

STATE OF MINNESOTA
IN SUPREME COURT
ADM10-8050



**ORDER REGARDING PROPOSED AMENDMENTS
TO THE RULES OF PUBLIC ACCESS TO RECORDS
OF THE JUDICIAL BRANCH**

The Minnesota Supreme Court Advisory Committee on the Rules of Public Access to Records of the Judicial Branch has recommended amendments to the Rules of Public Access to Records of the Judicial Branch to address public access to court records in light of the judicial branch's increased use of electronic case records. The Committee's recommendations and proposed amendments draw upon recommendations made by other advisory committees regarding access to electronic records, including the Advisory Committee for the Rules of Juvenile Protection, Adoption, and Guardian Ad Litem Procedure and the Advisory Committee for the Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act. The court has reviewed the proposed amendments and is fully advised in the premises.

IT IS HEREBY ORDERED THAT:

1. Any person or organization wishing to provide written comments in support of or opposition to the proposed amendments to the Minnesota Rules of Public Access to Records of the Judicial Branch shall file one copy of those comments with AnnMarie O'Neill, Clerk of the Appellate Courts, 25 Rev. Dr. Martin Luther King Jr.

Blvd., Saint Paul, Minnesota 55155. The written comments shall be filed so as to be received no later than March 2, 2015.

2. A hearing will be held before this court to consider the proposed amendments to the Minnesota Rules of Public Access to Records of the Judicial Branch. The hearing will take place in Courtroom 300, Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, Minnesota, on March 17, 2015, at 11:00 a.m.

3. Any person or organization desiring to make an oral presentation at the hearing in support of or in opposition to the proposed amendments to the Minnesota Rules of Public Access to Records of the Judicial Branch, or to recommendations for rule amendments related to access to judicial branch records that have been separately proposed by the court's Advisory Committees on the Rules of Civil Procedure, the Rules of General Practice, the Criminal Rules of Procedure, the Rules of Juvenile Delinquency Procedure, the Rules of Juvenile Protection, Adoption, and Guardian Ad Litem Procedure, or the Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act, shall file one copy of a written request to so appear, along with one copy of the material to be presented, with AnnMarie O'Neill, Clerk of Appellate Courts, 25 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, Minnesota 55155. The request to appear and written materials shall be filed with the Clerk of Appellate Courts so as to be received no later than March 2, 2015.

4. A copy of the committee's report and the proposed amendments to Rules of Public Access to Records of the Judicial Branch is attached to this Order. Copies of the

reports and recommendations filed by the court's other advisory committees can be accessed on P-MACS, the public access site for case records of the Minnesota appellate courts, as follows:

ADM04-8001 *Final Report and Recommendations of the Minnesota Supreme Court Advisory Committee on the Rules of Civil Procedure* (filed Dec. 23, 2014).

ADM09-8009 *Final Report and Recommendations of the Minnesota Supreme Court Advisory Committee on the General Rules of Practice* (filed Dec. 23, 2014).

ADM10-8049 *Report and Proposed Amendments to the Minnesota Rules of Criminal Procedure* (filed Dec. 19, 2014).

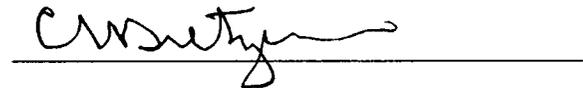
ADM10-8003 *Report and Proposed Amendments to the Minnesota Rules of Juvenile Delinquency Procedure* (filed Dec. 19, 2014).

ADM10-8041 *Final Report of the Advisory Committee on the Rules of Juvenile Protection, Adoption, and Guardian Ad Litem Procedure* (filed Dec. 29, 2014).

ADM10-8046 *Final Report and Recommendations of the Minnesota Supreme Court Advisory Committee on the Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act* (filed Dec. 23, 2014).

Dated: January 2, 2015

BY THE COURT:



Christopher J. Dietzen
Associate Justice

**ADM10-8050
STATE OF MINNESOTA
IN SUPREME COURT**

In re:

**Supreme Court Advisory Committee on the Rules
of Public Access to Records of the Judicial Branch**

**Recommendations of the Minnesota Supreme Court Advisory Committee
on the Rules of Public Access to Records of the Judicial Branch**

**FINAL REPORT
December 29, 2014**

**Hon. G. Barry Anderson, Saint Paul
Chair**

**Mark R. Anfinson, Minneapolis
Landon J. Ascheman, Saint Paul
Lee A. Bjorndal, Albert Lea
Hon. Peter A. Cahill, Minneapolis
Rita Coyle DeMeules, Saint Paul
Hon. Patrick C. Diamond, Saint Paul
Karen E. England, Lake City
Margaret K. Erickson, Worthington
Karrie Espinoza, Rochester
Lisa J. Kallemeyn, Coon Rapids
Julia Shmidov Latz, St. Louis Park**

**Cynthia L. Lehr, Saint Paul
Terri L. Lehr, Duluth
Eric N. Linsk, Minneapolis
Mary M. Lynch, Minneapolis
Lisa McNaughton, Minneapolis
AnnMarie S. O'Neill, Saint Paul
Elizabeth Reppe, Saint Paul
Kevin W. Rouse, Minneapolis
Jeffrey Shorba, Saint Paul
Michael F. Upton, Saint Paul
Hon. Thomas Van Hon, Montevideo**

**Michael B. Johnson, Saint Paul
Patrick Busch, Saint Paul
Staff Attorneys**

Introduction

The advisory committee met five times in 2014 to consider public access issues raised by the Minnesota courts' planned transition to a broader electronic environment. In addition to addressing matters directly raised by the eCourtMN Steering Committee, the advisory committee has considered eCourt-related public access recommendations from the Court's advisory committees on the Rules of Juvenile Protection Procedure and on the Special Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Act. The advisory committee has also been kept apprised of the recommendations of the Court's advisory committees on the Rules of Civil Procedure and the General Rules of Practice for the District Courts relating to restrictions on filing confidential and sensitive information in court files that are accessible to the general public. The advisory committee believes that its recommendations are consistent with those of the Court's other advisory committees in all significant respects.

Summary of Recommendations

This report recommends a number of substantive changes that either expand the list of records that are not accessible to the public or clarify the process or proper handling of the records. Specific case types and documents addressed include:

- Harassment restraining orders and orders for protection are provided a uniform level of privacy;
- Medical records are treated consistently across case types with the exception that in commitment cases the records remain non-public even if admitted into evidence;
- Post-adjudication paternity cases are treated consistently as public case types regardless of whether brought as a continuation of the original paternity file or as a separate support proceeding;

- Requests for assistance other than counsel under MINN. STAT. § 611.21 can be noted on public register of actions but the substance of request is non-public;
- Expungement proceedings under MINN. STAT. § 609A.03 will include a process for petitioners to request that private and confidential information in a response to the petition must be treated as non-public confidential information upon submission to the court;
- A will deposited for safekeeping during a testator's lifetime is maintained as non-public until proof of death is presented;
- Administrative warrants for certain inspections (e.g., occupational safety and health, fire marshal, liquor law, housing code) remain non-public until the inspection and require advance discussion with court administration when filed electronically;
- Motions to enforce or quash a county attorney administrative subpoena under MINN. STAT. § 388.23 remain non-public until further order of the court and require advance discussion with court administration when filed electronically;
- Requests for release of videotapes under MINN. STAT. § 611A.90 for use in human services non-public administrative hearings remain non-public until further order of the court and require advance discussion with court administration when filed electronically;
- Minor victims in criminal sexual conduct cases should be referred to by generic identifiers such as Child 1 or by initials and date of birth, with full disclosure in a separate, non-public document, except that a transcript of a publicly accessible hearing or trial may include the victim's full identity unless otherwise directed by the presiding judge;
- All records in juvenile protection proceedings in which the child is a party are inaccessible to the public; and

- All records in proceedings for commitment of a minor are inaccessible to the public.

The last two items in the above list are consistent with recommendations made by the Court's advisory committees on the Rules of Juvenile Protection Procedure and on the Special Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Act. They are also consistent with the recommendations from the eCourtMN Steering Committee, which sought to provide privacy protection where children are involved.

Regarding remote (i.e., over the Internet) public access, the committee explored several different approaches. The committee's initial inclination was to expand the use of name search limitations in the case management system, while still providing broad access to publicly accessible documents. The committee ultimately decided, however, to recommend tiered access by case type with varying levels of remote document access. These limitations on remote access are aimed at protecting children and preserving as much current public access as possible. The changes also take into account the cost and delay of further technological developments and the complexity and burden on court staff required to implement the solutions.

According to the State Court Administrator's Office, trial courts encounter an estimated 2,000 different types of documents, and have had as many as 196 different case types and sub-case types. Many case types are no longer used but they remain in the case management system database. While these variables might provide a means to surgically divide remote access down to discrete levels, the technological development to manage that division would be costly. In addition, because of already-planned software revisions, many changes could not be considered until January 1, 2017, which is the scheduled delivery of a revised portal update for the various views of MNCIS (known as Minnesota Public Access Remote, Minnesota Public Access Courthouse, and Minnesota

Government Access). Expanding remote name search limits is one area where technology development would be required.

There is also a level of complexity at which risk of human error becomes unmanageable. Requiring trial court staff to differentiate many different types of cases that may involve an affidavit, for example, and having to remember which ones might or might not be accessible to the public remotely, creates complexity with an unreasonable risk of human error. Document security can also vary within a case type. Document security is currently established by COURT ADMINISTRATION PROCESS (CAP) 110.41 DOCUMENT AND DATA SECURITY. For public documents CAP 110.41 defines two security classifications: Public1 (or P1) and Public2 (or P2). Public1 includes public records that do not have any remote access limitations. Currently MINN. R. PUB. ACCESS TO RECS. OF JUD. BRANCH 8, subd. 2(a), limits P1 to the register of actions, index, calendars, judgment docket, judgments and orders, appellate opinions, and notices prepared by the court. Public2 includes documents that can be made available to the public in electronic form in the courthouse, but not anywhere else. This would include documents submitted by a party or participant, such as pleadings, motions, and affidavits. Current technology requires that all documents within the same case type (P1, P2 etc) be treated the same, either all public or all not.

With these concerns in mind, the committee developed a proposal that attempts to reduce the number of case types that trial court staff will need to differentiate among, and provides an approach that is capable of being implemented within the configurable framework of the current document-security requirements, technology, and on a prospective basis. The proposal is summarized in the table below:

Table 1. Remote Access Summary

| <i>Type of Remote Access</i> | <i>Case Type (document security changes needed)</i> |
|------------------------------|--|
| No Remote Access | D-16¹, CHIPS (change C2 to P2 –so available at MPA |

| | |
|--------------------------------------|--|
| | Courthouse) ² |
| ROA ³ only | civil commitment (change P1 to P2 so documents only available MPA Courthouse) make minor commitments confidential case type |
| ROA and court generated documents | family, paternity (post adjudication)(post - change from C to P2 and P1) |
| ROA, court and party filed documents | civil, criminal (name search limitation on pending stays)(change P2 to P1). |

Key: 1 = “D-16” refers to felony-level juvenile delinquency proceedings involving a juvenile at least 16 years old, and records of these proceedings are already maintained with no remote access under the Court’s May 14, 2014, order amending MINN. R. JUV. DEL. P. 30.02.

2 = Order for protection and harassment restraining order matters are also already being maintained with no remote access as required by the federal Violence Against Women Act, 18 U.S.C. § 2265(d)(3).

3 = “ROA” means register of actions, calendars, and index.

Thus, the desired remote access can be accomplished by redefining P1 and P2 documents such that only the remote access recommended in Table 1 above is permitted.

The above changes are recommended on a prospective basis only in order to avoid reclassifying existing documents. This recommendation allows staff to learn a few new classification changes as set forth in the table above and apply them to documents submitted on or after a particular date, and then to test such reclassifications using quality control testing. It is estimated that the transition could be accomplished by as early as July 1, 2016, or January 1, 2017.¹

Additional configuration changes would be required to establish new case types required to implement the recommended non-public treatment of commitment and child protection cases involving minors, and potentially for post-adjudication paternity matters. Time would also be needed for training court staff and quality control testing. In the meantime, however, staff can manually flip a switch making individual cases non-public,

¹ The proposed rule on remote access (see Rule 8) incorporates implementation language (“to the extent that the record custodian has the resources and technical capacity...”) that has proved workable in the past and will allow the courts to proceed as they are able to implement these remote public access changes.

and training on this step can occur at the May 2015 court staff event. It is estimated that the courts would be ready to begin handling these cases as non-public by July 1, 2015.

The subject of fees for remote electronic access has been left to the judgment of the Supreme Court and Judicial Council, who are in a much better position to determine the impact of fees on court budgets. The committee was made aware of various fee structures in other jurisdictions, and that information can be passed on to the Court and the Council. The limited discussion of fees by the committee included a suggestion that fees imposed as a deterrent to remote access serve some useful purpose and limits casual access or “pajama surfing.” This suggestion was countered with the view that using fees as a barrier to access is bad public policy and is a barrier to transparency.

Remote access to records at the appellate level preserves the status quo but similarly allows the appellate courts to begin to expand remote access on a prospective basis to include publicly accessible documents submitted by parties. Back-scanning for a defined period is permitted as resources and technology permit. The appellate courts are able to implement remote access in this manner as the appellate court case management system and case types are different than those of the district court. The exceptions to remote access are consistent with those for district court records and recognize that district court records make their way into the appellate record.

Although the record on appeal, which includes district court records and various executive branch administrative agency records, is not included among the records with remote access, the executive branch agency records are presumed to be accessible to the public under Rule 2 once filed with the judicial branch. Those records may need to be redacted to ensure that sensitive items such as social security numbers and financial account numbers are not disclosed. This issue has been highlighted in recommended changes and advisory committee comments to Rule 1. The Court’s appellate rules committee may want to consider providing procedural guidance to facilitate the proper submission of such records.

The relatively short deadline for completion of this report also reduces the ability of this narrative to explain in more detail the factors considered by the committee in reaching its recommendations. Further detail can be found in the advisory committee comments to the proposed rules as set forth in this report, and in the meeting summaries prepared by committee staff. Meeting summaries will be filed separately into the same administrative file as this report so that all who seek them may conveniently find them.

Finally, this report includes a brief minority report attached at the end. Members supporting the minority view are listed on the first page of the minority report.²

² Although the minority report says that the committee had limited or no representation from most civil, probate, and guardianship practice areas, the committee did receive extensive input on public access issues from both the child protection rules and commitment rules committees. All other active rules committees (civil, general, criminal, juvenile delinquency, and adoption) addressed public access and shared any significant concerns about public access between committees. For example the access to records committee was made aware of the new enforcement procedure regarding proper submission of restricted identifiers that is being recommended by both the civil and general rules committee. And, of course, all practitioners and the public will also have an opportunity to comment on the proposals as they are considered by the court.

The minority report also characterizes proposed Rule 8, subd. (g), as dramatically increasing what is available online. This statement is accurate given the recommendation that party submitted documents be added to what is available remotely for general civil and criminal cases; but the majority has not recommended an increase in remote access for family, commitment, orders for protection, harassment, delinquency felony, and child protection case types. The minority report also suggests that only specifically identified documents should be available for online access. However, the minority report does not identify any documents that should or should not be remotely available. The majority decided that a case type approach was more workable, and the varying levels of remote access reflect concerns about what documents, by case type, should be remotely accessible.

Finally, the minority report expresses concern that the committee did not guard against the growing risks of data mining and the use of powerful search engines to harvest the data, possibly for nefarious purposes. The majority agrees that concern about data mining is not unreasonable. Consequently, the majority recommends continuing the name search limit on pending (currently “preconviction”) criminal cases. Balanced against the data mining concerns is the reality that for other public case types, the register of actions, indexes, calendars, and judgment docket, have been remotely accessible for a decade, and no complaints or concerns have been voiced to the court. The court took steps so that a name search using Google or Bing will not directly bring up any of these items, let alone any documents that would be made available under the majority approach. The remote case management system (aka MPA Remote), employs a CAPTCHA filter for each case search to prevent automated harvesting. Accessing district court records is also a multiple step process, requiring logging in to MPA Remote, searching for a case, viewing the register of actions for the case and, in certain public case types, clicking on a document. Further, the public still must come to the courthouse for access to many documents. Taken as a whole, the majority recommendations reflect an approach that takes into account the benefits of remote public access, concerns about possible misuse of publicly accessible data, and the public’s right to information about cases handled in Minnesota’s courts.

Effective Date

The committee believes that these rule amendments can be made effective as of July 1, 2015, or earlier.³ This would allow time for a public hearing or notice and comment period, sufficient advance notice to the bench and bar, and adjustments to various court forms.

Style of Report

The specific recommendations are reprinted in traditional legislative format, with new wording underscored and deleted words ~~struck through~~.

Respectfully submitted,

MINNESOTA SUPREME COURT ADVISORY
COMMITTEE ON THE RULES OF PUBLIC
ACCESS TO RECORDS OF THE JUDICIAL
BRANCH

³ See footnote 1, above, and accompanying text.

Proposed Revisions to Rules of Public Access to Records of the Judicial Branch

1 **Rule 1. Scope of Rules.**

2 **Subd. 1. Application; Conflicts; Local Rules.** These rules govern access to the
3 records of all courts and court administrators of the judicial branch of the state of
4 Minnesota. To the extent that there is any conflict between these rules and other court
5 rules, these rules shall govern. Any court may recommend rules, whether denominated as
6 a rule or standing order, governing access to its records that do not conflict with these rules
7 or the General Rules of Practice for the District Courts, and those recommended rules or
8 standing orders shall become effective as ordered by the Supreme Court.

9 **Subd. 2. Exclusions.** ~~They~~ These rules do not govern access to records of the Tax
10 Court, ~~or~~ the Workers' Compensation Court of Appeals, or the Office of Administrative
11 Hearings, which are part of the executive branch of the state, except to the extent that
12 such records are submitted in an appeal or proceeding in a judicial branch court. In
13 addition, these rules do not govern access to the substantive and procedural records of the
14 various Boards or Commissions of the Supreme Court as they are governed by
15 independent rules promulgated or approved by the Supreme Court. A partial list of
16 Boards and Commissions is set forth in Appendix A. Finally, except as provided in Rule
17 4, ~~subdivision 1(b),~~ with respect to case records, these rules do not govern access to
18 records of judicial branch court services departments or probation authorities. Access to
19 these records is governed by MINN. STAT. § 13.84 ~~and~~ or any successor statute, and other
20 applicable court rules and statutes.

21 **Subd. 3. Retention Unaffected.** Nothing in these rules shall affect the disposition
22 of records as authorized by MINN. STAT. § 138.17 or any successor or prevent the return
23 of documents or physical objects to any person or party in accordance with a court rule or
24 order.

25 **Subd. 4. Filer’s Obligations and Enforcement Sanctions Addressed Elsewhere.**

26 Various other court rules place obligations on parties and participants filing documents
27 with the court to correctly designate non-public documents when filing (e.g., MINN. GEN.
28 R. PRAC. 14 (electronic filing)), to redact certain data elements from documents before
29 filing (e.g., MINN. GEN. R. PRAC. 11.02 (restricted identifiers such as social security
30 numbers and certain financial account numbers); MINN. R. JUV. PROT. P. 8 (various
31 elements in child protection matters)), and to face sanctions for failure to comply (e.g.,
32 MINN. GEN. R. PRAC. 11.04 (appropriate sanctions including costs of redaction); proposed
33 MINN. R. CIV. P. 5.04 and proposed MINN. GEN. R. PRAC. 11.04 (potential striking of
34 pleadings)). Following these rules correctly is critical to ensuring appropriate public access
35 to court records as court staff are not required to review every word of every document
36 submitted to the court for filing to determine if it is appropriately accessible to the public.
37 To the extent that noncompliance is brought to the attention of the court, various rules may
38 require, among other possible relief or action, that a document be temporarily segregated
39 from public view until the redaction rule can be enforced.

40
41
42 **Advisory Committee Comment – 2015**

43 Rule 1 is amended in 2015 to recognize that these rules control in case of conflict with
44 other rules. One example is the 2014 version of MINN. R. JUV. PROT. P. 8.03, which was intended
45 to permit public access to reports filed by guardians ad litem and social workers after certain items
46 are redacted. The significant redaction required prior to public access to such records, however,
47 renders their access impractical and inefficient, and inconsistent with the fact that similar records
48 in family law cases are not accessible to the public unless formally admitted into evidence in a
49 testimonial-type hearing or trial under Rule 4, subd. 1(b) of these rules. This new conflict
50 provision attempts to ensure consistent treatment of these and other records. A list of rules that
51 are consistent with these access rules is included in Rule 4, subd. 1(o).

52 Rule 1 is amended in 2015 to recognize that courts may seek approval from the Supreme
53 Court for local rules addressing public access issues that do not conflict with these rules. A
54 standing order that affects more than a single case is considered a rule subject to the approval of
55 the Supreme Court. This is consistent with other rules. See, e.g., MINN. R. CIV. P. 83; MINN. R.
56 CRIM. P. 1.03. Rule 1 is also modified to clarify that public access to the personnel records of the

57 various Supreme Court boards are governed by Rule 5, subd. 1, of these rules, but that public
58 access to other procedural and substantive records of such boards are governed by independent
59 rules promulgated or approved by the Supreme Court.

60 Rule 1 is amended in 2015 to clarify that records of various executive branch entities,
61 such as the Tax Court, Worker’s Compensation Court of Appeals, and Office of Administrative
62 Hearings are not governed by these rules unless and until they are submitted to the judicial branch
63 in an appeal to the Minnesota Court of Appeals or the Minnesota Supreme Court, or become part
64 of some other proceeding in the District Court. Some of these executive branch records are not
65 accessible to the public in the hands of the executive branch, but once submitted to the judicial
66 branch they are presumed to be accessible to the public under Rule 2 of these rules and parties will
67 need to ensure that sensitive items, including social security numbers and financial account
68 numbers, are properly redacted according to the governing court rules.

69 Rule 1 is amended in 2015 by adding a new subdivision 4 explaining obligations imposed
70 on filing parties to protect certain private information from public disclosure in court filings.
71 These obligations are set forth in other court rules and are necessary to ensure that the appropriate
72 level of public access is maintained particularly for records maintained in electronic format.

73 * * *

74 **Rule 4. Accessibility to Case Records.**

75 **Subd. 1. Accessibility.** Subject to subdivision 4 of this rule (Records Referring
76 to Information in Non-Public Documents) and Rule 8, subd. 5 (Access to Certain
77 Evidence), the following~~All case records are not accessible to the public~~except the
78 following:

79 (a) Domestic Abuse and Harassment Records.

80 (1) Records maintained by a court administrator in accordance with the
81 domestic abuse act, MINN. STAT. § 518B.01, until a court order as
82 authorized by ~~subdivision 5 or 7 of section~~ MINN. STAT. § 518B.01, subs.
83 5 or 7, is executed or served upon the record subject who is the respondent
84 to the action;

85 (2) Records of harassment restraining order proceedings maintained by a court
86 administrator in accordance with MINN. STAT. § 609.748 until a court order
87 as authorized by MINN. STAT. § 609.748, subd. 4, is executed or served
88 upon the record subject who is the respondent to the action. Upon the

89 petitioner's request, information maintained by the court regarding the
90 petitioner's location or residence is not accessible to the public but may be
91 disclosed to law enforcement for purposes of service of process, conducting
92 an investigation, or enforcing an order.

93 (3) A law enforcement information form provided by the petitioner in a
94 proceeding under clause (1) or clause (2) of this rule. "Law enforcement
95 information form" means a document in the form of OFP105 or HAR103 as
96 published by the state court administrator on the website
97 www.mncourts.gov. A law enforcement information form may be
98 disclosed to law enforcement for purposes of service of process, conducting
99 an investigation, or enforcing an order.

100 (b) *Court Services Records.* Records on individuals maintained by a court, ~~other than~~
101 ~~records that have been admitted into evidence,~~ that are gathered at the request of a
102 court to:

- 103 (1) determine an individual's need for counseling, rehabilitation, treatment or
104 assistance with personal conflicts (including, without limitation, support or
105 attendance letters, e.g., regarding Alcoholics Anonymous, submitted by or for
106 a party),
- 107 (2) assist in assigning an appropriate sentence or other disposition in a
108 case (including, without limitation, disposition advisor memoranda or reports
109 in criminal matters),
- 110 (3) provide the court with a recommendation regarding the custody of
111 minor children, or
- 112 (4) provide the court with a psychological evaluation of an individual.

113
114 Provided, however, that the following information on adult individuals is
115 accessible to the public: name, age, sex, occupation, and the fact that an individual
116 is a parolee, probationer, or participant in a diversion program, and if so, at what

117 location; the offense for which the individual was placed under supervision; the
118 dates supervision began and ended and the duration of supervision; information
119 which was public in a court or other agency which originated the data; arrest
120 and detention orders; orders for parole, probation or participation in a diversion
121 program and the extent to which those conditions have been or are being met;
122 identities of agencies, units within agencies and individuals providing supervision;
123 and the legal basis for any change in supervision and the date, time and locations
124 associated with the change.

125 * * *
126

127 (f) Medical Records Genetic Information. ~~Records on genetic information, other than~~
128 ~~records that have been admitted into evidence in a hearing or trial,~~ that are from
129 medical or scientific professionals; (including but not limited to reports and
130 affidavits-) that are of the following types:

131 (1) Records that relate to the past, present, or future physical or mental health
132 or condition of an individual, including but not limited to medical history,
133 examinations, diagnoses, and treatment, pre-petition screening report and
134 court appointed examiners report; and

135 (2) Records on genetic information. For purposes of this rule, “genetic
136 information” means information about a specific human being that is
137 derived from the presence, absence, alteration, or mutation of a gene or
138 genes, or the presence or absence of a specific deoxyribonucleic acid or
139 ribonucleic acid marker or markers, and which has been obtained from an
140 analysis of an individual’s biological information or specimen or the
141 biological information or specimen of a person to whom an individual is
142 genetically related.

143 (g) Request for Assistance Other Than Counsel and Any Resulting Order. A request
144 under MINN. STAT. § 611.21 for assistance other than counsel and any resulting
145 order. The register of actions may publicly disclose the existence of the request

146 and the order granting or denying the request, but not the substance of the
147 assistance sought or granted.

148 (h) *Response to Petition for Criminal Expungement.* A response to a petition for
149 expungement filed with the court under MINN. STAT. § 609A.03 shall not include
150 any confidential or private data except on a separate document clearly marked as
151 sealed or confidential, provided that the petition included or was accompanied by
152 a request by the petitioner to seal or declare as not accessible to the public any
153 private or confidential data as defined by MINN. STAT. ch. 13 included in a
154 response to the petition by an agency or jurisdiction that is subject to MINN. STAT.
155 ch. 13. When submitting a response and separate document via the court's E-
156 Filing System, the agency or jurisdiction filing the separate document must also
157 appropriately designate the separate document as sealed or confidential by
158 selecting the appropriate designation in the court's E-Filing System. The agency
159 or jurisdiction filing a response to the petition shall be entirely responsible for
160 ensuring compliance with this rule. The court administrator is not responsible for
161 reviewing filings for compliance with this rule. The court may issue appropriate
162 sanctions for failure to comply with this rule.

163 (i) *Will Deposited for Safekeeping During Testator's Lifetime.* A will deposited with
164 the court for safekeeping under MINN. STAT. § 524.2-515, except that upon proof
165 of a testator's death the existence of the testator's will on deposit with the court
166 may be publicly disclosed. Access to the will during the testator's lifetime by the
167 testator, testator's attorney or agent, guardian or conservator is governed by MINN.
168 GEN. R. PRAC. 418. The court, following notice of the testator's death, may
169 deliver the will to the appropriate court and may order that copies of the will be
170 provided to appropriate persons.

171 (j) *Administrative Warrants.* All records of a request, and any resulting order,
172 submitted pursuant to MINN. STAT. § 182.659, subds. 6, 7 (occupational Safety
173 and Health Inspection), MINN. STAT. § 299F.08, subd. 2, (authorization for entry

174 by state fire marshal), MINN. STAT. § 340A.704 (authorization for search warrants
175 for liquor law violations), and for housing code inspections authorized pursuant to
176 Camara v. Municipal Court, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967),
177 and McCaughtry v. City of Red Wing, 831 N.W.2d 518 (Minn. 2013), unless and
178 until the search or inspection authorized by the court has been completed, except
179 by order of the court or consent of the official submitting the request. The person
180 seeking to file the request for warrant/inspection shall contact the court
181 administrator, who will establish a confidential file in the court’s case records
182 management system and provide the file number to the person seeking to file, who
183 may then submit the request for warrant/inspection for filing into that court case
184 file.

185 (k) Motion to Enforce or Quash County Attorney Subpoena. A request for an order
186 enforcing or quashing an administrative subpoena issued pursuant to MINN. STAT.
187 § 388.23 unless and until authorized by order of the court. The person seeking to
188 file the request shall contact the court administrator, who will establish a
189 confidential file in the court’s case records management system and provide the
190 file number to the person seeking to file, who may then submit the request for
191 filing into that court case file.

192 (l) Release of Video Recordings under 611A.90 for Administrative Hearing. All
193 records of a petition, and any resulting order, submitted pursuant to MINN. STAT.
194 § 611A.90 seeking release of or access to a video recording of a child victim or
195 alleged victim alleging, explaining, denying, or describing an act of physical or
196 sexual abuse as part of an investigation or evaluation of the abuse and for use as
197 provided in an administrative proceeding (see, e.g., MINN. STAT. § 256.045, subd.
198 4), except by order of the court. The person seeking to file the petition shall
199 contact the court administrator, who will establish a confidential file in the court’s
200 case records management system and provide the file number to the person

201 seeking to file, who may then submit the request for order for filing into that court
202 case file.

203 (m) Minor Victim Identifying Information.

204 (1) Where Applicable. Except as otherwise provided by order of the court,
205 information that specifically identifies a victim who is a minor at the time
206 of the alleged offense or incident in the following cases:

207 (A) criminal or juvenile delinquency or extended jurisdiction juvenile
208 cases involving a petition, complaint, or indictment issued pursuant
209 to MINN. STAT. §§ 609.342, 609.343, 609.344, 609.345, 609.3451
210 or 609.3453;

211 (B) commitment proceedings related to a case in (A) above, in which
212 supervisory responsibility is assigned to the presiding judge under
213 MINN. R. CRIM. P. 20.01, subd. 7, or 20.02, subd. 8(4).

214 (2) Burden on Filer. No person shall submit information that specifically
215 identifies a minor victim on any pleading or document filed with the court
216 in the above cases except on a separate, confidential document entitled
217 Confidential Victim Identifier Information. It shall not be a violation of
218 this rule for a pleading or document to include generic references, including
219 but not limited to “the victim” or “Child 1,” and, unless otherwise ordered
220 by the presiding judge, the victim’s initials and year of birth.

221 (3) Other Information Unaffected. Nothing in this rule authorizes denial of
222 access to any other data contained in the records, including the identity of
223 the defendant.

224 (4) Exception: Transcript. Unless otherwise directed by the presiding judge,
225 identifying information on a minor victim under this rule need not be
226 redacted from a transcript of a publicly accessible proceeding before such
227 transcript is disclosed to the public.

228 (n) Pre-Adjudication Paternity Proceedings. Records of proceedings to determine
229 existence of parent-child relationship under MINN. STAT. §§ 257.51 to 257.74,
230 provided that the following are public: the final judgment under section 257.70(a)
231 (minus findings of fact and restricted identifiers under MINN. GEN. R. PRAC. 11),
232 affidavits filed pursuant to MINN. STAT. §§ 548.09-.091 to enforce the judgment,
233 and all subsequent proceedings seeking to modify the judgment except an appeal
234 of the initial, final judgment.

235 (o) *Other.* Case records that are made inaccessible to the public under:

236 (1) state statutes, other than MINN. STAT. ch. 13 Minnesota Statutes, chapter 13;

237 (2) court rules ~~or~~ not inconsistent with these rules, including but not limited to:

238 (A) MINN. R. ADOPT. P. 7 (all adoption case records);

239 (B) MINN. SPEC. R. CT. APP. FAMILY L. MEDIATION 7, 9 (appellate family
240 mediation confidential information form and selection of mediator
241 form);

242 (C) MINN. GEN. R. PRAC. 114.08, 114.09 (notes, records and recollections of
243 the neutral);

244 (D) MINN. R. JUV. PROT. P. 8, 16.01, subd. 1; 33.02, subd. 6. (various records
245 and data elements in juvenile protection proceedings; all records in
246 juvenile protection proceedings in which the child is a party);

247 (E) MINN. R. CRIM. P. 9.03, subs. 5-7, 18.04, 18.07, 25.01, 26.02, subd 2,
248 26.02, subd. 4(4), 26.03, subd. 6, 33.04, 36.06 (in camera discovery
249 materials, grand jury records, closed hearings and records, and search
250 warrants);

251 (F) MINN. GEN. R. PRAC. 313 (2004) (social security numbers and tax returns
252 submitted to the court prior to July 1, 2005);

253 (G) MINN. GEN. R. PRAC. 11, 361.02, 361.05, 370.04, 371.04, 372.04, 807(e),
254 814 (restricted identifiers and financial source documents submitted to the
255 court on or after July 1, 2005, juror records);

256 (H) MINN. SPEC. R. COMMITMENT & TREATMENT ACT 13, 21 (medical
257 records in all commitment matters and all records in proceedings for
258 commitment of a minor);

259 (I) MINN. R. CIV. APP. P. 112 (confidential or sealed portions of the record on
260 appeal) and

261 (J) MINN. R. CIV. P. 47.01 (supplemental juror questionnaire).

262 (3) court orders; or

263 (4) other applicable law.

264 The state court administrator shall maintain, publish and periodically update a
265 partial list of case records that are not accessible to the public.

266 **Subd. 2. Restricting Access; Procedure.** Procedures for restricting access to
267 case records shall be as provided in the applicable court rule. A court may restrict access
268 to public case records in a particular case only if it makes findings that are required by
269 law, court rule or case law precedent. The factors that a court must consider before
270 issuing a restrictive order in regard to criminal case records are discussed in MINN. R.
271 CRIM. P. 25, *Minneapolis Star & Tribune v. Kammeyer*, 341 N.W.2d 550 (Minn. 1983),
272 and *Northwest Publications, Inc. v. Anderson*, 259 N.W.2d 254 (Minn. 1977). For a
273 discussion of the factors to consider in civil cases, see MINN. R. CIV. P. 26.03 and
274 *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197 (Minn. 1986). For
275 factors to consider in cases involving a child in need of protective services, see MINN. R.
276 JUV. PROT. P. 8.07. For factors to consider in juvenile delinquency cases, see MINN. R.
277 JUV. DEL. P. 10.06, subd. 5. For factors to consider for restricting public access to jury
278 records, see MINN. GEN. R. PRAC. 814(a).

279 * * *

280 **Subd. 4. Records Referring to Information in Non-Public Documents.**

281 Generally, a rule or law precluding public access to an entire document such as a
282 report or medical record shall not preclude the parties or the court from mentioning the
283 contents of the document in open court or in otherwise publicly accessible pleadings or

284 documents such as motions, affidavits, and memoranda of law where such discussion is
285 necessary and relevant to the particular issues or legal argument being addressed in the
286 proceeding. Except as otherwise authorized by the presiding judge in a particular case,
287 this rule permitting mention of otherwise non-public information shall not apply to:

- 288 (a) Restricted identifiers governed by MINN. GEN. R. PRAC. 11;
- 289 (b) Identity of a minor victim of sexual assault under MINN. STAT. § 609.3471,
290 except that unless otherwise ordered by the presiding judge, such victim may
291 be referred to by initials and year of birth;
- 292 (c) Specific data elements protected by applicable law, court rule or order,
293 including but not limited to those protected by MINN. R. JUV. PROT. P. 8; and
- 294 (d) Records sealed by order in individual cases, unless otherwise directed by the
295 court issuing such order.

296
297 Unless otherwise directed by the presiding judge, data elements in (a) through (d) of this
298 rule that appear in a transcript of a public proceeding need not be redacted from the
299 transcript before such transcript is disclosed to the public .

300 **Advisory Committee Comment – 2015**

301 Rule 4, subd. 1(a), is amended in 2015 to provide a consistent level of privacy to orders
302 for protection involving domestic abuse under MINN. STAT. § 518B.01 and harassment restraining
303 orders under MINN. STAT. § 609.748 as proceedings under either statute can involve domestic
304 abuse. Courts have attempted to provide uniformity through use of standardized order forms but
305 such forms may not always be used. The amended rule obviates the need to rely on forms. The
306 information maintained by the court regarding the petitioner's location or residence that is not
307 accessible to the public under the rule will typically include, but is not limited to, residence
308 address and telephone number. The amendments also recognize that the courts provide a pass-
309 through of a “law enforcement information form” (including, but not limited to information such
310 as Respondent Employer Name, Employer Address, Nickname or Alias, Phone Number, Work
311 Days/Hours, Additional Address to be Located, Expected Date/Time of Return, Vehicle Make,
312 Vehicle Model, Vehicle Color, Vehicle License Plate Number, Vehicle License State, Respondent
313 has vicious animal, Respondent’s Weapon Use or Possession) from the petitioner to law
314 enforcement for purposes of ensuring effective and safe service and enforcement of any resulting

315 order. The courts do not utilize the law enforcement information form in determining whether a
316 restraining order is appropriate.

317 Rule 4, subd. 1(b), is amended in 2015 to expressly add to the list of non-public records
318 support letters submitted by or for a party and disposition advisor memos. Similar items are
319 regularly included in pre-disposition reports from probation authorities, and this change attempts
320 to provide consistent treatment of the same information regardless of its route to the court file.
321 Language making the records public to the extent formally admitted into evidence in a publicly
322 accessible, testimonial-type hearing or trial has been relocated to Rule 8, subd. 5, which addresses
323 this issue globally.

324 Rule 4, subd. 1, is also amended in 2015 by adding part (g) to preclude public access to
325 the substance of a request under MINN. STAT. § 611.21 for assistance other than counsel and any
326 resulting order. The rule is intended to allow the register of actions to publicly disclose the
327 existence of the request and the fact that an order granting or denying the request has been entered,
328 but not to publicly disclose the substance of the assistance sought or granted. At least one district
329 has a standing order precluding public access to these requests and resulting orders, and similar
330 individual orders are common. Standing orders generally require approval of the Supreme Court.
331 See, e.g., MINN. R. CRIM. P. 1.03; MINN. R. CIV. P. 83. The rule obviates the use of such orders.

332 Rule 4, subd. 1, is amended in 2015 to add a new clause (h) that is intended to provide a
333 procedure for carrying out recent legislative amendments codified as MINN. STAT. § 609A.03,
334 subd. 3(d) (2014). This legislation authorizes an agency or jurisdiction that is served with an
335 expungment petition to submit to the court private or confidential data on the petitioner that the
336 agency or jurisdiction determines is necessary to respond to the petition. The legislation further
337 directs the agency or jurisdiction to inform the court and the petitioner that the submission
338 contains private or confidential data, and provides that the petitioner may, at the time of filing the
339 petition or after that time, file a request with the court to seal the private or confidential data that
340 are submitted by the agency or jurisdiction. Rule 4, subd. 1(h) allows the petitioner to include the
341 request in the petition and upon such request the agency or jurisdiction must submit any
342 confidential or private data to the court in a manner that protects such data from public view. This
343 process attempts to avoid public disclosure of the confidential or private data before the petitioner
344 can make a request.

345 Rule 4, subd. 1, is amended in 2015 by adding clause (i) to clarify the status of a filed
346 will during a testator's lifetime. MINN. STAT. § 524.2-515 requires that the will be kept "sealed
347 and confidential" during the testator's lifetime and that the court may deliver the will to the
348 appropriate court upon testator's death. Neither section 524.2-515 nor MINN. GEN. R. PRAC. 418
349 addresses a public index to such wills. Rule 4, subd. 1(i) requires proof of testator's death before

350 the existence of a filed will may be publicly disclosed, and is based on rules in several other
351 jurisdictions. See, e.g., 14 VERM. STAT. ANN. § 2; N. CAR. RULE OF RECORDKEEPING 6.9; and ST.
352 JOSEPH COUNTY, MICHIGAN PROBATE FAQs posted at
353 <http://www.stjosephcountymi.org/probate/faq.htm#c>.

354 Rule 4, subd. 1, is amended in 2015 to add clause (j) recognizing that various
355 administrative warrants must be submitted in a secure manner in order to avoid improper advance
356 disclosure. See, e.g., MINN. STAT. § 182.667, subd. 3 (2014) (imposing criminal penalty for
357 wrongful advance disclosure). A confidential case type must be established in the case
358 management system in order to ensure that any related electronic filing remains undisclosed. The
359 current technology in the E-Filing System does not allow the filer to establish a confidential case
360 type (as opposed to allowing a filer to designate a particular document as confidential or sealed) so
361 the court must establish the case type ahead of time. The rule places the burden on the filer to
362 contact the court so that the necessary confidential case type can be established prior to the initial
363 electronic filing in the case.

364 Rule 4, subd. 1, is amended in 2015 to add clause (k) to recognize that the legislature
365 intended that requests for an order enforcing or quashing an administrative subpoena issued
366 pursuant to MINN. STAT. § 388.23 be handled in a confidential manner. Under MINN. STAT.
367 § 388.23, subd. 4, the recipient of the subpoena is not authorized to disclose it except as necessary
368 to respond to it or as directed by a court order, and MINN. STAT. § 388.23, subd. 6, permits an ex
369 parte application to enforce the subpoena, and provides that any resulting order need not be filed.
370 Rule 4, subd. 1(k) provides the necessary confidentiality and recognizes that the order will be in
371 the court's computer systems and although it may technically be considered filed it remains
372 confidential unless and until authorized by order of the court. As is the case with administrative
373 warrants under clause (j), a confidential case type must be established in the case management
374 system, and the E-Filing System does not allow the filer to establish a confidential case type, so
375 the court must establish the case type ahead of time. The rule places the burden on the filer to
376 contact the court so that the necessary confidential case type can be established prior to the initial
377 electronic filing in the case.

378 Rule 4, subd. 1, is amended in 2015 to add clause (l) to ensure confidentiality of petitions
379 under MINN. STAT. § 611A.90 seeking release of certain video recordings of child victims for use
380 in private administrative hearings. The video recordings depict a child victim or alleged victim
381 alleging, explaining, denying, or describing an act of physical or sexual abuse as part of an
382 investigation or evaluation of the abuse. If authorized the video recording may be used in
383 administrative proceedings that are not accessible to the public. See, e.g., MINN. STAT. § 256.045,
384 subd. 4. As is the case with administrative warrants under clause (j) and motions to enforce or

385 quash a county attorney subpoena under clause (k), a confidential case type must be established in
386 the case management system, and the E-Filing System does not allow the filer to establish a
387 confidential case type, so the court must establish the case type ahead of time. The rule places the
388 burden on the filer to contact the court so that the necessary confidential case type can be
389 established prior to the initial electronic filing in the case.

390 Rule 4, subd. 1, is amended in 2015 to add clause (m) to comprehensively address minor
391 victim privacy in otherwise publicly-accessible case records involving criminal sexual conduct
392 offenses. The legislature in MINN. STAT. § 609.3471 (2014) attempted to do this, but the statute
393 left out one offense and lacks clarity regarding the scope. Clause (m) adds the missing offense and
394 clarifies when a closely-related commitment matter is included, what duties must be undertaken by
395 anyone filing documents in such a case, and whether redaction of identifiers from a transcript is
396 required when identifiers have been disclosed in testimony during a publicly accessible hearing or
397 trial.

398 Rule 4, subd. 1, is amended in 2015 to add clause (n) to ensure consistent treatment of
399 post-adjudication paternity proceedings. Following the initial determination of a relationship
400 between a parent and a child under MINN. STAT. §§ 257.51 to 257.74, parties may seek to modify
401 custody or support, and such modifications are brought either as separate custody or support
402 proceedings or as a continuation of the initial paternity matter. When custody or support
403 modifications are brought as a continuation, there is precedent for continuing to treat the matter as
404 non-public. See, *In re Disciplinary Action Against Terrazas*, 581 N.W.2d 841 (Minn. 1998)
405 (dismissing supplementary ethics petition in part because the board’s investigator viewed the trial
406 court file without obtaining the approval of the parties or the court under section 257.70, and that
407 file was a custody modification motion brought some five years after the initial paternity
408 adjudication, see *Autenreigh v. Terrazas*, 1997 WL 309414, No CX-96-2482 (Minn. Ct. App.
409 filed June 10, 1997)). The policy supporting privacy of the initial paternity proceeding, however,
410 is no longer present as the final judgment has already become public. MINN. GEN. R. PRAC.
411 371.10, subd. 1, purports to make the hearings post-adjudication open to the public, but the rule
412 arguably does not address the records. A few trial courts require that all modification proceedings
413 be brought as separate proceedings, and this may be the preferred approach or best practice. This
414 rule is aimed at providing consistent public access treatment for these modification proceedings
415 regardless of how they are presented.

416 Rule 4, subd. 1, is amended in 2015 to revise the catch-all paragraph by renumbering it as
417 clause (o) and providing examples of other rules that establish non-public case record categories.
418 The list is not exhaustive, but the rules included in the list are deemed to be consistent with these
419 access rules and would not create a conflict under Rule 1, subd. 1, of these rules. Noteworthy

420 changes in other rules that are new in 2015 include extending confidentiality to all records in
421 commitment proceedings involving commitment of a minor and to juvenile protection proceedings
422 in which a child is a party (e.g., in truancy and runaway cases the child is always a party, but is
423 generally only a “participant” in other child protection cases involving abuse and neglect).

424 Rule 4, subd. 2, is amended in 2015 to emphasize that closure of otherwise publicly
425 accessible records by court order must be determined on a case-by-case basis with appropriate
426 findings to support the closure. Cross references to rules and case law are included in the rule
427 rather than the comment to better assist self-represented litigants. The analysis can be complex.
428 For example, in a civil case a court must first examine the proceeding or document to determine
429 whether it has historically and philosophically been presumed open to the public, and if so, the court
430 must examine the constitutional right asserted to determine whether it “affords protection” to the
431 proceeding or document in question. If this analysis suggests a right of access under the First
432 Amendment, then “[i]n order to overcome the presumption in favor of access, a party must demonstrate
433 that a compelling governmental interest exists and that the restriction on access is narrowly tailored to
434 meet this governmental interest.” *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197,
435 204 (Minn. 1986) (citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980)). If the analysis
436 fails to demonstrate a right of access borne out of a constitutional dimension, then the balancing test of
437 the common law applies: “In order to overcome the [common law] presumption in favor of access, a
438 party must show strong countervailing reasons why access should be restricted.” *Schumacher, supra*, at
439 205-06. The burden on a party seeking closure in a criminal case is greater than that in civil cases. See
440 MINN. R. CRIM. P. 25; *Minneapolis Star & Tribune v. Kammeyer*, 341 N.W.2d 550 (Minn. 1983).

441 Rule 4, subd. 4, is added in 2015 to minimize the redaction burdens on all participants. It
442 is based in part on existing MINN. SPEC. R. COMMITMENT & TREATMENT ACT 21(b) (2014). It
443 recognizes that although certain documents, such as medical records in a commitment case or a
444 presentence investigation report in a criminal case, are not accessible to the public, their contents
445 are necessarily routinely discussed in various pleadings and orders and at open hearings and trials
446 with or without the report being admitted into evidence. Disclosure must be both necessary and
447 relevant to the particular issues or legal argument being addressed as otherwise the rule would be a
448 loophole for violating privacy interests of various individuals. Certain exceptions are necessary to
449 ensure that certain data elements, such as social security numbers, remain non-public.

450 Rule 4, subd. 4, will have one noteworthy impact on the application of MINN. R. CIV.
451 APP. P. 112.03, which requires the parties to “take reasonable steps to prevent the disclosure of
452 confidential information” in otherwise publicly accessible documents submitted on appeal. It is
453 likely that most issues and facts discussed in publicly accessible appellate court documents have
454 also been discussed in publicly accessible pleadings, affidavits, motions, etc., at the trial court

455 such that under MINN. R. PUB. ACCESS TO RECS. OF JUD. BRANCH 4, subd. 4, the discussion itself
456 is not “confidential” information within the scope of MINN. R. CIV. APP. P. 112.03. This is a
457 complex issue, however, and one that may not be readily grasped if MINN. R. PUB. ACCESS TO
458 RECS. OF JUD. BRANCH 4, subd. 4, and MINN. R. CIV. APP. P. 112.03 are not read together.

459

460 **Rule 5. Accessibility to Administrative Records.**

461 All administrative records are accessible to the public except the following:

462 * * *

463 **Subd. 5. Security Records.** Records in the possession or custody of the courts
464 that ~~may would be likely to~~ substantially jeopardize the security of information,
465 possessions, individuals, or property ~~in the possession or custody of the courts against~~
466 if subject to theft, tampering, improper use, illegal disclosure, trespass, or physical injury,
467 such as security plans or codes, checks and checking account numbers submitted as part of
468 a transaction with the courts, and unofficial fiscal notes and related bill drafts thereof in the
469 custody of the court provided that: (a) the request for an unofficial fiscal note is
470 accompanied by a directive from the requester that the data be classified as not accessible to
471 the public; and (b) the note and bill drafts have not become public if used subsequently for
472 an introduced bill or any legislation, including amendments or a proposed bill offered by
473 any legislator. As used in this rule, an “unofficial fiscal note” has the meaning set forth in
474 MINN. STAT. § 13.64.

475

476 **Advisory Committee Comment – 2015**

477 Rule 5, subd. 5, is amended in 2015 to recognize that checks and checking account numbers
478 submitted as part of a transaction with the courts contain sensitive financial information, the disclosure
479 of which could lead to identity theft. Similar information such as credit card numbers and social
480 security numbers are protected from public view either by statute or court rules. See MINN. STAT.
481 § 480.237 (2014) (account numbers collected by the judicial branch in connection with credit cards,
482 charge cards, debit cards or other methods of electronic funds transfer for government fees and
483 payments ordered by the court); MINN. GEN. R. PRAC. 11 (social security numbers and financial
484 account numbers).

485 Rule 5, subd. 5, is also amended in 2015 to recognize that, as a state entity, the judicial
486 branch participates in the creation of fiscal notes on proposed legislation. The amendment is intended
487 to provide a uniform level of public access across all branches of government to fiscal notes and
488 related legislative bill drafts. See MINN. STAT. § 13.64, subd. 3 (2014) (governing public access to
489 unofficial fiscal notes and related bill drafts held by executive branch agencies).

490

491 **Rule 8. Inspection, Copying, Bulk Distribution and Remote Access.**

492 **Subd. 2. Remote Access to Electronic Records.**

493 (a) ~~*Definitions. Remotely Accessible Electronic Records.* Except as otherwise provided~~
494 ~~in Rule 4 and parts (b) and (c) of this subdivision 2, a custodian that maintains the~~
495 ~~following electronic case records must provide remote electronic access to those~~
496 ~~records to the extent that the custodian has the resources and technical capacity to~~
497 ~~do so.~~

498 (1) ~~“Register of actions” means~~ (a register or list of the title, origination,
499 activities, proceedings and filings in each case [MINN. STAT. § 485.07(1)
500 ~~Minnesota Statutes, section 485.07, clause (1)~~);.

501 (2) ~~“Cealendars” means~~ (lists or searchable compilations of the cases to be
502 heard or tried at a particular court house or court division [MINN. STAT.
503 § 485.11 ~~Minnesota Statutes, section 485.11~~);.

504 (3) ~~“Indexes” means~~ (alphabetical lists or searchable compilations for
505 plaintiffs and for defendants for all cases including the names of the parties,
506 date commenced, case file number, and such other data as the court directs
507 [MINN. STAT. § 485.08 ~~Minnesota Statutes, section 485.08~~);.

508 (4) ~~“Judgment docket” means an~~ (alphabetical list or searchable compilation
509 including the name of each judgment debtor, amount of the judgment, and
510 precise time of its entry [MINN. STAT. § 485.07(3) ~~Minnesota Statutes,~~
511 ~~section 485.07(3)~~);.

512 (5) “Remote access” and “remotely accessible” mean that information in a
513 court record can be electronically searched, inspected, or copied without the
514 need to physically visit a court facility. The state court administrator may
515 designate publicly accessible facilities other than court facilities as official
516 locations for public access to court records where records can be
517 electronically searched, inspected, or copied without the need to physically
518 visit a court facility. This access shall not be considered remote access for
519 purposes of these rules. judgments, orders, appellate opinions, and notices
520 prepared by the court.

521 (6) “Appellate court record” means the case records of the Minnesota Court of
522 Appeals and the Minnesota Supreme Court, including without limitation
523 opinions, orders, judgments, notices, motions, and briefs.

524
525 ~~All other electronic case records that are accessible to the public under Rule, 4 and~~
526 ~~that have been in existence for not more than ninety (90) years, shall not be made~~
527 ~~remotely accessible but shall be made accessible in either electronic or in paper~~
528 ~~form at the court facility.~~

529 (b) *Certain Data Not To Be Remotely Disclosed.* Notwithstanding Rule 8, subd. 2(a)
530 (d), (e), (f) and (g) for case records other than appellate court records, the public
531 shall not have remote access to the following data fields in the register of actions,
532 calendars, index, and judgment docket, with regard to parties or their family
533 members, jurors, witnesses (other than expert witnesses), or victims of a criminal
534 or delinquent act:

- 535 (1) social security numbers and employer identification numbers;
- 536 (2) street addresses, except that street addresses of parties may be made
537 available by access agreement in a form prepared by the state court administrator
538 and approved by the Judicial Council;

- 539 (3) telephone numbers;
- 540 (4) financial account numbers; and
- 541 (5) in the case of a juror, witness, or victim of a criminal or delinquent act,
542 information that either specifically identifies the individual or from which the
543 identity of the individual could be ascertained.

544 Without limiting any other applicable laws or court rules, and in order to address
545 privacy concerns created by remote access, it is recommended that court personnel
546 preparing judgments, orders, appellate opinions, and notices limit the disclosure of
547 items (2), (3), and (5) above to what is necessary and relevant for the purposes of
548 the document. Under MINN. GEN. R. PRAC. 11, inclusion of items (1) and (4) in
549 judgments, orders, appellate opinions, and notices is to be made using the
550 confidential information form 11.1. Disclosure of juror information is also subject
551 to MINN. GEN. R. PRAC. 814, MINN. R. CRIM. P. 26.02, subd. 2, and MINN. R. CIV.
552 P. 47.01.

553 (c) ~~*Preconviction Pending Criminal Records*~~. The Information Technology Division
554 of State Court Administration ~~the Supreme Court~~ shall make reasonable efforts
555 and expend reasonable and proportionate resources to prevent ~~preconviction~~
556 records of pending criminal matters ~~records and preconviction or preadjudication~~
557 ~~juvenile records~~ from being electronically searched by defendant name by the
558 majority of known, mainstream electronic search ~~automated~~ tools, including but
559 not limited to the court's own electronic search tools. A "Records of pending
560 ~~preconviction criminal matters record~~" are is a records, other than an appellate
561 court records, for which there is no conviction as defined in MINN. STAT.
562 § 609.02, Minnesota Statutes 2004 2014, section 609.02, subdivision 5 (2014), on
563 any of the charges. A "~~preconviction or preadjudication juvenile record~~" is a
564 record, other than an appellate court record, for which there is no adjudication of
565 delinquency, adjudication of traffic offender, or extended jurisdiction juvenile

566 conviction as provided in the applicable Rules of Juvenile Delinquency Procedure
567 and related Minnesota Statutes, on any of the charges.

568 (d) District Court Case Types With No Remote Access. There shall be no remote
569 access to publicly accessible district court case records in the following case types:

570 (1) Domestic abuse (proceedings for orders for protection under MINN.
571 STAT. § 518B.01);

572 (2) Harassment (proceedings for harassment restraining orders under
573 MINN. STAT. § 609.748);

574 (3) Delinquency felony (felony-level juvenile delinquency proceedings
575 involving a juvenile at least 16 years old under MINN. R. JUV. DEL.
576 P.);

577 (4) CHIPS, CHIPS-Permanency; CHIPS-Runaway; CHIPS-Truancy;
578 CHIPS-Voluntary Placement; and Child in Voluntary Foster Care
579 for Treatment (encompasses publicly accessible records of all child
580 protection proceedings under the MINN. R. JUV. PROT. P.);

581 For purposes of this rule, an “appellate court record” means the appellate court’s
582 opinions, orders, judgments, notices, and case management system records, but
583 not the trial court record related to an appeal.

584 (e) District Court Case Types With No Remote Access to Documents. “Remotely
585 Accessible” Defined. “Remotely accessible” means that information in a court
586 record can be electronically searched, inspected, or copied without the need to
587 physically visit a court facility. The state court administrator may designate
588 publicly accessible facilities other than court facilities as official locations for
589 public access to court records where records can be electronically searched,
590 inspected, or copied without the need to physically visit a court. This shall not be
591 remote access for purposes of these rules. To the extent that the custodian has the
592 resources and technical capacity to do so, the custodian shall provide remote
593 access to the publicly accessible portions of the district court register of actions,

594 calendars, indexes, and judgments dockets, but excluding any other documents, in
595 the following case types:

596 (1) All Commitment case types (encompasses all proceedings under MINN.
597 SPEC. R. COMMITMENT & TREATMENT ACT).

598 (fe) District Court Case Types With No Remote Access to Party/Participant-Submitted
599 Documents. To the extent that the custodian has the resources and technical
600 capacity to do so, the custodian shall provide remote access to the publicly
601 accessible portions of the district court register of actions, calendars, indexes,
602 judgment dockets, judgments, orders, appellate opinions, and notices prepared by
603 the court, but excluding any other documents, in the following case types:

604 (1) Custody, Dissolution With Child, Dissolution Without Children, Other
605 Family, and Support (encompasses all family case types);

606 (2) Post-Adjudication Paternity Proceedings.

607 (g) District Court Case Types with Remote Access to Documents. To the extent that
608 the custodian has the resources and technical capacity to do so, the custodian shall
609 provide remote access to the publicly accessible portions of the district court
610 register of actions, calendars, indexes, judgments dockets, judgments, orders,
611 appellate opinions, notices prepared by the court, and any other documents, in the
612 following case types:

613 (1) All Major and Minor Civil Case Types (Torrens, Tort, Consumer Credit,
614 Contract, Employment, Forfeiture, Condemnation, Civil
615 Other/Miscellaneous, Other Major Civil, Personal Injury, Conciliation,
616 Implied Consent, Minor Civil Judgments, and Unlawful Detainer);

617 (2) Formal Probate, Other Probate, Guardianship and Conservatorship, and
618 Trust;

619 (3) All Major and Minor Criminal Case Types; and

620 (4) All electronic case records that are accessible to the public under Rule 4
621 and that have been in existence for more than 90 years.

622 (h) Remote Access to Appellate Court Records. The Clerk of the Appellate Courts
623 will provide remote access to publicly accessible appellate court records filed on
624 or after July 1, 2015, except:

625 (1) The record on appeal as defined in MINN. R. CIV. APP. P. 110.01;

626 (2) Data elements listed in clause (b)(1) – (5) of this rule contained in the
627 appellate court records case management system (currently known as
628 “PMACS”);

629 (3) Appellate briefs, provided that the State Law Library may, to the extent that
630 it has the resources and technical capacity to do so, provide remote access
631 to appellate court briefs provided that the following are redacted:
632 appendices or addenda to briefs, data listed in clause (b)(1) – (5) of this
633 rule, and other records that are not accessible to the public.

634 To the extent that the Clerk of the Appellate Courts has the resources and technical
635 capacity to do so, the Clerk of Appellate Courts may provide remote access to
636 appellate records filed between January 1, 2013 and June 30, 2015. Public
637 appellate records for which remote access is not available may be accessible at
638 public terminals in the state law library.

639 (i) Exceptions.

640 (1) Particular Case. After notice to the parties and an opportunity to be heard,
641 the presiding judge may by order direct the court administrator to provide
642 remote electronic access to publicly accessible records of a particular case
643 that would not otherwise be remotely accessible under parts (a), (b), or (e)
644 through (h) of this rule.

645 (2) Appellate Briefs. The State Law Library may, to the extent that it has the
646 resources and technical capacity to do so, provide remote access to

647 appellate court briefs provided that the following are redacted: appendices
648 or addenda to briefs, data listed in Rule 8, subd. 2(b), of these rules, and
649 other records that are not accessible to the public.

650 (23) *E-mail and Facsimile Other Means of Transmission.* Any record custodian
651 may, in the custodian's discretion and subject to applicable fees, provide
652 public access by e-mail or ~~facsimile~~ other means of transmission to publicly
653 accessible records that would not otherwise be remotely accessible under
654 parts (a), (b), ~~or (c)~~ through (h) of this rule.

655 (34) *E-filed Records.* Documents electronically filed or served using the E-
656 Filing System designated by the state court administrator shall be remotely
657 accessible to the person filing or serving them and the recipient of them, on
658 the E-Filing System for the period designated by the court, and on the
659 court's case management system to the extent technically feasible.

660 ~~(f) — *Delayed Application.* To reduce the burden and costs of modifying existing case~~
661 ~~management systems scheduled to be replaced by MNCIS, the remote access~~
662 ~~provisions of Rule 8, subd. 2, shall only apply to the individual district courts to~~
663 ~~the extent that they have transferred case management to MNCIS, provided that:~~
664 ~~(1) such courts shall not modify the remote access to case records that they are~~
665 ~~providing as of the issuance of this order other than to comply with any other rules~~
666 ~~or laws limiting access to records or in preparation of compliance with Rule 8,~~
667 ~~subd. 2; and (2) such courts shall comply with Rule 8, subd. 3, as if Rule 8, subd.~~
668 ~~2, were in effect.~~

669
670 **Subd. 3. Bulk Distribution of Court Records.** A custodian shall, to the extent
671 that the custodian has the resources and technical capacity to do so, provide bulk
672 distribution of its publicly accessible electronic case records as follows:

673 (a) Records subject to remote access limitations in Rule 8, subd. 2, shall not be
674 provided in bulk to any individual or entity except as authorized by order
675 or directive of the Supreme Court or its designee. Preconviction criminal
676 records and preconviction or preadjudication juvenile records shall be
677 provided only to an individual or entity which enters into an agreement
678 in the form approved by the state court administrator providing that the
679 individual or entity will not disclose or disseminate the data in a
680 manner that identifies specific individuals who are the subject of such
681 data. If the state court administrator determines that a bulk data recipient
682 has utilized data in a manner inconsistent with such agreement, the state
683 court administrator shall not allow further release of bulk data to that
684 individual or entity except upon order of a court.

685
686 (b) All other electronic case records that are remotely accessible to the public
687 under Rule 8, subd. 2, shall be provided to any individual or entity.

688
689 **Subd. 4. Criminal Justice and Other Government Agencies.** Notwithstanding
690 other rules, access to non-publicly accessible records and remote and bulk access to
691 publicly accessible records by criminal justice and other government agencies shall be
692 governed by order or directive of the Supreme Court or its designee.

693
694 (a) ~~Authorized by Law. Criminal justice agencies, including public~~
695 ~~defense agencies, and other state or local government agencies~~
696 ~~may obtain remote and bulk case record access where access to the~~
697 ~~records in any format by such agency is authorized by law.~~

698
699 (b) ~~Discretionary Authorization for Statewide Access to Certain Case~~
700 ~~Records. Except with respect to race data under Rule 4, subd. 1(e),~~
701 ~~Minnesota County attorneys, Minnesota state public defenders,~~

702 ~~Minnesota state and local corrections agencies, and Minnesota state~~
703 ~~and local social services agencies may obtain remote and bulk access~~
704 ~~to statewide case records in MNCIS that are not accessible to the~~
705 ~~public and are classified as Civil Domestic Violence, Juvenile, and~~
706 ~~Parent/Child Relationship case records, if the recipient of the records:~~

707
708 ~~(1) executes a nondisclosure agreement in form and content~~
709 ~~approved by the state court administrator; and~~

710
711 ~~(2) the custodian of the records reasonably determines that the~~
712 ~~recipient has a legitimate business need for the records and~~
713 ~~disclosure to the recipient will not compromise the~~
714 ~~confidentiality of any of the records.~~

715
716 **Subd. 5. Access to Certain Evidence.**

717 (a) General. Except for medical records under part (b) of this rule, or where access is
718 restricted by court order or the evidence is no longer retained by the court under a
719 court rule, order or retention schedule, documents and physical objects admitted
720 into evidence in a proceeding that is open to the public shall be available for
721 public inspection under such conditions as the court administrator may deem
722 appropriate to protect the security of the evidence.

723 (b) Medical Record Exhibits. Medical records under Rule 4, subd. 1(f), of these rules
724 that are admitted into evidence in a commitment proceeding that is open to the
725 public shall be available for public inspection only as ordered by the presiding judge.

726 (c) No Remote Access to Trial or Hearing Exhibits. Evidentiary exhibits from a hearing
727 or trial shall not be remotely accessible, but this shall not preclude remote access to
728 full or partial versions of such records that are or were otherwise submitted to the
729 court as a publicly accessible record.

730

731 **Advisory Committee Comment – 2015**

732 Rule 8, subd. 2, is amended in 2015 to allow for expanded remote public access to certain
733 court records. Subdivision 2(a) has become a definition section. Subdivision 2(b) continues
734 existing limits on remote access to certain data elements contained in the district court case
735 management system.

736 Rule 8, subd. 2(c) is amended to replace “preconviction” with “pending” as the latter is
737 more consistent with the presumption of innocence. No substantive change is being made in this
738 rule in regard to pending criminal matters. References in the rule to juvenile delinquency
739 proceedings have been removed as they are no longer necessary in light of the Court’s May 14,
740 2014, order amending MINN. R. JUV. DEL. P. 30.02 to preclude all remote public access to
741 delinquency cases involving felony level conduct by a juvenile at least 16 years old.

742 Rule 8, subd. 2(d) - (g), establishes a tiered approach to remote public access to district
743 court records. Case types with no remote access are listed in clause (d), which merely continues
744 existing practice for these case types. Proceedings for orders for protection and harassment
745 restraining orders are already maintained with no remote access as required by the federal
746 Violence Against Women Act, 18 U.S.C.A. § 2265(d)(3). Felony-level juvenile delinquency
747 proceedings involving a juvenile at least 16 years old are also already maintained with no remote
748 access under MINN. R. JUV. DEL. P. 30.02. All proceedings governed by MINN. R. JUV. PROT. P.
749 are also currently maintained with no remote electronic access, although an advisory committee
750 has recommended changes that would allow public access at a courthouse terminal.

751 Rule 8, subd. 2(e), continues the existing level of remote access, which currently includes
752 no documents, for all proceedings under MINN. SPEC. R. COMMITMENT & TREATMENT ACT. This
753 approach is consistent with the recommendation of the Court’s advisory committee on those
754 commitment rules, and attempts to maintain current level of remote public access (register of
755 actions, name index, and calendars) but not create additional undue hardship for litigants in such
756 cases by making the detailed documents remotely accessible. Medical records in commitment
757 matters also receive additional protections in Rule 8, subd. 5.

758 Rule 8, subd. 2(f), provides for remote public access to court-generated documents,
759 along with the register of actions, index, calendars, and judgment docket, for all family law case
760 types and post-adjudication paternity matters. There is no remote access to documents submitted
761 by parties or participants. This means, for example, that there is no remote access in dissolution
762 and child support matters to affidavits, which may contain highly sensitive information or, in some
763 cases, unfounded allegations. Affidavits can be accessed at the courthouse to the extent that they
764 are publicly accessible.

765 Rule 8, subd. 2(g), provides remote access to all publicly accessible documents in all
766 major and minor civil and criminal cases, and all probate matters. It also continues the existing

767 provision in these rules regarding remote access in all case types to publicly accessible case
768 records that have been in existence for at least 90 years.

769 Rule 8, subd. 2(h), attempts to clarify remote access to appellate court records. The
770 appellate courts are able to implement remote access to party-submitted documents on a day
771 forward basis as the appellate court case management system and case types are different than
772 those of the district court. The exceptions to remote access are consistent with those for district
773 court records and recognize that district court records make their way into the appellate record.

774 Rule 8, subd. 3, as amended in 2015, retains consistent treatment for bulk and remote
775 access. Inconsistent treatment would allow one to defeat the purpose of the other.

776 Rule 8, subd. 4, is amended in 2015 to recognize that the judicial branch has developed
777 access policies to address systemic, computerized access by various government agencies. Such
778 policy development properly belongs outside the public access rules.

779 Rule 8, subd. 5, is amended in 2015 to establish an exception to public access for medical
780 records admitted into evidence in commitment proceedings. These records tend to be voluminous
781 and redaction on an individual basis is impractical. The Supreme Court Advisory Committee on
782 Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and
783 Treatment Act felt strongly about this approach and that committee has also codified this approach
784 in its recommended changes to the commitment rules. A number of district courts also have
785 standing orders accomplishing the same result. This rule change would obviate the need for such
786 standing orders. Rule 8, subd. 5, is also amended to clarify that trial exhibits are not remotely
787 accessible. Many exhibits because of their physical nature cannot be digitized, and therefore
788 would not be remotely accessible. This clarification attempts to provide consistency for remote
789 public access treatment of exhibits.

**ADM10-8050
STATE OF MINNESOTA
IN SUPREME COURT**

In re:

**Supreme Court Advisory Committee on the Rules
of Public Access to Records of the Judicial Branch**

**Recommendations of the Minnesota Supreme Court Advisory Committee
on the Rules of Public Access to Records of the Judicial Branch**

**MINORITY REPORT
DECEMBER 29, 2014**

Lisa McNaughton, Minneapolis

The committee brought impressive expertise and dedication to addressing public access to court records. It understood the importance of allowing the public to know how the courts handle the cases before it. I am concerned, however, the committee did not guard against the growing risks of data mining. People come to court to resolve personal disputes. In the process, litigants are often required to reveal their most intimate private and business information on the possibility that it may be relevant to some issue in dispute. It is not their desire to publish this information to the world.

Those revelations almost always have nothing to do with how justice is administered. In this age of massive information collection and storage by unknown and sometimes nefarious organizations, putting this information on line, where anyone can easily access it, does little to make courts more transparent, but much to distribute private information. It makes available people's private and business information to be misused by anyone with an internet connection, whether it be identity thieves from abroad, potential future employers, business competitors, burglars, stalkers or retailers trying to sell anything

from insurance policies to home repair. Once it is downloaded, the courts cannot retrieve it and even erroneous information will be stored on external servers. Powerful search engines will be able to examine the data, for whatever purpose these unknown entities choose.

In 2005, MNCIS was introduced to Minnesota. At that time, employees in my office were asked to sign a document stating they would not access information about anyone other than their own clients. This was to assure that there was not wholesale distribution of personal information. Concerns were raised by management in both the county attorney and public defender's offices that there were not individual access codes but rather group logon codes. It was viewed as important to make sure there was individual responsibility attached to accessing the data. When these concerns are raised even about attorneys and staff having access to MNICS information, it highlights a significant concern about remote access by the general public.

The committee spent a great deal of time addressing issues raised by the committee members who were at the table. This was an important step. The committee also heard from subject matter experts who were also grappling with issues of remote public access. The group had significant input, for instance, from the committee addressing child protection issues. Family court issues were discussed at length. The concerns raised were thus identified and addressed. Unfortunately, numerous practice areas had limited or no representatives at the table, ranging from most civil litigation to probate and guardianship law. This deprived the committee of the insight practitioners in these areas could provide.

Also of concern is wide-open language mandating accessibility of virtually all documents. For example, Rule 8, subd.(g), like many sections, starts with a specific list of what is to be available for remote access, all of which may be appropriate for such distribution, but then nullifies these limitations by adding "and any other documents". This makes the carefully phrased list a nullity.

This foray into dramatically increasing what is available online should proceed more cautiously. Only specifically identified documents should be available for online access. Based upon the results of such an approach, the committee could reconvene in a couple of years and promulgate rules based on a better experiential foundation.