. Review for a Child Who is with a Relative Who Has Permanent Legal and Physical Custody. When the court orders transfer of permanent legal and physical custody to a relative under this Rule, the court may retain jurisdiction over the responsible social services agency, the parents or guardian of the child, the child, and the permanent legal and physical custodian. The court may conduct reviews at such frequency as the court determines will serve the child's best interests for the purpose of ensuring:

- (a) appropriate services are delivered to the child and the permanent legal and physical custodian; or
- (b) conditions ordered by the court relating to the care and custody of the child are met.

Rule 42.08. Involuntary and Voluntary Termination of Parental Rights Proceedings

* * * * *

Subd. 5. Review When Child is Under the Guardianship of the Commissioner of Human Services. ~~Following termination of parental rights of both of the child's parents, the court shall conduct review hearings pursuant to Rule 42.11. If the court terminates parental rights, the court shall schedule a review hearing ninety (90) days from the date the termination order is filed with the court, and at least every ninety (90) days thereafter, for the purpose of reviewing the progress towards finalization of adoption. Review under this rule is required unless the court has ordered the child into long-term foster care. The court shall notify the county attorney, responsible social services agency, the child's guardian ad litem, the child, the child's attorney, and the child's foster parent, pre-adoptive parent, and relative caregiver of the date and time of the hearing. In lieu of the court report required under Rule 38, not later than five (5) business days before the hearing the responsible social services agency shall file with the court and serve upon the parties a report which addresses the following:~~

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~~(a) — where the child currently resides, the length of time the child has resided in the current placement, the number of other placements the child has experienced, and whether the current foster care provider is willing to adopt the child;~~

~~(b) — whether the responsible social services agency has made adequate efforts to identify, locate, and place the child with a relative willing to adopt the child; if the child is an Indian child, the agency's plan to meet the adoptive placement preferences of 25 U.S.C. § 1915;~~

~~(c) — if the child has siblings in out-of-home placement or previously placed for adoption, whether the child is placed with the siblings; if the child is not placed with siblings, whether the agency:~~

~~—— (1) — must make further efforts to place the child with siblings; or~~

~~—— (2) — obtain the consent of the Commissioner of Human Services to separate the child from siblings for adoption under Minnesota Statutes § 259.24, subd. 1(e), and Minnesota Rules 9560.0450, subp. 2; and~~

~~—— (3) — has developed a visitation plan for the siblings; if no visitation plan exists, the reason why;~~

~~(d) — the efforts the agency has made to identify non-relative adoptive resources for the child including utilizing the State of Minnesota Adoption Registry and other strategies for identifying potential adoptive homes for the child; and~~

~~(e) — if an adoptive home has been identified whether:~~

~~—— (1) — placement has been made in the home;~~

~~—— (2) — a preadoptive placement agreement has been signed;~~

~~—— (3) — the child qualifies for adoption assistance payments, and if so, what the status of the adoption assistance agreement is;~~

~~—— (4) — an adoption petition has been filed;~~

~~—— (5) — a finalization hearing has been scheduled; and~~

~~—— (6) — there are barriers to adoption and how those barriers might be removed.~~

~~(f) — At least every twelve (12) months, the court shall enter a finding regarding whether or not the responsible social services agency has made reasonable efforts to finalize the permanent plan for the child as long as the permanent plan remains adoption.~~

~~(g) — When an adoptive placement was made more than twelve (12) months prior to the review hearing and no hearing to finalize the adoption has been scheduled, a hearing under Minnesota Statutes § 259.22, subd. 4, shall be scheduled.~~

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Rule 42.09. Guardianship and Legal Custody to the Commissioner of Human Services Upon Consent by the Child's Parent to Adopt Under Minn. Stat. § 260C.515, subd. 3 ~~260C.201, subd. 11(d)~~

Subd. 1. Procedures. Without terminating parental rights of the parent consenting to adoption under Minnesota Statutes 260C.515, subd. 3, the court may award guardianship and legal custody to the commissioner of human services when both parents of the child consent or when the only legal parent of the child consents under the following procedures:

(a) *Consent and Identified Prospective Adoptive Home.* The court may accept the parent's voluntary consent to adopt under Minnesota Statutes § 260C.515, subd. 3. when ~~When~~ there is an identified prospective adoptive parent home who has agreed to adopt the child, by and the responsible social services agency agrees to that adoption by the identified prospective adoptive parent has agreed to adopt the child and the court accepts the parent's voluntary consent to adopt under Minnesota Statutes § 259.24.

(b) *Copies of Consent and Order to Commissioner of Human Services.* The court shall forward to the commissioner of human services one copy of the consent to adopt, together with a certified copy of the order transferring guardianship and legal custody to the commissioner.

Subd. 2. When Consent is Irrevocable. Consent to adoption executed by a parent under Minnesota Statute § 260C.515, subd. 3(2)(i) ~~260C.201, subd. 11(d)(5)~~, is irrevocable upon acceptance by the court unless fraud is established and an order issues permitting revocation. In a matter governed by the Indian Child Welfare Act, 25 U.S.C. § 1913, a consent to adopt given by the parent of an Indian child is revocable at any time prior to finalization of the adoption.

Rule 42.10. Order for Guardianship and Legal Custody When Parental Rights Are Terminated or When Parent Consents to Adoption

Subd. 1. Procedures. In addition to the findings and order for termination of parental rights requirements of Rule 42.08, or when the parent consents to adoption of the child under Rule 42.09, the court shall order guardianship and legal custody according to the following requirements:

(a) **Order When Parental Rights of Both Parents Terminated.** When an order terminates the rights of the only known living parent of the child, the rights of both parents of the child, or where the rights of the other parent of the child were previously terminated, the court shall issue an order transferring guardianship and legal custody to:

- (1) the commissioner of human services;
- (2) a licensed child placing agency; or

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(3) an individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

(b) **Order When Parental Rights of Both Parents Not Terminated.** When the rights of both known, living parents are not terminated at the same time, the order terminating the rights of one parent, but not both parents, shall not award guardianship and legal custody to a person or entity until and unless the rights of both parents are terminated or the child is free for adoption due to consent of a parent to adoption under Minnesota Statutes § 260C.515, subd. 3 ~~260C.201, subd. 11, or § 259.24~~. The order may continue legal custody of the child with the responsible social services agency.

(c) **Order When Parents Rights are Terminated in Separate Orders.** When the court issues separate orders terminating parental rights to a child or an order freeing a child for adoption due to consent by a parent to adoption under Minnesota Statutes § 260C.515, subd. 3 ~~260C.201, subd. 11(d), or § 259.24~~, the second order terminating parental rights or freeing the child for adoption shall reference by filing date and jurisdiction the previous order and shall award guardianship and legal custody to:

- (1) the Commissioner of Human Services;
- (2) a licensed child placing agency; or
- (3) an individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

Subd. 2. Conditions - Limits on When Commissioner of Human Services May Become Guardian or Legal Custodian.

(a) **Limits on Appointment of Commissioner of Human Services When no Appointment under Probate Code.** The court may transfer guardianship and legal custody to the Commissioner of Human Services if, upon petition to the juvenile court by a reputable person, including but not limited to an agency of the Commissioner of Human Services, and upon trial the court finds:

- (1) that both parents or the only known legal parent are or is deceased;
- (2) no appointment has been made or petition for appointment filed under Minnesota Statutes § 524.5-102 to 524.5-317; and
- (3) there is no individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

(b) **Responsible Social Services Agency Has Permanency Planning Responsibility.** The court shall order transfer of guardianship and legal custody of a child to the Commissioner of Human Services only when the responsible county social services agency had legal responsibility for planning for the permanent placement of the child and the child was in

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foster care under the legal responsibility of the responsible county social services agency at the time the court orders guardianship and legal custody transferred to the commissioner.

Subd. 3. Certified Copy of Orders. The court administrator shall forward one certified copy of the findings and order terminating parental rights and awarding guardianship and legal custody to the Commissioner of Human Services, the agency to which guardianship is transferred, or the individual to whom guardianship is transferred. The court also shall issue a separate order for guardianship and legal custody and provide a certified copy to the guardian.

Subd. 4. Copy of Order Terminating Guardianship. If the court issues an order, other than an order for adoption, terminating guardianship with the commissioner of human services, an agency, or an individual ~~by other than an order for adoption,~~ the court administrator shall send a copy of the order terminating the guardianship to the former guardian.

Subd. 5. Review When Child is Under the Guardianship of the Commissioner of Human Services. Following termination of parental rights of both of the child's parents, the court shall conduct review hearings pursuant to Rule 42.11.

Rule 42.11. Review When Child is Under the Guardianship of the Commissioner of Human Services; Contested Adoptive Placements

Subd. 1. Timing and Purpose. At least every ninety (90) days after issuing an order placing a child under the guardianship of the commissioner of human services, the court shall schedule a hearing to review the reasonable efforts of the responsible social service agency to finalize the child's adoption and the progress toward adoption consistent with the requirements of Minnesota Statutes § 260C.607. The court may conduct review hearings less frequently if the requirements of Minnesota Statutes § 260C.607, subd. 8(b), are met. Review hearings shall continue pending any appeal of the order terminating parental rights.

Subd. 2. Notice of Hearing. Notice of each hearing shall be provided by the court to persons listed in Minnesota Statutes § 260C.607, subd. 2.

Subd. 3. Content of Review Hearing. At each hearing the court shall review:

(a) the agency's reasonable efforts under Minnesota Statutes § 260C.605 to finalize an adoption for the child as appropriate to the stage of the case;

(b) the child's current out-of-home placement plan required under Minnesota Statutes § 260C.212, subd. 1, to ensure the child is receiving all services and supports required to meet the child's needs as they relate to the child's;

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- (1) placement;
- (2) visitation and contact with siblings;
- (3) visitation and contact with relatives;
- (4) medical, mental, and dental health; and
- (5) education; and.

(c) when the child is age 16 and older and in foster care, the agency's planning for the child's independent living after leaving foster care, including how the agency is meeting the requirements of Minnesota Statutes § 260C.212, subd. 1(c)(11) consistent with the review requirements of Minnesota Statutes § 260C.203.

Subd. 4. Relative's Request for Consideration. Any relative or the child's foster parent who believes the responsible social services agency has not reasonably considered the relative's or foster parent's request to be considered for adoptive placement as required under Minnesota Statutes § 260C.212, subd. 2, and who wants to be considered for adoptive placement of the child, shall bring a request for consideration to the attention of the court during a review required under this subdivision. The child's guardian ad litem and the child may also bring a request for a relative or the child's foster parent to be considered for adoptive placement. After hearing from the agency, the court may order the agency to take appropriate action regarding the relative's or foster parent's request for consideration under Minnesota Statutes § 260C.212, subd. 2(b).

Subd. 5. Motion and Hearing to Order Adoptive Placement; Contested Adoptive Placement.

(a) Timing and Purpose. At any time after the court orders the child under the guardianship of the commissioner of human services, but not later than thirty (30) days after receiving notice required under Minnesota Statutes § 260C.613, subd. 1(c), that the agency has made an adoptive placement, a relative or the child's foster parent may file a motion for an order for adoptive placement of a child who is under the guardianship of the commissioner if the requirements of Minnesota Statutes 260C.607, subd. 6, are met.

(b) Filing and Service of Motion. The motion shall be filed with the court conducting reviews of the child's progress toward adoption under this subdivision. The motion shall be served on all individuals and entities listed Minnesota Statutes § 260C.607, subd. 2.

(c) Prima Facie Determination. If the motion and supporting documents do not make a prima facie showing for the court to determine whether the agency has been unreasonable in failing to make the requested adoptive placement, the court shall dismiss the motion. If the court determines a prima facie basis is made, the court shall set the matter for evidentiary hearing.

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(d) **Evidentiary Hearing Procedures and Standard of Proof.** At the evidentiary hearing, the responsible social services agency shall proceed first with evidence about the reason for not making the adoptive placement proposed by the moving party. The moving party then has the burden of proving by a preponderance of the evidence that the agency has been unreasonable in failing to make the adoptive placement.

(e) **Decision.** At the conclusion of the evidentiary hearing, if the court finds that the agency has been unreasonable in failing to make the adoptive placement and that the relative or the child's foster parent is the most suitable adoptive home to meet the child's needs using the factors in Minnesota Statutes § 260C.212, subd. 2(b), the court may order the responsible social services agency to make an adoptive placement in the home of the relative or the child's foster parent.

(f) **Appeal.** An order denying or granting a motion for adoptive placement after an evidentiary hearing is an order which may be appealed by the responsible social services agency, the moving party, the child when age ten (10) or older, the child's guardian ad litem, or any individual who had a fully executed adoption placement agreement regarding the child at the time the motion was filed if the court's order has the effect of terminating the adoption placement agreement. An appeal shall be conducted according to the requirements of the Rules of Juvenile Protection Procedure.

Rule ~~42.12~~ ~~42.11~~. Permanent Custody to Agency Long-term Foster Care

~~Subd. 1. Requirements for Compelling Reasons Why Permanent Legal and Physical Custody and Adoption is Not in the Child's Best Interests.~~ The court may order permanent custody to the agency long-term foster care only if it approves the responsible social services agency's compelling reasons that neither an award of permanent legal and physical custody to a relative; nor termination of parental rights; is in the child's best interests and all of the requirements of Minnesota Statutes § ~~260C.515, subd. 5~~ ~~260C.201, subd. 11(d)(3)~~, are met.

~~Subd. 2. Disruption.~~ Pursuant to Rule ~~42.16~~ ~~42.15~~, if the permanent custody to the agency long-term foster care placement disrupts, the responsible social services agency shall return the matter to court within ten (10) days of the disruption for review of the matter.

~~Subd. 3. Long-Term Foster Care For State Wards.~~

(a) **~~Limits on Circumstances When Long-term Foster Care Ordered.~~** ~~The responsible social services agency may make a determination of compelling reasons for a child who is a ward of the Commissioner of Human Services to be in long-term foster care when the agency has made exhaustive efforts to recruit, identify, and place the child in an adoptive home, and the child continues in foster care for at least twenty four (24) months after the court has~~

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issued the order terminating parental rights. If the court approves the agency's determination of compelling reasons, the court may order the child placed in long-term foster care.

~~(b) — **Child's Minority.** Jurisdiction over a child in foster care pursuant to Minnesota Statutes § 260C.451 shall continue to age twenty one (21) for the purpose of conducting the reviews required under Minnesota Statutes § 260C.203; § 260C.317, subd. 3; or § 260C.515, subds. 5 or 6. Jurisdiction over a child in foster care pursuant to Minnesota Statutes § 260C.451 shall not be terminated without giving the child notice of any motion or proposed order to terminate jurisdiction and an opportunity to be heard on the appropriateness of the termination. When a child in foster care pursuant to Minnesota Statutes § 260C.451 asks to leave foster care or actually leaves foster care, the court may terminate its jurisdiction.~~

Subd. 3 4. Annual Review When Child is Ordered into Permanent Custody to Agency Long-Term Foster Care.

(a) **Review of Appropriateness of Order for Permanent Custody to Agency Long-term Foster Care.** When a child has been ordered into permanent custody of the agency long-term foster care, the court shall review the matter in court at least every twelve (12) months to consider whether:

(1) permanent custody to the agency long-term foster care continues to be the best permanent plan for the child, and

any other permanency disposition order is in the best interests of the child.

(b) **Reasonable Efforts.** The court shall also review the reasonable efforts of the agency to:

(1) identify a specific ~~long-term~~ foster home or other legally permanent home for the child, if one has not already been identified;

(2) support continued placement of the child in the identified home, if one has been identified;

(3) ensure appropriate services are provided to the child during the period of permanent custody to the agency, including assisting the child to build connections to the child's family and community ~~long-term foster care~~; and

(4) plan for the child's independence upon the child's leaving permanent custody to the agency long-term foster care living as required under Minnesota Statutes § 260C.212, subd. 1(c)(~~11~~ 8).

(c) **Additional Requirements for Youth Age 16 or Older.** When the child is age sixteen (16) or older, the court shall review the agency's reasonable efforts to implement the independent living plan required under Minnesota Statutes § 260C.212, subd. 1(c)(~~11~~ 8), and the provision of services to the child related to the well-being of the child as the child prepares to

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leave foster care. The court's review shall include the actual plans related to each item in the plan necessary to the child's future safety and well-being when the child is no longer in foster care. The court shall make findings regarding progress toward or accomplishment of the following goals:

- (1) the child has obtained a high school diploma or its equivalent;
- (2) the child has completed a driver's education course or has demonstrated the ability to use public transportation in the child's community;
- (3) the child is employed or enrolled in postsecondary education;
- (4) the child has applied for and obtained postsecondary education financial aid for which the child is eligible;
- (5) the child has health care coverage and health care providers to meet the child's physical and mental health needs;
- (6) the child has applied for and obtained disability income assistance for which the child is eligible;
- (7) the child has obtained affordable housing with necessary supports, which does not include a homeless shelter;
- (8) the child has saved sufficient funds to pay for the first month's rent and a damage deposit;
- (9) the child has an alternative affordable housing plan, which does not include a homeless shelter, if the original housing plan is unworkable;
- (10) the child, if male, has registered for the Selective Service; and
- (11) the child has a permanent connection to a caring adult.

(d) **Agency Responsibility for Notice When Child is Seventeen (17).** When the child is age seventeen (17), the responsible social services agency shall establish for the court that it has given the notice required under Minnesota Statutes § 260C.451 ~~Administrative Rules, part 9560.0660~~, regarding the right to continued access to services for children in foster care past age eighteen (18), including the right to appeal a denial of social services under Minnesota Statutes § 256.045. If the agency is unable to establish that the notice, including the right to appeal a denial of social services, has been given, the court shall order the agency to give it.

Subd. 4 5. Modifying an Order for Permanent Custody to the Agency Long-term Foster Care for a Child Who is Not a State Ward.

(a) **Modification by Parent.** A parent may seek modification of an order for permanent custody to the agency long-term foster care only upon motion and a showing by the parent of a substantial change in the parent's circumstances such that the parent could provide appropriate care for the child and that removal of the child from the child's permanent placement and the return to the parent's care would be in the best interest of the child.

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(b) **Modification by Agency.** The responsible social services agency may ask the court to vacate an order for permanent custody to the agency long-term foster care upon a prima facie showing that there is a factual basis for the court to order another permanent placement under this rule and that the placement is in the child's best interests. The agency may ask the court to vacate an order for permanent custody to the agency and order another permanency disposition, including termination of parental rights based on abandonment if a parent fails to maintain visitation or contact with the child or participate in planning for the child. If the agency's request is to terminate parental rights, the county attorney shall file a petition under Rule 33 and the court shall proceed under Rule 34. If the agency's request is transfer of permanent legal and physical custody to a relative, the county attorney may file a motion under Rule 15 to modify the permanency order establishing permanent custody to the agency long-term foster care for the child. If a party entitled to notice of the motion opposes the transfer of permanent legal and physical custody to a fit and willing relative, the responsible social services agency and county attorney shall establish:

- (1) that the relative is fit and willing; and
- (2) that the transfer is in the best interest of the child.

Subd. 5 6. Order. Upon a hearing or trial where the court determines that there is a factual basis for vacating the order for permanent custody to the agency long-term foster care and that another permanent order regarding the placement of the child is in the child's best interests, the court may vacate the order for permanent custody to the agency long-term foster care and enter a different order for permanent placement that is in the child's best interests.

Subd. 6 7. Further Reasonable Efforts Not Required. The court shall not require further reasonable efforts to reunify the child with the parent or guardian as a basis for vacating the order for permanent custody to the agency long-term foster care and ordering a different permanent placement in the child's best interests.

Subd. 7 8. Jurisdiction. The court shall retain jurisdiction ~~through the child's minority~~ in a case where permanent custody to the agency where long-term foster care is the permanent disposition as provided in Rule 51. ~~unless the court extends jurisdiction to age nineteen (19).~~

Rule 42.13 ~~42.12~~. Temporary Legal Custody to the Agency Foster Care for a Specified Period of Time

Subd. 1. Requirements for Compelling Reasons Why Permanent Legal and Physical Custody and Adoption is Not in the Child's Best Interests. The court may order temporary legal custody to the agency foster care for a specified period of time only if it

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approves the responsible social services agency's compelling reasons that neither an award of permanent legal and physical custody to a relative, nor termination of parental rights, is in the child's best interests and all of the requirements of Minnesota Statutes § 260C.515, subd. 6-5 ~~260C.201, subd. 11(d)(4)~~, are met.

Subd. 2. Periodic Review. If the court orders temporary legal custody to the agency~~foster care for a specified period of time~~, the court shall order in-court review hearings at intervals as will serve the child's best interests not to exceed a total of twelve (12) months after the date the order is entered for temporary legal custody to the agency ~~foster care for a specified period of time~~ pursuant to subdivision 3.

Subd. 3. Continued Review of Temporary Legal Custody to the Agency ~~Foster Care for a Specified Period of Time~~. If it is necessary for a child who has been ordered into temporary legal custody to the agency ~~foster care for a specified period of time~~ to be in foster care longer than one year, then not later than twelve (12) months after the time the child was ordered into temporary legal custody to the agency ~~foster care for a specified period of time~~ the matter shall be returned to court for a review of the appropriateness of continuing the child in foster care and of the responsible social services agency's reasonable efforts to finalize a permanent plan for the child. If it is in the child's best interests to continue the order for temporary legal custody to the agency ~~foster care for a specified period of time~~ past a total of twelve (12) months, the court shall set objectives for the child's continuation in foster care, specify any further amount of time the child may be in foster care, and review the plan for the safe return of the child to the parent.

Rule 42.14 ~~42.13~~. Hearing for Child on Trial Home Visit at Time for Commencement of Permanency Proceedings

Subd. 1. Hearing. When the child has been ordered on a trial home visit which continues at the time the court is required to commence permanent placement determination proceedings under Rule 42.01, the court shall hold a hearing to determine the continued status of the child on the trial home visit and shall review:

- (a) the child's progress during the trial home visit;
- (b) the parent's progress during the trial home visit;
- (c) the agency's reasonable efforts to finalize the child's safety and permanent return to the care of the parent.

Subd. 2. Required Findings. The court shall make findings regarding the reasonableness of the agency's efforts to finalize the child's return home as the permanent order

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in the best interests of the child and may continue the trial home visit for a period not to exceed a total of six (6) months. If the court finds that the responsible social services agency has not made reasonable efforts to finalize the child's return home as the permanent order in the best interests of the child, the court may order other or additional efforts to support the child remaining in the care of the parent.

Subd. 3. Procedure When Child Returns to Foster Care. If an order for a trial home visit is continued at or after a hearing under subdivision 1 and the child is subsequently returned to foster care, the court shall commence proceedings to determine an appropriate permanent order for the child not later than thirty (30) days after the child returns to foster care.

Rule ~~42.15~~ 42.14. Terminating Jurisdiction When Child is Continued in Voluntary Foster Care for Treatment Under Minnesota Statutes Chapter 260D

* * * * *

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 § 260C.505(a) ~~260C.201, subd. 11~~, but may be filed as soon as the agency and the parent agree that the child should remain in foster care under a voluntary foster care agreement, because the child needs treatment and voluntary foster care is in the child's best interest.

Rule ~~42.16~~ 42.15. Review of Child Who Experiences Disruption of a Permanent Placement

Subd. 1. Review Required When Child Removed from Permanent Placement Within One (1) Year. If a child is removed from a permanent placement disposition ordered under Rule 42, including transfer of permanent legal and physical custody to a relative pursuant to Rule 42.07 and Minnesota Statutes § 260C.515, subd. 4, or permanent custody to the agency pursuant to Rule 42.12 and Minnesota Statutes § 260C.515, subd. 5, or temporary custody to the agency pursuant to Rule 42.13 and Minnesota Statutes § 260C.515, subd. 6, within one year after the placement was made:

(a) the child shall be returned to the foster home where the child was placed immediately preceding the permanent placement; ~~and~~

(b) the court shall conduct a hearing within ten (10) days after the child is removed from the permanent placement to determine where the child is to be placed. A guardian ad litem shall be appointed for the child for this hearing.

Subd. 2. Further Planning for Child. The court shall also review what further planning is appropriate to meet the child's need for safety and stability and to address the well-

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being of the child, including the child's physical and mental health and educational needs.

2008 Advisory Committee Comment

Rule ~~42.1642.15~~, subd. 2, delineates what orders are to be reviewed under Minnesota Statute § ~~260C.212~~, subd. ~~6~~260C.521, subd. 4.

Rule 42.17. Reestablishment of the Legal Parent and Child Relationship

The procedures for reestablishing a legal parent and child relationship are set forth in Minnesota Statutes § 260C.329.

RULE 43. REVIEW OF CHILDREN IN VOLUNTARY FOSTER CARE FOR TREATMENT

* * * * *

Rule 43.02. Report by Agency

Subd. 1. Content and Timing of Report. Within 165 days of the date of the voluntary foster care agreement the responsible social services agency shall file with the court and serve upon the county attorney; the responsible social services agency; the parent; the parent's attorney; the foster parent or foster care facility; the child, if age twelve (12) or older; the child's attorney, if one is appointed; the child's guardian ad litem, if one is appointed; and the child's Indian tribe, if the child is an Indian child, a written report which shall contain or have attached:

- (a) a statement of facts that necessitate the child's foster care placement;
- (b) the child's name, date of birth, race, gender, and current address;
- (c) the name, race, date of birth, residence, and post office address of the child's parents or legal custodian;
- (d) a statement regarding the child's eligibility for membership or enrollment in an Indian tribe and the agency's compliance with applicable provisions of Minnesota Statutes §§ 260.751 – 835;
- (e) the name and address of the child's foster parents or chief administrator of the facility in which the child is placed;
- (f) a copy of the out-of-home placement plan required under subdivision 5 and Minnesota Statutes § 260C.212, subd. 1;
- (g) a written summary of the proceedings of the administrative review required under Minnesota Statutes § ~~260C.203~~ ~~260C.212~~, subd. ~~7~~, and § 260D.03;
- (h) a statement that the parent, representative of the foster care facility, and the child have been notified of their right to request a hearing; and

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(i) any other information the agency, parent or legal custodian, child, or foster parent or other residential facility wants the court to consider.

* * * * *

Rule 43.05. Annual Review

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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 § 260C.212, subd. 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 § 260C.212, subd. 1(c)(~~11~~ 8), and the provision of services to the child related to the well-being of the child as the child prepares to leave foster care. The court's review shall include the findings and review required under Rule 42.11, subd. 4(c).

RULE 44. REVIEW OF VOLUNTARY PLACEMENT MATTERS

Rule 44.01. Generally

Subd. 1. Scope of Review. This rule governs review of all voluntary foster care placements made pursuant to Minnesota Statutes § ~~260C.227~~ 260C.212, ~~subd. 8.~~

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Rule 44.02. Petition and Hearing

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Subd. 7. Calculating Time Period. When a child is placed in foster care pursuant to a voluntary placement agreement pursuant to Minnesota Statutes § ~~260C.227~~ ~~260C.212, subd. 8,~~ the time period the child is considered to be in foster care for purposes of determining whether to proceed pursuant to Minnesota Statutes § ~~260C.503, subd. 1~~ ~~260C.201, subd. 11,~~ is sixty (60) days after the voluntary placement agreement is signed, or the date the court orders the child in protective care, whichever is earlier.

Rule 44.03. Procedures When Court-Ordered Foster Care, Permanent Placement, or Termination of Parental Rights Sought

Subd. 1. Applicable Rules When Other than Voluntary Review is Sought. When a child enters foster care pursuant to a voluntary placement agreement under Minnesota Statutes § ~~260C.227~~ ~~260C.212, subd. 8,~~ and there is a sufficient evidentiary basis, the responsible social services agency may file a petition for termination of parental rights, a petition for permanent placement of the child away from the parent, or a petition alleging the child to be in need of protection or services stating sufficient facts to meet any definition of Minnesota Statutes § 260C.007, subd. 6(6). The matter shall proceed under:

- (a) Rule 30 if the petition requests an order for protective care under Rule 30.10 and Minnesota Statutes § 260C.178; or
- (b) Rule 34 if an order for protective care is not requested.

RULE 51. JURISDICTION TO AGE 18 AND CONTINUED REVIEW AFTER AGE 18

Rule 51.01. Continuing Jurisdiction to Age 18

Unless terminated by the court pursuant to Minnesota Statutes § 260C.193, subd. 6(b), jurisdiction of the court shall continue until the child becomes eighteen (18) years of age.

Rule 51.02. Continuing Jurisdiction to Age 19

The court may continue jurisdiction over an individual and all other parties to the proceeding to the individual's 19th birthday when continuing jurisdiction is in the child's best interest under Minnesota Statutes. § 260C.193, subd 6(c).

Rule 51.03. Continuing Jurisdiction and Review after Child's Eighteenth Birthday

Subd. 1. Jurisdiction over Children in Foster Care. Jurisdiction over a child in foster care pursuant to Minnesota Statutes § 260C.451 shall continue to age twenty-one (21) for the purpose of conducting the reviews required under Minnesota Statutes § 260C.203; § 260C.317, subd. 3; or § 260C.515, subds. 5 or 6.

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Subd. 2. Orders for Guardianship or Legal Custody Terminate. Any order establishing guardianship under Minnesota Statutes § 260C.325 and § 260C.515, subd. 3, any legal custody order under Minnesota Statutes § 260C.201, subd. 1, and any order for legal custody associated with an order for permanent custody under Minnesota Statutes § 260C.515, subd. 5, terminates on the child's 18th birthday. The responsible social services agency has legal responsibility for the individual's placement and care when the matter continues under court jurisdiction pursuant to Minnesota Statutes § 260C.193 or when the individual and the responsible agency execute a voluntary placement agreement pursuant to Minnesota Statutes § 260C.229.

Subd. 3. Notice of Termination of Foster Care. When a child in foster care between the ages of 18 and 21 ceases to meet one of the eligibility criteria of Minnesota Statutes § 260C.451, subd. 3a, termination of the child's ability to remain in foster care shall be addressed according to the requirements of Minnesota Statutes § 260C.451, subd. 8.

Subd. 4. Required Notice to Child. Jurisdiction over a child in foster care pursuant to Minnesota Statutes § 260C.451 shall not be terminated without giving the child notice of any motion or proposed order to terminate jurisdiction and an opportunity to be heard on the appropriateness of the termination.

Subd. 5. Terminating Jurisdiction when Child Age 18 or Older Leaves Foster Care. When a child age 18 or older in foster care pursuant to Minnesota Statutes § 260C.451 asks to leave foster care or actually leaves foster care, the court may terminate its jurisdiction.

Subd. 6. Review after Re-entry into Foster Care after Age 18. When a child re-enters foster care after age eighteen (18) pursuant to Minnesota Statutes § 260C.451, subd. 6, the child's placement shall be pursuant to a voluntary placement agreement with the child under Minnesota Statute § 260C.229. If the child is not already under court jurisdiction pursuant to Minnesota Statutes § 260C.193, subd. 6, review of the voluntary placement agreement between the child and the agency shall be according to Minnesota Statute § 260C.229(b).

PROPOSED TECHNICAL AMENDMENTS TO RULES OF ADOPTION PROCEDURE

RULE 1. SCOPE AND PURPOSE

Rule 1.01. Scope

These rules govern the procedure in the juvenile courts of Minnesota for all adoptions pursuant to Minn. Stat. § 259.20 to § 259.89 and adoptions of children under the guardianship of the commissioner of human services pursuant to Minnesota Statutes § 260C.601 to § 260C.637. These rules do not apply to a change of name under Minn. Stat. § 259.10 to § 259.13. Rules 39, 42, 43, and 44 regarding contested adoptions do not apply to children under the guardianship of the commissioner of human services.

Rule 38.05. Contested Adoptive Placement for Children Under Guardianship of the Commissioner of Human Services

Subd. 1. Rule Does Not Apply to Children under Guardianship of the Commissioner. This rule does not apply to children under the guardianship of the commissioner of human services.

Subd. 2. Contested Adoptive Placements Governed by Rules of Juvenile Protection Procedure and Minnesota Statutes Chapter 260C. Procedures for contested adoptive placements of children under the guardianship of the commissioner of human services are governed by Rule 42.11 of the Rules of Juvenile Protection Procedure and Minnesota Statutes § 260C.607, subd. 6.

2014 Advisory Committee Comment

Rule 1.01 provides that contests over the adoptive placement of children under state guardianship are governed by the Rules of Juvenile Protection Procedure and Minnesota Statutes § 260C.607, subd. 6. A contested adoptive placement hearing for a child under guardianship of the commissioner of human services occurs when an individual not selected by the agency for adoptive placement and who has an adoptive home study makes a prima facie showing that the responsible social services agency was unreasonable in making the adoptive placement. The individual files a motion which is heard by the judge conducting the reviews required under Minnesota Statutes § 260C.607 on the agency's reasonable efforts to in finalize adoption of the child.

If the court finds there is a prima facie showing, it will conduct further hearing on the motion and may order the agency to make an adoptive placement

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with the individual bringing the motion. A petition for adoption of a child under guardianship of the commissioner cannot be filed unless there is an adoptive placement by the responsible agency made by fully executed adoptive placement agreement. So the process is not for contested adoption, but rather for contested adoptive placement.

Rule 1.02. Purpose

These rules establish uniform practice and procedure for adoption matters in the juvenile courts of Minnesota. The purpose of these rules is to ensure that:

- (a) the best interests of adopted persons ~~the child~~ are met in the planning and granting of an adoption, including, in the adoption of a child, an individualized determination of the child's needs and how the adoptive placement will serve the child's needs;
- (b) there is recognition of the diversity of Minnesota's population and the diverse needs of persons affected by adoption; and
- (c) the processes are culturally responsive.

2004 Advisory Committee Comment

Rule 1.02 reflects the policy set forth in Minn. Stat. § 259.20 and § 259.29. The purpose statement also reflects the policy set forth in the federal Adoption and Safe Families Act of 1997, 42 U.S.C. §§ 601, 603, 622, 629, 653, 675, 670-679, and 1320, which emphasizes that the overriding objective in any juvenile protection matter is to timely provide a safe, stable, permanent home for the child.

RULE 2. DEFINITIONS

Rule 2.01. Definitions

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

(1a) **“Adjudicated father”** means an individual determined by a court, or pursuant to a Recognition of Parentage under Minnesota Statutes § 257.75, subd. 3, to be the biological father of the child.

(2b) **“Adoption case records”** means all records of the court regarding a particular adoption matter, including all records filed with the court, all records maintained by the court, and all reporter's notes and tapes, electronic recordings, and transcripts of hearings and trials relating to the adoption matter.

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

(4e) **“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

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placement adoption, intercountry adoption, adoption resulting from a juvenile protection matter, proceeding under Minnesota Statutes § 260C.601 - § 260C.637, and any other type of adoption proceeding under Minnesota Statutes Chapter 259 or § 260C.601 - § 260C.637.

(5) “Adoption placement agreement” has the meaning given under Minnesota Statutes § 260C.603, subd. 3.

(6) “Adoptive placement” has the meaning given under Minnesota Statutes § 260C.603, subd. 5.

(7-d) “Agency,” as defined in Minnesota Statutes § 259.21, subd. 6, and as referenced in Minnesota Statutes § 245A.02 to § 245A.16 and § 260C.007, subd. 2 and § 252.28, subd. 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.

(8e) “Birth relative,” for purposes of entering into a communication or contact agreement pursuant to Rule 34.01, subd. 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. § 1903(2).

(9f) “Child” means a person under the age of 18 years.

(10g) “Child placing agency” means a private agency making or supervising an adoptive placement.

(11h) “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.

(12i) “Contested adoption” means an adoption matter where:

(a+) there are two or more adoption petitions regarding the same child;

(b2) a party has filed a written challenge to the adoption; or

(c3) the commissioner of human services or a legal custodian or legal guardian who is not a parent has withheld consent.

(13) “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 § 260C.607, subd. 6, which provides for motion and hearing to contest the adoptive placement of a child under guardianship of the commissioner of human services.

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(14j) **“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 § 259.47.

(15k) **“Father.”** See “adjudicated father” and “putative father” as defined in this Rule.

(16l) **“Indian child,”** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(1)(4), and modified by Minnesota Statutes § 260.755, subd. 8, means any unmarried person who is under age eighteen (18) and is either (1) a member of an Indian tribe or (2) eligible for membership in an Indian tribe.

(17m) **“Indian custodian,”** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(1)(6), and Minnesota Statutes § 260.755, subd. 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.

(18n) **“Indian tribe,”** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(1)(8), and Minnesota Statutes § 260.755, subd. 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. § 1602(c).

(19o) **“Individual related to child,”** as defined under Minnesota Statutes § 245A.02, subd. 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(28*).

(20p) **“Legal custodian”** means a person, including a legal guardian, who by court order or statute has sole or joint legal custody of the child.

(21q) **“Legal guardian”** means a person who is the court-appointed legal guardian of the child pursuant to Minnesota Statutes § 260C.325, subs. 1 and 3, or Minnesota Statutes Chapter 525 or an equivalent law in another jurisdiction.

(22r) **“Local social services agency”** means the agency in the county of the petitioner’s residence.

(23s) **“Parent”** means the biological or adoptive parent of a child, including an adjudicated father. Pursuant to Minnesota Statutes § 260.755, subd. 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.

(24t) **“Petitioner”** means a person, with a spouse, if any, petitioning for the adoption of any person pursuant to Minnesota Statutes § ~~259.20 to § 259.89~~ ~~259.21 to § 259.63~~. “Petitioner”

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also means the responsible social services agency petitioning for the adopting parent to adopt a child under state guardianship pursuant to Minnesota Statutes § 260C.623.

~~(25)~~ **“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.

~~(26)~~ **“Placement activities”** means any of the following:

- (1) placement of a child;
- (2) arranging or providing short-term foster care pending an adoptive placement;
- (3) facilitating placement by maintaining a list, in any form, of biological parents or prospective adoptive parents;
- (4) completing or updating a child’s social and medical history as required under Minnesota Statutes § 259.41 and § 260C.611~~collecting health and social histories of a birth family;~~
- (5) conducting an adoption study;
- (6) witnessing consents to an adoption; or
- (7) engaging in any activity listed in clauses (1) to (6) for purposes of fulfilling any requirements of the Interstate Compact on the Placement of Children, Minnesota Statutes § 260.851 ~~to § 260.94.~~

~~(27)~~ **“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 § 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 § 257.75, which has not been revoked or vacated.

~~(28)~~ **“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 step-parent as provided in the Indian Child Welfare Act of 1978, 25 U.S.C. § 1903(2). Distinguish “individual related to child” under Rule 2.01~~(19)~~.

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(29y) “**Responsible social services agency**” means the county agency acting ~~on behalf~~ as agent of the commissioner of human services ~~as when the commissioner is legal guardian or legal custodian~~ of the child.

(30z) “**Working day**” refers solely to revocation of consents and means Monday through Friday, excluding any holiday as defined under Minnesota Statutes § 645.44, subd. 5.

(31aa) “**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.

RULE 3. APPLICABILITY OF OTHER RULES AND STATUTES

* * * * *

Rule 3.06. Interstate Compact on the Placement of Children

Adoption matters concerning children crossing state lines for the purpose of adoption are subject to the provisions of the Interstate Compact on the Placement of Children, Minnesota Statutes § 260.851 to § 260.91.

* * * * *

Rule 3.08. Review of Progress toward Adoption of Children under State Guardianship

The requirements for the responsible social services agency’s reasonable efforts to finalize adoption and for court review of progress towards adoption of children under guardianship of the commissioner of human services are governed by Rule 42.11 of the Rules of Juvenile Protection Procedure and Minnesota Statutes § 260C.601 to 260C.619.

RULE 10. ORDERS

Rule 10.01. Written or Oral Orders

Court orders may be written or stated on the record. An order stated on the record shall also be reduced to writing by the court. Except for orders issued following a trial pursuant to Rule 44.06, all orders shall be filed with the court administrator within fifteen (15) days of the conclusion of the hearing. An order shall remain in full force and effect pursuant to law or until the occurrence of any of the following:

- (a) issuance of an inconsistent order; or
- (b) the order ends pursuant to the terms of the order
- (c) ~~jurisdiction of the juvenile court is terminated.~~

RULE 17. DISCOVERY

Rule 17.01. Applicability

These discovery rules apply only to contested adoption matters and only to the extent permitted and upon the conditions ordered by the court. To the extent that there are any discovery issues that arise out of an uncontested adoption matter, any requests for information shall be addressed to the court which shall determine whether such discovery will be allowed and, if so, in what form and whether any protective order shall be issued.

Rule 17.02. Regulation of Discovery

Discovery in adoption matters shall be governed by Rules 26 through 37 of the Minnesota Rules of Civil Procedure, except discovery for a contested adoptive placement under Minnesota Statutes § 260C.607 is governed by the Rule 17 of the Rules of Juvenile Protection Procedure.

2014 Advisory Committee Comment

Rule 17.02 provides clarification that discovery in the case of a contested adoptive placement for a child under the guardianship of the commissioner of human services is governed by the Rules of Juvenile Protection Procedure. This results from changes to the requirements of Minnesota Statutes Chapters 259 and 260C. In 2012, most adoption procedures regarding children under the guardianship of the commissioner were moved from Minnesota Statutes Chapter 259 to Minnesota Statutes Chapter 260C. The relevant provisions in Minnesota Statutes Chapter 260C include:

1. Requirements for reasonable efforts to finalize the adoption (see Minnesota Statutes § 260C.605);
2. Strengthening provisions related to concurrent permanency planning, especially:
 - a. early court review of requirements for ensuring the child’s relatives are notified of the child’s foster care placement and of the need for a home, including the potential need for a legally permanent home if the child cannot return to the parent (see Minnesota Statutes § 260C.221); and
 - b. giving relatives the right to notice of court hearings and to ask to be considered as a placement resource for the child (see Minnesota Statutes § 260C.221, § 260C.204, and § 260C.607); and
3. Clearly articulated state policy giving the responsible social services agency exclusive authority to make the adoptive placement while also

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providing opportunities for relatives or foster parents who want to be considered for placement to ask the court to direct the agency to take appropriate action to consider them and to challenge the agency's decision regarding the adoptive placement (see Minnesota Statutes § 260C.204 and § 260C.607).

The purpose of the statutory amendments regarding a child under guardianship of the commissioner of human services and accompanying provisions strengthening relative search and concurrent permanency planning requirements is to help reduce the length of time the child is in foster care and the number of moves the child experiences.

Rule 17.01 of the Minnesota Rules of Juvenile Protection Procedure provides for access at any reasonable time to all information, material, and items within the petitioner's possession or control which relate to the case. The petitioner in a motion under Minnesota Statutes § 260C.607 is the entity that brought the action making the child a ward of the commissioner of human services because the motion is brought in the context of the review of progress towards adoption. In the event that access to the file and materials in the petitioner's possession does not provide sufficient information for the movant, Rule 17.04 of the Rules of Juvenile Protection Procedure allows the judge to order additional discovery, including depositions.

Providing that the discovery rule in the Rules of Juvenile Protection Procedure applies to motions challenging adoptive placement decision of the responsible agency made under Minnesota Statutes Chapter 260C accomplishes two things:

1. It strikes a balance between the need for expedited decision-making and the child's need for stability with the parties' need to access information, especially when the party has had the ongoing right to raise issues about the agency's placement decision from very early in the proceedings; and
2. It continues the Rules of Juvenile Protection Procedure in effect until an adoption petition is filed. This is a bright line that helps avoid confusion about which rules or parts of rules (the Juvenile Protection Rules or Adoption Rules) apply to proceedings up to the point an adoption petition is filed.

RULE 20. PARTIES

Rule 20.01. Party Status

Parties to an adoption matter shall include:

- (a) the child's guardian ad litem;
- (b) the adoptee, if age ten (10) or older;
- (c) the child's legal custodian;
- (d) the child's legal guardian;
- (e) the petitioner;
- (f) the adopting parent, in cases where the social services agency is the petitioner;
- (~~g~~) the child's biological parent, if the consent of the biological parent is required and

has not been executed pursuant to Rule 33;

(~~h~~) the child's Indian tribe, if the child is an Indian child and the tribe is or was a party in an underlying juvenile protection matter as defined in Rule 2.01(~~18k~~) of the Minnesota Rules of Juvenile Protection Procedure;

(~~i~~) the responsible social services agency, if the child is under the guardianship of the commissioner of human services;

(~~j~~) the child placing agency, if applicable ~~the child has been placed;~~

(~~k~~) any person who intervenes as a party pursuant to Rule 21; and

(~~l~~) any person who is joined as a party pursuant to Rule 22.

RULE 24. GUARDIAN AD LITEM

Rule 24.01. Appointment

Subd. 1. Generally. A guardian ad litem appointed to serve in a juvenile protection matter, as defined in Rule 2.01(~~16k~~) of the Minnesota Rules of Juvenile Protection Procedure, shall continue to serve in the adoption matter following a ~~termination of parental rights or~~ transfer of guardianship to the commissioner of human services. In any other adoption matter, the court may appoint a guardian ad litem. The guardian ad litem shall advocate for the best interests of the child and shall continue to serve until the adoption decree is entered pursuant to Rule 45.

RULE 26. COMMENCEMENT OF ADOPTION MATTER

Rule 26.01. Commencement of an Adoption Matter

An adoption matter is commenced by filing:

- (a) a motion for a direct placement preadoptive custody order pursuant to Rule 29;
- (b) an adoption petition; or

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(c) a motion for waiver of agency placement pursuant to Minnesota Statutes § 259.22, subd 2(d), when the child is not under the guardianship of the commissioner of human services.

2014 Advisory Committee Comment

A motion for waiver of agency placement is not available for a child under the guardianship of the commissioner of human services. Under Minnesota Statutes § 260C.613, subd. 1, the responsible social services agency has exclusive authority to make an adoptive placement for a child under the guardianship of the commissioner. A challenge to the agency's adoptive placement of a child under the guardianship of the commissioner is brought in a hearing under Minnesota Statute § 260C.607, subd. 6.

RULE 31. NOTICE OF FINAL HEARING OR TRIAL

Rule 31.01. Notice

* * * * *

Subd. 2. Upon Whom.

(a) **Generally.** Except as provided in paragraph b, the petitioner shall serve ~~A~~ notice of hearing and adoption petition ~~shall be served by the petitioner~~ upon:

- (~~1~~a) all parties under Rule 20;
- (~~2~~b) the parent of a child if:
 - (~~i~~1) the person's name appears on the child's birth record as a parent;
 - (~~ii~~2) the person has substantially supported the child;
 - (~~iii~~3) the person either was married to the person designated on the birth record as the biological mother within the 325 days before the child's birth or married that person within the ten (10) days after the child's birth;
 - (~~iv~~4) the person is openly living with the child or the person designated on the birth record as the biological mother of the child, or both;
 - (~~v~~5) the person has been adjudicated the child's parent;
 - (~~vi~~6) the person has filed a paternity action within thirty (30) days after the child's birth and the action is still pending; or
 - (~~vii~~7) the person and the mother of the child signed a declaration of parentage before August 1, 1995, which has not been revoked or a recognition of parentage which has not been revoked or vacated;
- (~~3~~e) a person who has timely registered pursuant to Minnesota Statutes § 259.52;
- (~~4~~d) the responsible social services agency;

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(5e) any parent who has abandoned the child or who has lost custody of the child through a divorce decree or dissolution of marriage; and

(6f) the child's Indian tribe, if the child is an Indian child.

(b) 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 a notice of hearing and petition, unless service of the petition has already been accomplished, upon:

(1) the child's tribe if the child is an Indian child;

(2) the responsible social services agency;

(3) the child's guardian ad litem;

(4) the child, if the child is age ten or over;

(5) the child's attorney; and

(6) the adopting parent; and

(7) the county attorney.

Rule 31.02. Notice Not Required

Without express order of the court, a notice of the hearing and petition shall not be served upon:

(a) persons whose parental rights have been terminated or who have consented to the adoption of the child;

(b) persons who have not timely registered pursuant to Minnesota Statutes § 259.52;

(c) persons who have waived notice of hearing pursuant to Minnesota Statutes § 259.49, subd. 1;

(d) a putative father who has timely registered with the Minnesota Fathers' Adoption Registry pursuant to Minnesota Statutes § 259.52, but who fails to timely file an intent to claim parental rights form with the court; and

(e) a putative father who has registered with the Minnesota Fathers' Adoption Registry pursuant to Minnesota Statutes § 259.52 and who has filed a completed denial of paternity form and a consent to adoption form.

RULE 33. CONSENT TO ADOPTION

Rule 33.01. Persons and Agencies Required to Consent

Subd. 1. Generally. Except as provided in subdivision 2, ~~w~~Written consent to an adoption is required by the following:

(a) the child to be adopted, if the child is fourteen (14) years of age or older, and the child's consent must be consent to adoption by a particular person;

(b) the adult to be adopted, whose consent shall be the only consent required;

PROPOSED AMENDMENTS

- (c) a registered putative father, if pursuant to Rule 32 he has:
 - (1) been notified under the Minnesota Fathers' Adoption Registry;
 - (2) timely filed an intent to claim parental rights form; and
 - (3) timely filed a paternity action;
- (d) the child's parents or legal guardian, except:
 - (1) a parent not entitled to notice of the proceedings;
 - (2) a parent who has abandoned the child or a parent who has lost custody of the child through a divorce decree or a decree of dissolution and upon whom notice has been served as required under Rule 31; and
 - (3) a parent whose parental rights to the child have been terminated by a juvenile court order or through a decree in a prior adoption matter; and
- (e) if there is no parent or legal guardian qualified to consent to the adoption, the consent shall be given by ~~the commissioner of human services;~~
- ~~(f) the agency having authority to place the child for adoption, which shall have the exclusive right to consent to the adoption of such child; and~~
- ~~(g) the Commissioner of Human Services when the Commissioner is the legal guardian or legal custodian of the child, who shall have the exclusive right to consent to the adoption of such child.~~

Subd. 2. Child Under Guardianship of Commissioner of Human Services.

- (a) Any consent by a parent whose rights to the child have not been terminated shall be pursuant to Minnesota Statutes § 260C.515, subd. 3, and that consent shall be irrevocable upon acceptance by the court except as otherwise provided in Minnesota Statutes § 260C.515, subd. 3(2)(i). A parent of an Indian child may consent to the adoption of the child according to the Indian Child Welfare Act, 25 U.S.C § 1913, and that consent may be withdrawn for any reason at any time before the entry of a final decree of adoption.
- (b) When the child to be adopted is age fourteen (14) years or older, the child's written consent to adoption by the adopting parent is required.
- (c) Consent by the responsible social services agency or the commissioner of human services is not required because the adoptive placement has been made by the responsible social services agency according to Minnesota Statutes § 260C.613, subd. 1.

2004 Advisory Committee Comment

The Advisory Committee recommends that, with respect to a parent who has abandoned the child or a parent who has lost custody of the child through a divorce decree or a decree of dissolution, it is best practice to either obtain a parent's consent as provided under Rule 31 or to commence a termination of

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parental rights proceeding pursuant to the Minnesota Rules of Juvenile Protection Procedure.

2014 Advisory Committee Comment

When a child, age 14 or older, is under the guardianship of the commissioner of human services, the child must give consent to adoption by the particular person seeking to adopt the child. The child may not withhold “general consent” to the responsible social services agency working to find an appropriate adoptive home and making reasonable efforts to finalize adoption. See Minnesota Statutes § 260C.605, subd. 2.

Rule 33.02. Notice of Intent to Consent to Adoption

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Subd. 2. Consent of Minors. If an unmarried parent who consents to the adoption of a child is under eighteen (18) years of age, the consent of the minor parent’s parents or legal custodian or legal guardian, if any, also shall be required. If either or both parents are not required to consent pursuant to Rule 33.01(d), the consent of such parent shall be waived and the consent of the legal custodian or legal guardian only shall be sufficient. If there be neither parent nor legal custodian or legal guardian qualified to give such consent, the consent may be given by the commissioner of human services. The responsible social services or child placing agency overseeing the adoption matter shall ensure that the minor parent is offered the opportunity to consult with an attorney, a member of the clergy, or a physician before consenting to adoption of the child. The advice or opinion of the attorney, clergy member, or physician shall not be binding on the minor parent. If the minor parent cannot afford the cost of consulting with an attorney, a member of the clergy, or a physician, the county shall bear that cost. A parent or legal custodian or legal guardian of a minor or incapacitated person may not delegate the power to consent to adoption of a minor ward under Minnesota Statutes §§ 524.5-101 to 524.5-502.

Rule 33.03. Execution of Consent to Adoption

Subd. 1. Requirements of Consent.

- (a) **Generally.** Except as provided in subdivision 3, all consents to an adoption shall:
- (1a) be in writing;
 - (2b) be executed before two competent witnesses;
 - (3e) be acknowledged by the consenting party;
 - ~~(d) be executed before a representative of the Commissioner of Human Services, the Commissioner’s agent, or a licensed child placing agency;~~
 - (4e) include a notice to the parent of the substance of Minnesota Statutes § 259.24, subd. 6a, providing for the right to withdraw consent; and

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(5f) include the following written notice in all capital letters at least one-eighth inch high: “The ~~This~~ agency responsible for supervising the adoptive placement of the child will submit your consent to adoption to the court. If you are consenting to adoption by the child’s stepparent, the consent will be submitted to the court by the petitioner in your child’s adoption. The consent itself does not terminate your parental rights. Parental rights to a child may be terminated only by an adoption decree or by a court order terminating parental rights. Unless the child is adopted or your parental rights are terminated, you may be asked to support the child.”

(b) Child Under Guardianship of Commissioner of Human Services. Pursuant to Minnesota Statutes § 260C.515, subd. 3, consents for children under the guardianship of the commissioner of human services shall:

(1) be on a form prescribed by the commissioner of human services;
(2) be executed before two competent witnesses;
(3) be confirmed by the consenting parent before the court or executed before the court; and

(4) include notice that the consent is irrevocable upon acceptance by the court and shall result in an order that the child is under the guardianship of the commissioner of human services, unless:

(a) fraud is established and an order is issued permitting revocation for fraud pursuant to Minnesota Statutes § 260C.515, subd. 3(2)(i), and § 259.24; or

(b) the matter is governed by the Indian Child Welfare Act, 25 USC § 1913(c).

* * * * *

Subd. 3. Exceptions to Consent Requirements. The requirements of subdivision 1 do not apply to:

- (a) consents to adoption given by:
- (1) the Commissioner of Human Services, when required by Minnesota Statutes § 259.24, subd. 2 ~~or the Commissioner’s agent~~;
 - (2) a licensed child-placing agency;
 - (3) an adult adoptee;
 - (4) the child’s parent in a petition for adoption by a stepparent; or
 - (5) a parent or legal guardian when executed, together with a waiver of notice of hearing, before a judicial officer;
- (b) a Minnesota Fathers’ Adoption Registry consent to adoption; or
- (c) consent to the adoption of an Indian child.

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Rule 33.05. Failure to Execute Consent

With the exception of cases where a person receives notice under Minnesota Statutes § 259.24, subd. 2a, if a biological parent whose consent is required under Rule 33 does not execute a consent by the end of the period specified in Rule 33.04, the child placing agency shall notify the court and the court shall issue an order regarding continued placement of the child. The court shall order the local social services agency to determine whether to commence proceedings for termination of parental rights on grounds of abandonment as defined in Minnesota Statutes § 260C.301, subd. 2. The court may disregard the six-month and twelve-month requirements of Minnesota Statutes § ~~260C.301~~~~260C.201, subd. 11,~~ in finding abandonment if the biological parent has failed to execute a consent within the time required under Rule 33.04 and has made no effort to obtain custody of the child.

RULE 34. COMMUNICATION OR CONTACT AGREEMENT

Rule 34.01. Persons Who May Enter Into a Communication or Contact Agreement

Subd. 1. Parties to Agreement for Child under Guardianship of the Commissioner of Human Services. A communication or contact agreement for children under the guardianship of the commissioner of human services under Minnesota Statutes § 260C.619 shall be in writing and may be entered into between the following persons:

- (a) an the-adopting parent and a biological-birth parent;
- (b) an the-adopting parent and any other-birth relative, including a sibling, or foster parent with whom the child resided before being adopted; or
- (c) ~~the adopting parent and any other birth relative, including a sibling, if the child is adopted by a birth relative upon the death of both biological parents;~~
- (cd) an adopting parent and any adult sibling of the child or the parent or legal custodian of a sibling of the child, if the child is a minor.

Subd. 2. Parties to Agreement for a Child Not under Guardianship of the Commissioner of Human Services. If the child is not under the guardianship of the commissioner, the adoptive parents and a birth relative or foster parents may enter into an agreement regarding communication with or contact between an adopted minor, adoptive parents, and a birth relative or foster parents pursuant to Minnesota Statutes § 259.58 and § 260C.619. An agreement may be entered between:

- (a) adoptive parents and a birth parent;
- (b) adoptive parents and any other birth relative or foster parent with whom the child resided before being adopted; or

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(c) adoptive parents and any other birth relative if the child is adopted by a birth relative upon the death of both birth parents.

Subd. 32. Approval. The court shall not issue a communication or contact order unless the agreement has been ~~A communication or contact agreement shall be approved~~ as follows:

(a) The responsible social services agency, the prospective adoptive parents or adoptive parents, and any birth parent, birth relative, foster parent, adult sibling, or legal custodian of the child's siblings who desire to be a party to the agreement shall approve, in writing, any agreement involving a child in ~~under the legal custody or guardianship of the commissioner of human services.~~

(b) A child placing agency shall approve, in writing, any agreement involving a child under its legal custody or guardianship.

(c) A biological parent shall approve in writing an agreement between an adopting parent and any other birth relative or foster parent, unless an action has been filed against the biological parent by a county under Minnesota Statutes Chapter 260C.

An agreement under this subdivision need not disclose the identity of the parties to be legally enforceable, and when the identity of the parties to the agreement is not disclosed, data about the identities in the adoption file shall remain confidential.

Rule 34.02. Filing of Agreement

The signed communication or contact agreement shall be filed with the court after the petition has been filed and prior to finalization of the adoption.

Rule 34.03. Written Order Required

A communication or contact agreement is not legally enforceable unless the terms of the agreement are contained in a written court order entered pursuant to these rules, which shall be separate from the findings of fact, conclusions of law, order for judgment, and adoption decree issued pursuant to Rule 45. The order shall be filed in the adoption file and shall be issued before or at the time of the granting of the decree of adoption. For children under guardianship of the commissioner of human services, when there is a written communication or contact agreement between prospective adoptive parents and birth relatives other than birth parents it must be included in the final adoption decree unless all the parties to the communication or contact agreement agree to omit it. If the adoptive parents or birth relatives do not comply with the communication or contact agreement, the court shall determine the terms of the communication and contact agreement.

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Rule 34.04. Timing

A communication or contact agreement order shall be issued by the court within thirty (30) fifteen (15) days of being submitted to the court or by the date the adoption decree is issued, whichever is earlier.

Rule 34.05. Requirements for Entry of Order

A communication or contact agreement order under this rule need not disclose the identity of the parties. The court shall not enter an order unless the court finds that the communication or contact between the child, the adoptive parent, and a birth relative as agreed upon and contained in the proposed order is in the child's best interests.

Rule 34.06. Service of Order

The court administrator shall mail a certified copy of the communication or contact agreement order to the parties to the agreement or their legal representatives at the addresses provided by the petitioners. Service shall be completed in a manner that maintains confidentiality of confidential information.

Rule 34.07. Enforcement — Family Court

Subd. 1. Filing Requirement. A communication or contact agreement order entered under this rule may be enforced by filing with the family court, or, for children under the guardianship of the commissioner of human services, with the juvenile court pursuant to subdivision 3:

- (a) a petition or motion;
- (b) a certified copy of the communication or contact agreement order; and
- (c) an affidavit that the parties have mediated or attempted to mediate any dispute under the agreement or that the parties agree to a proposed modification.

Subd. 2. Attorneys Fees. The prevailing party upon a motion to enforce a communication or contact agreement order may be awarded reasonable attorney's fees and costs.

Subd. 3. Child Under Guardianship of Commissioner of Human Services. An order regarding a communication or contact agreement entered pursuant to this rule and Minnesota Statutes § 260C.619 for a child under the guardianship of the commissioner of human services shall be enforced by filing a motion in the existing adoption file with the court that entered the contact agreement. Any party to the communication or contact order or the child who is the subject of the order has standing to file the motion to enforce the order.

RULE 35. PETITION

Rule 35.01. Who May Petition; Residency of Petitioner

Subd. 1. Who May Petition.

(a) **Generally.** The adopting parent may petition for adoption of the child.

(b) **Child Under Guardianship of Commissioner of Human Services.** The responsible social services agency may petition for the adopting parent to adopt a child who is under the guardianship of the commissioner of human services. The petition shall contain or have attached a statement certified by the adopting parent that the adopting parent desires that the relationship of parent and child be established between the adopting parent and the child and that adoption is in the best interests of the child. An adopting parent must be at least 21 years of age at the time the adoption petition is filed unless the adopting parent is an individual related to the child as defined under Rule 2.01.

Subd. 21. Residency Requirement.

(a) **Child Not Under Guardianship of the Commissioner of Human Services.**

Any person who has resided in the state for one (1) year or more may petition to adopt.

(b) **Child Under Guardianship of the Commissioner of Human Services.** An adopting parent for a child under state guardianship may reside within or outside the state of Minnesota.

Subd. 32. Exception to Residency Requirement. The one (1) year residency requirement may be reduced to thirty (30) days by the court in the best interests of the child. The court may waive any residency requirement of this rule if the petitioner is an individual related to the child, as defined in Rule 2.01(190), or as a member of a child's extended family or important friend with whom the child has resided or had significant contact or, upon a showing of good cause, the court is satisfied that the proposed adoptive home and the child are suited to each other.

Rule 35.02. Residency of Child to be Adopted

Unless waived by the court, no petition shall be granted until the child has lived three (3) months in the proposed home, subject to a right of visitation by the commissioner of human services or an agency or their authorized representatives. If the three-month residency requirement is waived by the court, at least ten (10) days notice of the hearing shall be provided by certified mail to the local social services agency.

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Rule 35.03. Timing

Subd. 1. Generally Child Not under Guardianship of Commissioner of Human Services. An adoption petition shall be filed not later than twelve (12) months after a child is placed in a prospective adoptive home. If a petition is not filed by that time, the agency that placed the child or, in a direct placement adoption, the agency that is supervising the placement, shall file with the court in the county where the prospective adoptive parent resides, ~~or in the county where the court is reviewing progress towards adoption of a child under the guardianship or legal custody of the Commissioner of Human Services,~~ a motion for an order and a report recommending one of the following:

- (a) that the time for filing a petition be extended because of the child's special needs as specified under Minnesota Statutes § 259.22, subd. 4;
- (b) that, based on a written plan for completing filing of the petition, including a specific timeline, to which the prospective adoptive parents have agreed, the time for filing a petition be extended long enough to complete the plan because such an extension is in the best interests of the child and additional time is needed for the child to adjust to the adoptive home; or
- (c) that the child be removed from the prospective adoptive home.

Subd. 2. Child Under Guardianship of Commissioner of Human Services.

(a) Petition Filed Within Nine (9) Months of Adoption Placement Agreement. An adoption petition shall be filed not later than nine (9) months after the date of the fully executed adoption placement agreement unless the court orders that:

- (1) the time for filing a petition be extended because of the child's special needs as defined under title IV-E of the federal Social Security Act, 42 USC § 672; or
- (2) based on a written plan for completing filing of the petition, including a specific timeline, to which the adopting parent has agreed, the time for filing a petition be extended long enough to complete the plan because an extension is in the best interests of the child and additional time is needed for the child to adjust to the adoptive home.

(b) Petition Not Filed Within Nine (9) Months of Adoption Placement Agreement If an adoption petition is not filed within nine (9) months of the execution of the adoption placement agreement, and after giving the adopting parent written notice of its request together with the date and time of the hearing set to consider its report, the responsible social services agency shall file a report requesting an order for one of the following:

- (1) extending the time for filing a petition because of the child's special needs as defined under title IV-E of the federal Social Security Act, United States Code, title 42, section 673;

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(2) based on a written plan for completing filing of the petition, including a specific timeline, to which the adopting parent has agreed, extending the time for filing a petition long enough to complete the plan because an extension is in the best interests of the child and additional time is needed for the child to adjust to the adoptive home; or

(c) removing the child from the adopting home.

At the conclusion of the review, the court shall issue findings and appropriate orders for the parties to take action or steps required to advance the case toward a finalized adoption, and shall set the date and time for the next review hearing.

Subd. 32. Exceptions – Stepparent and Relative Adoptions. The timing specified in subdivision 1 does not apply to stepparent adoptions or adoptions under Minnesota Statutes § 259.47 by an individual related to the child not involving a placement as defined in Rule 2.01(19e).

Rule 35.04. Conditions for Filing Petition for Adoption of a Child; Exceptions

Subd. 1. Generally. No petition for adoption of a child may be filed unless the adoptive placement of the child was made by:

(a) ~~the Commissioner of Human Services;~~

(a**b**) the responsible social services agency as an agent of the commissioner of human services; or

(b**e**) a child placing agency as defined in Rule 2.01(10g).

Subd. 2. Exceptions. The requirements of subdivision 1 shall not apply if:

(a) the child is over fourteen (14) years of age;

(b) the petitioner is an individual who is related to the child as defined in Rule 2.01(19e);

(c) the child has been lawfully placed under the laws of another state while the child and the petitioner resided in that state;

(d) the court waives the requirement of subdivision 1 in the best interests of the child and the placement is not made by transfer of physical custody of the child from a biological parent or legal guardian to the prospective adoptive home; or

(e) the child has been lawfully placed pursuant to an order for direct placement pursuant to Rule 29.

2014 Advisory Committee Comment

Agency placement cannot be waived for children under the guardianship of the commissioner of human services. Under Minnesota Statutes § 260C.613,

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the responsible social services agency has exclusive authority to make an adoptive placement. An adoptive placement is made through a fully executed adoption placement agreement between the adopting parent, the responsible social services agency and the commissioner. The agency's adoptive placement can be challenged in a motion under Minnesota Statutes § 260C.607, subd. 6, and if the prevailing party is not the adopting parent party to the adoption placement agreement, the court may order the agency to make the adoptive placement in the home of the prevailing party.

Rule 35.05. Content

Subd. 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 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~~petitioner~~, 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~~9~~), 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;

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- (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 petitioner to the child, if any;
- (j) whether the Indian Child Welfare Act does or does not apply;
- (k) the name and address of the parties identified in Rule 20;
- (l) whether the child has been placed with petitioner for adoption by an agency and, if so, the date of the adoptive placement; and
- (m) that the petitioner desires that the relationship of parent and child be established between petitioner and the child, and that it is in the best interests of the child to be adopted by the petitioner.

Subd. 3. Exception to Content. In agency placements, the information required in subdivision 2(e) and (f) shall not be required to be alleged in the petition but shall be provided to the court by the Commissioner of Human Services 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 § 259.41;
- (b) any biological parent social and medical history required under Minnesota Statutes § 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; ~~and~~
- (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 §260C.627, subd. 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 guardianship of the commissioner of human services under Minnesota Statutes § 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 260C.613, subd. 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 ~~shall be filed with the court~~ prior to finalization of the adoption:

- (a) a certified copy of the child's birth record;

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(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 § 260C.515, subd. 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 § 260c.515, subd. 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.

* * * * *

Rule 35.06. Verification; Signatures

(a) **Generally.** The petition shall be signed and dated by the petitioner and verified upon information and belief.

(b) **Child Under Guardianship of Commissioner of Human Services.** The petition shall be verified as required under Minnesota Statutes § 260C.141, subd. 4, and, if filed by the responsible social services agency, shall be approved and signed by the county attorney. If a petition is for adoption by a married person, both spouses must sign the petition indicating willingness to adopt the child and the petition must ask for adoption by both spouses unless the court approves adoption by only one spouse when spouses do not reside together or for other good cause shown. If the petition is for adoption by a person residing outside the state, the adoptive placement must have been approved by the state where the person is a resident through the Interstate Compact on the Placement of Children, Minnesota Statutes § § 260.851.

Rule ~~35.08~~ 35.07. Amendment

[No changes to this rule except for renumbering]

Rule ~~35.09~~ 35.08. Statement of Expenses

Upon the filing of an adoption petition, the agency shall file with the court a statement of expenses that have been paid or are to be paid by the prospective adoptive parent in connection with the adoption. In a direct placement adoption, the statement of expenses shall be filed by the prospective adoptive parent.

RULE 36. ACTIONS UPON FILING OF PETITION

Upon the filing of an adoption petition, the court administrator shall immediately provide a copy of the petition to:

- (a) the Commissioner of Human Services; and
- (b) if the petition relates to a child, the agency identified below:
 - (1) in an agency or a direct placement adoption, the court shall provide the petition to the agency supervising the placement; and
 - (2) in all other instances not described in clause (1), the court shall provide the petition to the local social services agency of the county in which the prospective adoptive parent lives if the child is to be adopted by an individual who is related to the child as defined in Rule 2.01(~~19e~~).

RULE 38. POST-PLACEMENT ASSESSMENT REPORT

Rule 38.01. Timing

Subd. 1. Generally. Unless waived by the court pursuant to Rule 38.04 and Minnesota Statutes § 259.53, subd. 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.

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Rule 38.03. Background Study

If an adoption study is not required because the petitioner is an individual who is related to the child as defined in Rule 2.01(~~19e~~), the agency, as part of its post-placement assessment report, shall conduct a background study meeting the requirements of Minnesota Statutes § 259.41, subd. 3(b). An adoption study and background study are always required for a child under guardianship of the commissioner of human services.

Rule 38.04. Waiver by Court

Subdivision 1. Post-Placement Assessment Waiver Permitted. The post-placement assessment report may be waived by the court pursuant to Minnesota Statutes § 259.53, subd. 5, or § 260C.607. A request to waive a post-placement assessment report shall be in writing and shall be filed and served with the petition pursuant to Rule 35.05. A request to waive a post-placement assessment report shall be decided by the court within fifteen (15) days of filing, unless a written objection to the waiver is filed, in which case a hearing must be conducted as soon as practicable.

PROPOSED AMENDMENTS

Subd. 2. Background Study Waiver Prohibited. The court shall not waive the background study.

2014 Advisory Committee Comment

Rule 39.04 provides that contests over the adoptive placement of children under state guardianship are governed by the Rules of Juvenile Protection Procedure and Minnesota Statutes § 260C.607, subd. 6. A contested adoptive placement hearing for a child under guardianship of the commissioner of human services occurs when an individual not selected by the agency for adoptive placement and who has an adoptive home study makes a prima facie showing that the responsible social services agency was unreasonable in making the adoptive placement. The individual files a motion which is heard by the judge conducting the reviews required under Minnesota Statutes § 260C.607 on the agency's reasonable efforts to in finalize adoption of the child.

If the court finds there is a prima facie showing, it will conduct further hearing on the motion and may order the agency to make an adoptive placement with the individual bringing the motion. A petition for adoption of a child under guardianship of the commissioner cannot be filed unless there is an adoptive placement by the responsible agency made by fully executed adoptive placement agreement. So the process is not for contested adoption, but rather for contested adoptive placement.

RULE 41. FINAL HEARING IN UNCONTESTED MATTERS

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Rule 41.03. Hearing Procedure

At the beginning of the final hearing, the court shall on the record:

- (a) verify the name, age, and current address of the child who is the subject of the proceeding, except as provided in Rule 20.03;
- (b) determine whether the Indian child's tribe has been notified, if the child has been determined to be an Indian child;
- (c) determine whether all parties are present and identify those present for the record;
- (d) determine whether any necessary biological parent, guardian, or other person from whom consent to the adoption is required or whose parental rights will need to be terminated is present;
- (e) determine whether notice requirements have been met, and, if not, whether the affected person waives notice; and

PROPOSED AMENDMENTS

(f) determine whether the Interstate Compact on the Placement of Children, Minnesota Statutes §§ 260.851—94, applies.

Rule 41.05. Timing of Decision

Within fifteen (15) days of the conclusion of the final hearing in an uncontested adoption, the court shall issue findings of fact, conclusions of law, order for judgment, and adoption decree pursuant to Rule 45. For good cause, the court may extend this period for an additional fifteen (15) days.

RULE 42. CONSOLIDATION; BIFURCATION

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Rule 42.04. Rule Does Not Apply to Children under Guardianship of the Commissioner of Human Services

This provisions of Rules 42.01 to 42.03 do not apply to children under the guardianships of the commissioner of human services. Procedures for contested adoptive placement of children under the guardianship of the commissioner of human services are governed by Rule 42.11 of the Rules of Juvenile Protection Procedure and Minnesota Statutes § 260C.607, subd. 6.

2014 Advisory Committee Comment

Rule 42.04 provides that contests over the adoptive placement of children under state guardianship are governed by the Rules of Juvenile Protection Procedure and Minnesota Statutes § 260C.607, subd. 6. A contested adoptive placement hearing for a child under the guardianship of the commissioner of human services occurs when an individual not selected by the agency for adoptive placement and who has an adoptive home study makes a prima facie showing that the responsible social services agency was unreasonable in making the adoptive placement. The individual files a motion which is heard by the judge conducting the reviews required under Minnesota Statutes § 260C.607 on the agency's reasonable efforts to in finalize adoption of the child.

If the court finds there is a prima facie showing, it will conduct a further hearing on the motion and may order the agency to make an adoptive placement with the individual bringing the motion. A petition for adoption of a child under guardianship of the commissioner cannot be filed unless there is an adoptive placement by the responsible agency made by fully executed adoptive placement agreement. So the process is not for contested adoption, but rather for contested adoptive placement.

RULE 45. FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER FOR JUDGMENT, AND ADOPTION DECREE

Rule 45.01. Dismissal and Denial of Adoption Petition

If the court finds that the consent of the adult person to be adopted is not valid, the court shall deny the petition. The court may dismiss an adoption petition if appropriate legal grounds have not been proved. In the case of a child under the guardianship of the commissioner of human services, the court shall dismiss the petition if the petitioner is not a party to a fully executed adoption placement agreement. If the court is not satisfied that the proposed adoption is in the best interests of the child, the court shall deny the petition and:

(a) order that the child be returned to the custody of the person or agency legally vested with permanent custody; or

(b) in the case of a child under the guardianship of the commissioner of human services, order the responsible social services agency to take appropriate action for the protection and safety of the child and notify the court responsible for conducting review hearings under Minnesota Statute § 260C.607, which shall set a hearing within thirty (30) days of receiving notice of the denial of the petition; or

(c) order the case transferred for appropriate action and disposition by the court having jurisdiction to determine the custody and guardianship of the child.

Rule 45.02. Granting Adoption Petition

If the court finds that it is in the best interests of the child that the petition be granted, the court shall issue findings of fact, conclusions of law, an order for judgment, and an adoption decree that the person shall be the child of the adopting parent~~petitioner~~. If the person being adopted is an adult, the court shall grant an adoption decree if the court finds that the person's consent is valid. Once the court issues an adoption decree, the court shall also direct the court administrator to complete the appropriate forms so that a new birth record may be issued and notify the prevailing petitioner and his or her attorney of the determination, and provide them with an opportunity to obtain a certified copy of the adoption decree and new birth record prior to the closing of the file.