STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8041

**ORDER PROMULGATING AMENDMENTS TO
THE RULES OF JUVENILE PROTECTION,
ADOPTION, AND GUARDIAN AD LITEM PROCEDURE**

The Advisory Committee on the Rules of Juvenile Protection, Adoption, and Guardian Ad Litem Procedure has recommended amendments to the Rules of Juvenile Protection, Adoption, and Guardian Ad Litem Procedure to update the rules and to accommodate the judicial branch's increasing use of electronic filing and service. Specifically, the committee's recommended amendments aim to incorporate terms and requirements commonly used in an electronic filing and service environment; update various rules based on statutory or other changes in the law; and clarify public access to records and information in the proceedings subject to these rules.

In an order filed January 2, 2015, the court opened a public-comment period on the proposed amendments to these rules. The court also scheduled a public hearing on March 17, 2015, to consider issues related to public access to judicial-branch case records that may be presented by the recommended amendments to these rules. Thirteen written comments were received on the committee's proposed amendments. Judge John McBride, chair of the committee, spoke at the March 17 hearing, as did several members of the public.

The court has carefully considered the committee's recommendations and the comments. Based on all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The attached amendments to the Rules of Juvenile Protection, Adoption, and Guardian Ad Litem Procedure be, and the same are, prescribed and promulgated to be effective as of July 1, 2015. The rules as amended shall apply to all cases pending on, or filed on or after, the effective date, except that Rules 8.03, 8.04, 8.05, and 8.06 of the Rules of Juvenile Protection Procedure, as amended, shall apply only to documents filed with a court on or after July 1, 2015.

2. The inclusion of committee comments is for convenience and does not reflect court approval of those comments.

3. The Advisory Committee for the Rules of Juvenile Protection, Adoption, and Guardian Ad Litem Procedure shall continue to serve and monitor the rules and these amendments during the expansion of electronic filing and electronic service in the district courts, and by April 1, 2016, report to the court on any additional or new amendments to the rules deemed necessary by the committee.

Dated: April 22, 2015

BY THE COURT:

Lorie S. Gildea
Chief Justice

STATE OF MINNESOTA
IN SUPREME COURT

ADM10-8041

MEMORANDUM

PER CURIAM.

In July 2014, the court directed the Advisory Committee on the Rules of Juvenile Protection, Adoption, and Guardian Ad Litem Procedure to consider whether amendments to the rules were needed to accommodate the transition by the judicial branch to a more universal electronic environment. The committee met several times in 2014, and on December 29, 2014, filed a report and recommendations for amendments to the rules. Specifically, the committee recommends amendments to: (a) make non-substantive changes that incorporate terms commonly used in an electronic environment, e.g., substituting "document" for "paper," and update language in the rules to reflect changes in the law or terminology; (b) incorporate the electronic service and filing provisions of Minn. Gen. R. Prac. 14, and permit in some instances the use of sworn statements under penalty of perjury; (c) clarify the extent and scope of public, including remote, access to juvenile protection case records; and, (d) update the Rules of Guardian ad Litem Procedure for Juvenile and Family Court to reflect the change in administration and supervision of guardians ad litem by the State Guardian ad Litem Board.

The court provided a 60-day public comment period on the proposed amendments. Comments were received from a range of interested entities and persons, including: the Minnesota State Bar Association; representatives of media organizations; representatives

of organizations that advocate on behalf of children in need of protection, families, and transparency and accountability in Minnesota's juvenile protection system; and, private citizens interested in the safety and protection of children.

The written comments and those at the hearing focused almost exclusively on public access to case records in proceedings subject to the Rules of Juvenile Protection Procedure. Before turning to those comments, we address the proposed amendments to the Rules of Adoption Procedure and the Rules of Guardian ad Litem Procedure.

First, we approve the recommended amendments to the Rules of Adoption Procedure. No comments were submitted nor were any concerns identified regarding the recommended amendments to these rules. Most of the recommended amendments clarify the application of the General Rules of Practice and the Rules of Public Access to Records of the Judicial Branch in adoption proceedings; or clarify the procedures for electronic service and filing in adoption matters. The recommended amendments facilitate the expansion of electronic filing and service in adoption cases, and are therefore approved.

Second, we approve the recommended amendments to the Rules of Guardian ad Litem Procedure. Minnesota Statutes § 480.35 (2014), established the State Guardian ad Litem Board to supervise and administer guardians ad litem. The committee's recommended amendments reflect the transition in administration and supervision from the State Court Administrator's Office to the State Guardian ad Litem Board, are non-substantive in nature, and are therefore approved.

Third, many of the recommended amendments to the Rules of Juvenile Protection Procedure also clarify the application of other court rules to juvenile protection proceedings and facilitate the expansion of electronic filing and service in Minnesota courts. Therefore, with the exception noted below, we approve the recommended amendments to these rules.[1]

We now turn to the comments. As noted above, these comments focused almost exclusively on the issue of public access to case records in juvenile protection proceedings—specifically, the recommendation to amend Rule 8.04, subdivision 2 to designate "social services reports and guardian ad litem reports" confidential. *See* ADM10-8041, Report at pp. 24-25 (Dec. 29, 2014). This designation would exclude public access to these reports. *Id*. at p. 26 (recommended amendment to subdivision 3). The committee's Advisory Comment acknowledges that proposed Rule 8.04, subdivision 2(o), is a "new provision" that would represent a "departure" from the previous public access allowed to such reports. *Id*. at p. 33. For the reasons below, we elect not to adopt that portion of the committee's proposal.[2]

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[1] An amendment, not recommended by the committee, has been made to Minn. R. Juv. Prot. P. 47.01, to reinforce that appeals subject to these rules have different filing deadlines than for other types of appeals. Parties to an appeal who seek review by this court are reminded that the deadline for a petition for review is 15 days after the filing date of the court of appeals opinion, Minn. R. Juv. Prot. P. 47.07, not the 30 days available under Minn. R. Civ. App. P. 117.

[2] Amendments were recommended to other paragraphs in subdivision 2 that identify confidential documents or confidential information. None of the comments submitted regarding the recommended amendments expressed concern with the access limitations in these other paragraphs of subdivision 2. Many of the provisions in subdivision 2 are intended to ensure compliance with privacy restrictions in other state and federal laws.

Currently, case records in juvenile protection matters are presumed to be accessible "to any party and to any member of the public for inspection, copying, or release." Minn. R. Juv. Prot. P. 8.01.[3] Similarly, under the public access rules, "[r]ecords of all courts" are presumed public. Minn. R. Pub. Access 2.

Social worker and guardian ad litem reports, as the committee explains, "often contain highly sensitive information"; indeed, these reports may include details on some of the most sensitive aspects of the lives of some of our most vulnerable citizens: children, including minor victims of abuse, who may reside in an unsafe or unhealthy setting, and family members struggling to overcome health and economic challenges of a highly personal nature. The privacy interests implicated by these matters deserve protection. The comments, however, question the impact on the transparency, accountability, and legitimacy of these proceedings if social worker and guardian ad litem reports were designated as no longer publicly accessible. Some of the comments expressed concern that without public accountability and oversight, the very purpose of the proceedings, to protect and advance the best interests and welfare of children at risk of harm or injury, is undermined. Put another way, some commenters believe the judicial branch can, without departing from the current level of public access, accommodate

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Thus, with the exception of proposed paragraph (o), we approve the amendments to Rule 8.04, subdivision 2.

[3] In contrast, adoption case records are "not [] available for inspection or copying by any person" with limited exceptions. Minn. R. Adopt. P. 7.01. The committee did not propose any amendments to the current status of adoption case records, and the amendments promulgated today make no change to their status.

multiple objectives: preserve legitimate privacy interests, ensure transparency and accountability in proceedings in which the State intervenes in family relationships, and ensure that the child's best interests remain the paramount purpose of the proceeding.

The State and the judiciary are charged with protecting the best interests of children, a charge that is the "paramount consideration" in all juvenile protection proceedings. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 131 (Minn. 2014); *see also* Minn. Stat. § 260C.001, subd. 2(a) (2014). The judicial branch has adhered to this objective while permitting public access to the public portions of social worker and guardian ad litem reports. Nothing in the legislative direction to protect the best interests of a child has changed, and we perceive no reason that our commitment to the presumptive public access to these reports should change.[4]

The committee correctly recognized that a "redact on demand" process would be "impractical" and inefficient in an electronic filing environment. Report at p. 33-34. But we decide not to adopt the committee's recommendation to solve that inefficiency by restricting public access to these reports. Nor do we see a need to restrict public access when the committee has already taken steps to ensure the important privacy interests implicated by some of the details or information in these reports are protected. In particular, the new provisions in Rule 8.04, subdivision 5, which require parties to

[4] We recognize that some details may need to be omitted from these reports before filing in order for public access to them to be granted. Indeed, paragraphs (a)-(n) of Rule 8.04, subdivision 2, catalog several categories of documents or information that are not public. Amendments recommended to Rule 8.04, subdivision 5, which we adopt here, provide procedures to ensure that confidential documents and confidential information are correctly maintained as non-public. *See* Minn. R. Juv. Prot. P. 8.04, subd. 5.

designate documents or information as confidential, will alleviate the committee's concern with the inefficiency of a redact-on-demand process. *See* Minn. R. Juv. Prot. P. 8.04, subd. 5 (a)-(b) ("*No person shall file*" a confidential document or a publicly accessible document with confidential information without the required confidentiality restrictions) (emphasis added). Further, court administration is authorized to "direct the filer to" comply with these requirements. Minn. R. Juv. Prot. P. 8.04, subd. 5(d)(2).[5] Finally, none of these case records are remotely accessible. Minn. R. Pub. Access 8, subd. 2(d).[6]

We recognize that the concerns to be balanced here are weighty. But we conclude that the correct balance is struck by retaining public access to the records that shed light on the steps taken by the State to protect the State's children. We therefore do not adopt the language recommended as Rule 8.04, subdivision 2(o).

We acknowledge, as Judge McBride explained, that social worker and guardian ad litem reports may be "peppered" with confidential information. We are confident, however, that report authors and those who file these reports can comply with the rules

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[5] We are confident district court judges will demand compliance with these rules, and as necessary exercise the sanction authority permitted by these amendments. *See* Minn. R. Juv. Prot. P. 8.04, subd. 5(d)(3).

[6] None of the comments opposed the restrictions on remote access to case records in juvenile protection matters. In addition, the committee recommended that case records in juvenile protection proceedings in which a child is a party, *see, e.g.*, Minn. R. Juv. Prot. P. 21.01, subd. 2 (identifying case types in which the child "regardless of age, shall also be a party"), should be "confidential and presumptively inaccessible to the public." Minn. R. Juv. Prot. P. 8.04, subd. 4. The committee determined this restriction is necessary, at least temporarily, based on search-functionality limitations that currently exist in the case management system. We agree and therefore adopt this recommended amendment as well.

for filing confidential documents or public documents with confidential information, Minn. R. Juv. Prot. P. 8.04, subd. 5, and we encourage State Court Administration to provide guidance and training on the requirements of the amended rules. We are also confident that court staff will, consistent with the best interests of children, work collaboratively with the stakeholders in juvenile protection matters to prevent the inadvertent release of non-public information.

We appreciate the thorough and thoughtful work of the committee on these challenging issues, and in completing its work in the limited time frame provided for statewide implementation of e-filing and e-service.

AMENDMENTS TO THE RULES OF JUVENILE PROTECTION PROCEDURE

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

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

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

(43) "**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.

(54) "**Child placing agency**" means any agency licensed pursuant to Minnesota Statutes § 245A.02–.16 or § 252.28.

(65) **"Child custody proceeding,"** isas defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(1), and Minnesota Statutes § 260.755, subd. 3, and means and includes:

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

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

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

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

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

(76) "**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–.74;

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

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

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

(97) **"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.

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

(11~~9~~) **"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 excluded in this subdivision, child care institutions, and preadoptive homes. A child is in foster care under this definition regardless of whether the facility is licensed and payments are made for the cost of care. Nothing in this definition creates any authority to place a child in a home or facility that is required to be licensed which is not licensed. "Foster care" does not include placement in any of the following facilities: hospitals, inpatient chemical dependency treatment facilities, facilities that are primarily for delinquent children, any corrections facility or program within a particular correction~~'~~s facility not meeting requirements for Title IV-E facilities as determined by the commissioner, facilities to which a child is committed under the provision of chapter 253B, forestry camps, or jails. Foster care is intended to provide for a child's safety or access to treatment. Foster care must not be used as a punishment or consequence for a child's behavior.

(12~~10~~)**"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).

(13~~11~~)**"Indian child~~,~~"** is~~as~~ defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(4), and modified by Minnesota Statutes § 260.755, subd. 8, and means any unmarried person who is under age eighteen (18) and is either (a) a member of an Indian tribe or (b) eligible for membership in an Indian tribe.

(14~~12~~)**"Indian custodian~~,~~"** is~~as~~ defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(6), and Minnesota Statutes § 260.755, subd. 10, and means an Indian person who has legal custody of an Indian child under tribal law or custom or under state

law, or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

(15~~13~~) **"Indian child's tribe~~,~~"** is~~as~~ defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(5), and Minnesota Statutes § 260.755, subd. 9, and means:

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

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

(16~~14~~) **"Indian tribe~~,~~"** is~~as~~ defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(8), and Minnesota Statutes § 260.755, subd. 12, and means an Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. § 1602(c), and exercising tribal governmental powers.

(17~~15~~) **"Juvenile protection case records"** means all records ~~of the juvenile court~~ regarding a particular juvenile protection matter ~~case or controversy, including all records~~ filed with ~~the court~~ or generated by the court, including orders, notices, the register of actions, the index, the calendar, and the 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 (32~~29~~).

(18~~16~~) **"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–.328; and

(f) permanent placement matters as defined in Minnesota Statutes § 260C.503–.521, including matters involving termination of parental rights, guardianship to the commissioner of human services, transfer of permanent legal and physical custody to a relative, permanent custody to the agency, and temporary legal custody to the agency, and matters involving voluntary placement pursuant to Minnesota Statutes 260D.07.

(19~~17~~) **"Legal custodian"** means a person, including a legal guardian, who by court order or statute has sole or joint legal or physical custody of the child.

(20~~18~~) "**Nonresident parent**" means a parent who was not residing with the child at the time the child was removed from the home.

(21~~19~~) **"Parent"** is defined in Minnesota Statutes § 260C.007, subd. 25.

(22~~20~~) "**Parentage matter**" means an action under Minnesota Statutes § 257.51–.74 to:

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

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

(23~~21~~) **"Person,"** is~~as~~ defined in Minnesota Statutes § 260C.007, subd. 26, and includes any individual, association, corporation, partnership, and the state or any of its political subdivisions, departments, or agencies.

(24~~22~~) **"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.

(25~~23~~) **"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.

(2624) **"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.

(2725) **"Putative fFather"** is defined has the meaning set forth in Minnesota Statutes § 259.21.

(2826) **"Qualified expert witness,"** isas defined in Minnesota Administrative Rule 9560.0221, subp. 3G, and means:

(a) a member of an Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs of family organization and child rearing;

(b) a lay expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe; or

(c) a professional person having substantial education and experience in the area of the professional person's specialty, along with substantial knowledge of prevailing social and cultural standards and child-rearing practices within the Indian community.

(2927) **"Reasonable efforts to prevent placement,"** isas defined in Minnesota Statutes § 260.012(d), and means:

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

(b) given the particular circumstances of the child and family at the time of the child's removal, there are no services or efforts available which could allow the child to safely remain in the home.

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

(30~~28~~) **"Reasonable efforts to finalize a permanent plan for the child~~,~~"** is~~as~~ defined in Minnesota Statutes § 260.012(e) and (f), and means due diligence by the responsible social services agency:

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

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

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

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

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

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

(31~~29~~) **"Records"** is defined in Rule 3 of the Rules of Public Access to Records of the Judicial Branch ~~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 (18~~15~~).

(32~~30~~) **"Relative"** is~~as~~ defined in Minnesota Statutes § 260C.007, subd. 27, and means a person related to the child by blood, marriage, or adoption, or an individual who is an important friend with whom the child has resided or had significant contact. For an Indian child, "relative" includes members of the extended family as defined by the law or custom of the Indian child's tribe or, in the absence of laws or custom, nieces, nephews, or first or second cousins, as provided in the Indian Child Welfare Act of 1978, 25 U.S.C. § 1903(2).

(33~~31~~) **"Removed from home"** means the child has been taken out of the care of the parent or legal custodian, including a substitute caregiver, and placed in foster care or in a shelter care facility.

(34~~32~~) **"Reservation,"** is~~as~~ defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(10), and 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.

(35~~33~~) **"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 facility licensed for foster care pursuant to Minnesota Statutes Chapter 245A, used for the temporary care of a child during the pendency of a juvenile protection matter.

(36~~34~~) **"Trial home visit~~,~~"** is~~as~~ defined in Minnesota Statutes § 260C.201, subd. 1(a)(3), and means the child is returned to the care of the parent or legal custodian from whom the child was removed for a period not to exceed six months, with agency authority and responsibilities set forth in the statute.

(37~~35~~) **"Tribal court~~,~~"** ~~as~~is defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(12), and means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the

code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(38~~36~~)**"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, and § 260D.02, subd. 5.

(39~~37~~)**"Voluntary foster care of an Indian child~~,~~**" is~~as~~ defined in Minnesota Statutes § 260.755, subd. 22, and means a decision in which there has been participation by a local social services agency or private child-placing agency resulting in the temporary placement of an Indian child away from the home of the child's parent or Indian custodian in a foster home, institution, or the home of a guardian, and the parent or Indian custodian may have the child returned upon demand.

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RULE 3. APPLICABILITY OF OTHER RULES AND STATUTES

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Rule 3.06. General Rules of Practice for the District Courts

Except as otherwise provided by statute or these rules, Rules ~~10~~ 1–2, 4–14, and 901–907 of the General Rules of Practice for the District Courts apply ~~applies~~ to juvenile protection matters. Rules 3 and 101–814 of the General Rules of Practice for the District Courts do not apply to juvenile protection matters. Rule 5 of the General Rules of Practice for the District Courts does not apply to attorneys who represent Indian tribes in juvenile protection matters.

2015 Advisory Committee Comment

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

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

Rule 3.07. Rules of Public Access to Records of the Judicial Branch

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

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RULE 4. TIME; TIMELINE

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

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

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RULE 8. ACCESSIBILITY OF JUVENILE PROTECTION CASE RECORDS

Rule 8.01. Presumption of Access to Juvenile Protection Case Records

Except as otherwise provided in Rule 8.04 of these rules and the Rules on Public Access to Records of the Judicial Branch~~this rule~~, all juvenile protection case records relating to juvenile protection matters, as those terms are defined in Rule 2.01, are presumed to be accessible to any party, participant, or~~and any~~ member of the public for inspection, copying, or release. ~~Records or information to which access is restricted under Rule 8.04 shall not be redacted prior to transmission to the clerk of appellate courts. If a party or a member of the public requests access to the juvenile protection case record during the appeal, the portion of the case record requested shall be returned to the trial court to be redacted pursuant to Rule 8.04 before access shall be allowed. The Minnesota Court of Appeals or the Minnesota Supreme Court shall deny access to the case records during the appeal if providing access would unduly delay the conclusion of the appeal.~~ Any order prohibiting access to all juvenile protection case records of a particular case, or any portion of a juvenile protection case record, ~~the court file, or any record in such file,~~ shall be accessible to the public, parties, and participants.

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

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

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

2015 Advisory Committee Comment

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

notify the petitioner of the access request and direct the petitioner to promptly file an appropriately redacted petition so that access may be provided to the requesting individual.

Rule 8.03. Applicability of Rules of Public Access to Records of the Judicial Branch

Except where inconsistent with this rule, the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court shall apply to juvenile protection case records relating to juvenile protection matters. Subdivisions 1(a) and 1(c) of Rule 4 of the Rules of Public Access to Records of the Judicial Branch, which prohibit public access to domestic abuse restraining orders and judicial work products and drafts, are not inconsistent with this rule.

2001 Advisory Committee Comment

Rule 8.03 incorporates the provisions of the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court ("Access Rules"), except to the extent that the Access Rules are inconsistent with this rule. The Access Rules establish the procedure for requesting access, the timing and format of the response, and an administrative appeal process. The Access Rules also define "case records" as a subcategory of records maintained by a court. Thus, "case records" would not include items that are not made a part of the court file, such as notes of a social worker or guardian ad litem. Aggregate statistics on juvenile protection cases that do not identify parties or participants or a particular case are included in the "administrative records" category and are accessible to the public under the Access Rules. Such statistics are routinely published by the courts in numerous reports and studies. These procedures and definitions are consistent with this rule.

~~One significant aspect of both this rule and the Access Rules is that they govern public access only. Parties and participants in a juvenile protection matter may have greater access rights than the general public. See, e.g., Minn. R. Juv. P. 17 (2001).~~

~~Rule 8.03 preserves the confidentiality of domestic abuse restraining orders issued pursuant to Minnesota Statutes 2001 Supplement, section 518B.01. The address of a petitioner for a restraining order under section 518B.01 must not be disclosed to the public if nondisclosure is requested by the petitioner. Minnesota Statutes 2001 Supplement, section 518B.01, subdivision 3b. All other case records regarding the restraining order must not be disclosed until the temporary order made pursuant to subdivision 5 or 7 of section 518B.01 is served on the respondent. Access Rule 4, subdivision 1(a)(Supp. 2001).~~

~~Rule 8.03 prohibits public access to judicial work products and drafts. These include notes, memoranda, and drafts prepared by a judge or court employed attorney, law clerk, legal assistant, or secretary and used in the process of preparing a decision or order, except the official court minutes prepared pursuant to Minnesota Statutes 2001 Supplement, sections 546.24 and 546.25. Access Rule 4, subdivision 1(c) (2001).~~

~~The "Court Services Records" provision of Access Rule 4, subdivision 1(b), is inconsistent with this rule. The Advisory Committee is of the opinion that public access to reports and recommendations of social workers and guardians ad litem, which become case records, is an integral component of the increased accountability that underlies the concept of public access to juvenile protection matters. Court rulings will necessarily~~

~~incorporate significant portions of what is set forth in those reports, and similar information is routinely disclosed in family law cases.~~

Rule 8.04. Juvenile Protection Case Records Inaccessible ~~Not Accessible~~ to the Public, ~~or~~ Parties, or Participants

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

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

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

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

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

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

Subd. 2. Confidential Documents and Confidential Information. The following juvenile protection case records are confidential documents or confidential information and are accessible to the public, parties, and participants only as specified in subdivision 3: ~~The following records (a) – (m) in the court file are not accessible to the public. Unless otherwise ordered by the court, parties shall have access for inspection and copying to all records in the court file, except records (b), (d), and (e) listed below.~~

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

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

(c) victims' statements;

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

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

(f) medical records, chemical-dependency evaluations and records, psychological evaluations and records, and psychiatric evaluations and records;

(g) sexual offender treatment program reports;

(h) portions of photographs that identify a child;

(i) applications for ex parte emergency protective custody orders, and any resulting orders, until the hearing where all parties have an opportunity to be heard on the custody issue, provided that, if the order is requested in a child in need of protection or services (CHIPS) petition, only that portion of the petition that requests the order shall be deemed to be the application for purposes of this section (i);

(j) records or portions of records that specifically identify a minor victim of an alleged or adjudicated sexual assault;

(k) notice of pending court proceedings provided to an Indian tribe by the responsible social services agency pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1912;

(*l*) records or portions of records which the court in exceptional circumstances has deemed inaccessible to the public; ~~and~~

(m) records or portions of records that identify the name, address, home, or location of any shelter care or foster care facility in which a child is placed pursuant to an emergency protective care placement, foster care placement, pre-adoptive placement, adoptive placement, or any other type of court ordered placement~~.~~; and

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

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

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

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

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

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

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

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

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

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

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

person filing a confidential document is solely responsible for ensuring that it is filed under a "Confidential Document" cover sheet and designated as confidential.

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

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

(d) **Noncompliance.**

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

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

(3) **Sanctions.** If a person fails to comply with the requirements of this rule, the court may upon motion or its own initiative impose appropriate sanctions,

including any monetary fee to the court or costs necessary to prepare a document for filing that complies with this rule.

2001 Advisory Committee Comment (amended 2015)

Rule 8.04, subd. 2(a), prohibits public access to testimony of anyone taken during portions of a proceeding that are closed to the public by the presiding judge. Hearings or portions of hearings may be closed by the presiding judge only in exceptional circumstances.

Rule 8.04, subd. 2(b), prohibits public access to audio ~~tapes~~ and video ~~tapes~~ recordings of a child alleging or describing physical abuse, sexual abuse, or neglect of any child. This includes all recordings ~~tapes~~ made pursuant to Minn. Stat. § 626.561, subd. 3 ~~(Supp. 2001)~~, during the course of a child abuse assessment, criminal investigation, or prosecution. This is consistent with Minn. Stat. § 13.821 §~~13.391 (Supp. 2001)~~, which prohibits an individual who is a subject of the tape from obtaining a copy of the tape without a court order. See also *In re Application of KSTP Television v. Ming Sen Shiue*, 504 F. Supp. 360 (D. Minn. 1980) (television station not entitled to view and copy three hours of video tapes received in evidence in criminal trial). Similarly, Rule 8.04(c) prohibits public access to victims' statements, and this includes written records of interviews of victims made pursuant to Minn. Stat. § 626.561, subd. 3 ~~(Supp. 2001)~~. This is consistent with Minn. Stat. § § 609.115, subds. 1 and 5; ~~§~~ 609.2244; and ~~§~~ 611A.037 ~~(Supp. 2001)~~ (pre-sentence investigations to include victim impact statements; no public access; domestic abuse victim impact statement confidential).

Although victims' statements and audio ~~tapes~~ and video ~~tapes~~ recordings of a child alleging or describing abuse or neglect of any child are inaccessible to the public under Rule 8.04, subd. 2(b) and (c), this does not prohibit the attorneys for the parties or the court from including ~~information~~ summaries or quotes from the statements or tapes in the petition, court orders, and other documents that are otherwise accessible to the public. In contrast, Rule 8.04, subd. 2(d), prohibits public access to "portions of juvenile protection case records that identify reporters of abuse or neglect." By precluding public access to "portions of records that identify reporters of abuse or neglect," the Advisory Committee did not intend to preclude public access to any other information included in the same document. Instead, filers are required to omit from their documents the identity of reporters of abuse or neglect, thus allowing the remainder of the document to be publicly accessible. If it is brought to the attention of court administration staff that a filer failed to omit the information, court administration staff are required to designate the otherwise public document as confidential and inaccessible to the public. ~~Thus, courts and court administrators must redact identifying information from otherwise publicly accessible documents and then make the edited documents available to the public for inspection and copying.~~ Similarly, under Rule 8.04, subd. 2(e), filers are required to omit from their documents ~~requires that courts and court administrators redact from any publicly accessible juvenile court record~~ any reference to records of HIV testing.~~HIV test results, Rule 8.04, subd. 2(h), requires administrators to redact the face or other identifying features in a photograph of a child~~ If it is brought to the attention of court administration staff that a filer failed to omit the information, court administration staff are required to designate the otherwise public document as confidential and inaccessible to the public.

The prohibition of public access to the identity of reporters of abuse or neglect under Rule 8.04, subd. 2(d), is consistent with state law governing access to this information in the hands of social services, law enforcement, court services, schools, and other agencies. Minn. Stat. § 626.556 ~~(Supp. 2001)~~. Rule 8.04, subd. 2(d), is also intended to help preserve federal funds for child abuse prevention and treatment programs. See 42 U.S.C. § 5106a(b)(2)(A) and § 5106a(b)(3) (1998); 45 C.F.R. § § 1340.1 to ~~§~~ 1340.20 (1997). Rule 8.04, subd. 2(d), does not, however, apply to testimony of a witness taken during a proceeding that is open to the public.

Rule 8.04, subd. 2(e), is amended in 2015 to prohibit ~~prohibits~~ public access not only to HIV test results, but also to any records of HIV testing or portions of records that reveal a person has undergone HIV testing. This is consistent with state and federal laws regarding court ordered testing for HIV. Minnesota Statutes ~~2001 Supplement, section~~ § 611A.19 (defendant convicted for criminal sexual conduct; no reference to the test, the motion requesting the test, the test order, or the test results may appear in the criminal record or be maintained in any record of the court or court services); 42 U.S.C. ~~section~~ § 14011 (1998) (defendant charged with crime; test result may be disclosed to victim only). The Committee is also aware that federal funding for early intervention services requires confidential treatment of this information. 42 U.S.C. § 300ff-61(a); § 300ff-63 (1998).

Rule 8.04, subd. 2(f) and (g), prohibit public access to medical records, chemical dependency evaluations and records, psychological evaluations and records, psychiatric evaluations and records, and sexual offender treatment program reports, unless admitted into evidence under Rule 8.05. This is consistent with public access limitations in criminal and

juvenile delinquency proceedings that are open to the public. See, e.g., Minnesota Statutes § 609.115, subd. 6 ~~(Supp. 2001)~~ (presentence investigation reports). Practitioners and the courts must be careful not to violate applicable federal laws. Under 42 U.S.C. § 290dd-2 (1998), records of all federally assisted or regulated substance abuse treatment programs, including diagnosis and evaluation records, and all confidential communications made therein, except information required to be reported under a state mandatory child abuse reporting law, are confidential and may not be disclosed by the program unless disclosure is authorized by consent or court order. Thus, practitioners will have to obtain the relevant written consents from the parties or court orders, including protective orders, before disclosing certain medical records in their reports and submissions to the court. See 42 C.F.R. § § 2.1 to ~~§~~ 2.67 (1997) (comprehensive regulations providing procedures that must be followed for consent and court-ordered disclosure of records and confidential communications).

Although similar requirements apply to educational records under the Federal Educational Rights and Privacy Act (FERPA), 20 U.S.C. ~~sections~~ § § 1232g, 1417, and 11432 (1998); 34 C.F.R. ~~sections~~ § § 99.1 to ~~sections~~ § 99.67 (1997), FERPA allows schools to disclose education records without consent or court order in certain circumstances, including disclosures to state and local officials under laws in effect before November 19, 1974. 20 U.S.C. § ~~sections~~ 1232g(b)(1)(E)(i) (1998); 34 C.F.R. ~~section~~ § 99.31(a)(5)(i)(A) (1997). Authorization to disclose truancy to the county attorney, for example, was in effect before that date and continues under current law. See Minnesota Statutes ~~, section~~ § 120.12 (1974) (superintendent to notify county attorney if truancy continues after notice to parent); Minnesota Laws 1987, chapter 178, section 10, (repealing Minnesota Statutes ~~section~~ § 120.12, and replacing with current § 120A.26

~~sections 120.103~~, which adds mediation process before notice to county attorney); see also Minnesota Statutes ~~2001 Supplement, sections~~ § 260A.06 and § 260A.07 (referral to county attorney from school attendance review boards; county attorney truancy mediation program notice includes warning that court action may be taken). Practitioners will have to review the procedures under which they receive education records from schools and, where necessary, obtain relevant written consents or protective orders before disclosing certain education records in their reports and submissions to the court. Additional information regarding FERPA may be found in Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs (U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, Washington, D.C. 20531, June 1997) (includes hypothetical disclosure situations and complete set of federal regulations).

Rule 8.04, subd. 2(h), prohibits public access to portions of photographs that identify a child~~, and requires administrators to redact the face or other identifying features in a photograph of a child before permitting public access~~. Filers are required to designate as confidential any photograph that identifies a child's face or other features. If it is brought to the attention of court staff that a filer failed to designate as confidential a photograpph that identifies a child, court administration staff are required to designate the document as confidential and inaccessible to the public. Any appropriate concern regarding public access to the remaining portions of such a photograph can be addressed through a protective order (see Rule 8.07).

Rule 8.04, subd. 2(i), precludes public access to an ex parte emergency protective custody order, until the hearing where all parties have

an opportunity to be heard on the custody issue. This provision is designed to reduce the risk that a parent or legal custodian would try to hide a child before the child can be placed in protective custody or to take the child from custody before the court can hear the matter. See, e.g., Minn. R. Juv. P. 28 ~~65 (Supp. 2001)~~ (order must either direct that child be brought immediately before the court or taken to a placement facility designated by the court; parent or legal custodian, if present when child is taken into custody, shall immediately be informed of existence of order and reasons why child is being taken into custody). Rule 8.04, subd. 2(i), also precludes public access to the application or request for the protective custody order, except that if the request is made in a Child In Need of Protection or Services (CHIPS) petition, only that portion of the petition that requests the order is inaccessible to the public.

Rule 8.04, subd. 2(j), precludes public access to portions of records that specifically identify a minor victim of an alleged or adjudicated sexual assault. Filers are required to omit from their documents the identity of a minor victim of an alleged or adjudicated sexual assault, including the child's name, address, and references to "him," "her," "he," "she," etc. If it is brought to the attention of court administration staff that a filer failed to omit the information from an otherwise publicly accessible document, court administration staff are required to designate the document as confidential and inaccessible to the public. ~~This will require court administrators to redact information from case records that specifically identifies the minor victim, including the victim's name and address. Rule 8.04, subd. 2(j), does not preclude public access to other information in the particular record.~~ This is intended to parallel the treatment of victim identities in criminal and juvenile delinquency proceedings involving sexual assault charges under Minn. Stat. § 609.3471 (~~2001 Supp.~~). Thus, the term "sexual assault"

includes any act described in Minnesota Statutes § § 609.342, ~~§~~ 609.343, ~~§~~ 609.344, and ~~§~~ 609.345. The Committee considered using the term "sexual abuse" but felt that it was a limited subcategory of "sexual assault." See Minn. Stat. § 626.556, subd. 2 (a) ~~(Supp. 2001)~~ ("sexual abuse" includes violations of § 609.342 to 609.345, committed by person in a position of authority, responsible for child's care, or having a significant relationship with the child). Rule 8.04, subd. 2(j), does not require a finding that sexual assault occurred. An allegation of sexual assault is sufficient.

Rule 8.04, subd. 2(k), precludes public access to the notice of pending proceedings given by the responsible social services agency to an Indian child's tribe or to the Secretary of the Interior pursuant to 25 U.S.C. § 1912(a) (1998). The notice includes extensive personal information about the child, including all known information on direct lineal ancestors, and requires parties who receive the notice to keep it confidential. 25 C.F.R. § 23.11(d), (e) (1997). Notices are routinely given in doubtful cases because lack of notice can be fatal to a state court proceeding. See 25 U.S.C. § 1911 (1998) (exclusive jurisdiction of tribes; right to intervene; transfer of jurisdiction). The Committee believed that public access to information regarding the child's tribal heritage is appropriately given whenever a tribe intervenes or petitions for transfer of jurisdiction. Rule 8.04, subd. 2(k), does not preclude public access to intervention motions or transfer petitions.

Rule 8.04, subd. 2(*l*), recognizes that courts may, in exceptional circumstances, issue protective orders precluding public access to certain records or portions of records. Records of closed proceedings are inaccessible to the public under Rule 8.04, subd. 2(a). Procedures for issuing protective orders are set forth in Rule 8.07.

Rule 8.04, subd. 2(m), prohibits public access to the names, addresses, home, location, or other identifying information about the foster parents, foster care institutions, adoptive parents, and other persons and institutions providing care or pre-adoptive care of the child. This is consistent with the confidentiality accorded adoption proceedings. It is also designed to reduce the risk of continuing contact by someone whose parental rights have been terminated or who is a potentially dangerous family member. If deemed appropriate, the name, address, home, location, or other identifying information about a child's foster placement may be protected from a party through issuance of a protective order pursuant to Rule 8.07.

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

Notwithstanding the list of inaccessible case records in Rule 8.04, subd. 2(a) through (n ~~– m~~), many juvenile protection case records will typically be accessible to the public. Examples include: petitions, other than petitions for paternity; summons; affidavits of publication or service; certificates of representation; orders; hearing and trial notices; subpoenas; names of witnesses; motions and supporting affidavits and legal memoranda; transcripts; and reports of social workers and guardians ad litem. With the exception of information that must be redacted under Rule 8.04, subd. 2(d), (e), (j), (*l*), and (m~~h~~), these records will be accessible to the public notwithstanding that they contain a summary of information derived from another record that is not accessible to the public. For

example, a petition or social services or guardian ad litem report might discuss or quote the results or other content of a chemical dependency evaluation. Although the chemical dependency evaluation itself is not accessible to the public under Rule 8.04(f), quotes from or discussion of the details of that evaluation in the petition or social services or guardian ad litem report need not be redacted before public disclosure of the document ~~report~~. Finally, it must be remembered that public access under this rule would not apply to records filed with the court before the effective date of this rule (see Rule 8.02) or to reports of a social worker or guardian ad litem that have not been made a part of the court file (see Rule 8.03).

2006 Advisory Committee Comment (amended 2015)

The child's name and other identifying information are not to be redacted from records that are accessible to the public, except under Rule 8.04, subd. 2(j) when the child is the victim of an alleged or adjudicated sexual assault and under Rule 8.04, subd. 2(d), where the child is specifically identified as the reporter of the abuse or neglect. In the latter instance, the child's name and other identifying information should be redacted only in those instances where it is used as the reporter of abuse or neglect but should not be redacted when referenced elsewhere in the record.

2015 Advisory Committee Comment

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

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

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

Rule 8.04, subd. 5, is a new provision intended to prevent the filing of confidential documents without the appropriate designation, or the inclusion of confidential information in publicly accessible documents. The rule emphasizes that it is the filer's responsibility to omit confidential information and perform all required redactions prior to filing. For guidance, the amendment specifies the kind of information inaccessible to

the public under Rule 8.04, subd. 2, that must be omitted from publicly accessible documents. Rule 8.04, subd. 2, generally precludes public access to entire documents such as medical records and reports. The rule does not prohibit a person from referencing, quoting, or mentioning the contents of such confidential documents in other documents filed with the court. However, because Rule 8.04, subd. 2(d), (e), (j), (*l*), and (m) preclude public access to "portions of juvenile protection records" that contain specified types of confidential information, the filer must redact (or omit entirely) portions of a publicly accessible document that reference or disclose confidential information.

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

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

(b) *Foster Parent*: In the petition or other document, do not use the foster parent's initials but, instead, refer to the person as "Foster Parent 1," "Foster Parent 2", etc. In the "Confidential Information Form" state the

name of the foster parent (e.g., "Foster Parent 1 is Jane Doe" and "Foster Parent 2 is John Doe") and then include address of the foster parent.

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

Rule 8.05. Access to Exhibits

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

2001 Advisory Committee Comment (amended 2015)

Rule 8.05 permits public access to records that have been received in evidence as an exhibit, unless the records are subject to a protective order (see Rule 8.07). Thus, any of the records identified in Rule 8.04, subd. 2(b) through (n~~k~~) that have been admitted into evidence as an exhibit are

accessible to the public, unless there is a protective order indicating otherwise. An exhibit that has been offered, but not expressly admitted by the court, does not become accessible to the public under Rule 8.05. Exhibits admitted during a trial or hearing must be distinguished from items attached as exhibits to a petition or a report of a social worker or guardian ad litem. Merely attaching something as an "exhibit" to another filed document does not render the "exhibit" ~~to be~~ accessible to the public under Rule 8.05.

Rule 8.06. Electronic Access to Juvenile Protection Case Records ~~Access to Court Information Systems~~

~~Except where authorized by the district court, there shall be no direct public access to juvenile protection case records maintained in electronic format in court information systems.~~ Electronic access to juvenile protection case records, including remote access and access at a courthouse facility, shall be as permitted by the Rules of Public Access to Records of the Judicial Branch.

~~2001 Advisory Committee Comment~~

~~Rule 8.06 prohibits direct public access to case records maintained in electronic format in court information systems unless authorized by the court. Rule 8.06 intentionally limits access to electronic formats as a means of precluding widespread distribution of case records about children into larger, private databases that could be used to discriminate against children for insurance, employment, and other purposes. This concern also led the Advisory Committee to recommend that case titles in the petition and other documents include only the name of the parent or legal custodian, and exclude the names or initials of the children (see Rule 8.08). Rule 8.06 allows the courts to prepare calendars that identify cases by the appropriate caption. To the extent that court information systems can provide~~

~~appropriate electronic formats for public access, Rule 8.06 allows the district court to make those accessible to the public~~

2015 Advisory Committee Comment

Rule 8.06 is amended to allow for electronic access to public juvenile protection case records in light of the Judicial Branch's transition to electronic court records and its effort to offer electronic accessibility to public court documents across all case types. Electronic access to public juvenile protection records will be available to the public only at courthouse facilities. Remote access to public records is governed by Rule 8, subd. 2, of the Rules of Public Access to Records of the Judicial Branch, which prohibits remote access to juvenile protection case records. Access to juvenile protection records by government agencies is governed by Rule 8, subd. 4, of the Rules of Public Access to Records of the Judicial Branch.

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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, the county attorney, and such other persons as the court may direct, and may be made by personal service ~~delivery~~ at the hearing, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court. If a party is represented by counsel, delivery or service shall be upon counsel.

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Rule 10.04. Notice of Filing of Order

Each order served upon ~~delivered or mailed to~~ the parties and the county attorney shall be accompanied by a notice of filing of order, which shall include notice of the right to appeal a final order pursuant to Rule 47.02. The State Court Administrator shall develop a "notice of filing" form which shall be used by court administrators.

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RULE 13. SUBPOENAS

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Rule 13.03. Service

A subpoena may be served by the sheriff, a deputy sheriff, or any other person over the age of 18 who is not a party to the proceeding. Service of a subpoena upon a person named in the subpoena shall be made by delivering a copy of the subpoena to the named person or by leaving a copy at the person's usual place of abode with some person of suitable age and discretion residing at such abode. Upon written agreement of the witness, a subpoena may be served by U.S. mail, through the E-Filing System, by e-mail or by other electronic means.

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RULE 15. MOTIONS

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Rule 15.02 Service and Notice of Motions

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Subd. 2. How Made. Service of a motion by a Registered User of the E-Filing System upon another Registered User shall be made in compliance with Rule 14.03 of the General Rules of Practice for the District Courts. All other service of a motion shall be made by personal service, U.S. mail, or e-mail or other electronic means agreed upon in

writing by the person to be served~~may be made by personal service, by mail, or by transmitting a copy by facsimile transmission pursuant to Rule 31~~.

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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 by 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~~ document shall state the signer's name, address, telephone number, e-mail address if the document is filed or served electronically, and attorney registration number if signed by an attorney. If providing a party's or participant's address, e-mail address, or ~~and~~ telephone number would endanger the party or participant, the address, e-mail address, or ~~and~~ telephone number may be provided to the court in a separate information statement that shall not be accessible to the public, parties, or participants, but shall be accessible to the attorneys and the guardian ad litem. Upon notice and motion, the court may disclose the address, e-mail address, or ~~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~~ through the E-Filing System ~~established by order of the court~~ constitutes certification of compliance with Rule 16.02~~the signature requirement of these rules~~.

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RULE 21. PARTIES

Rule 21.01. Party Status

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Subd. 2. Habitual Truant, Runaway, and Sexually Exploited Child ~~Prostitution~~ Matters. In addition to the parties identified in subdivision 1, in any matter alleging a child to be a habitual truant, a runaway, or a sexually exploited child ~~engaged in prostitution~~, the child, regardless of age, shall also be a party. In any matter alleging a child to be a habitual truant, the child's school district may be joined as a party pursuant to Rule 24.

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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 or e-mail address; Registered Users of the E-Filing System shall also update any change of e-mail address in the E-Filing System. If a party is endangered, the party may ask the court to keep the party's name and address confidential and, if the court grants the request, the name and address shall be provided to the court in a separate information statement that shall not be accessible to the public, parties, or participants, but shall be accessible to the attorneys and the guardian ad litem.

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RULE 22. PARTICIPANTS

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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 or e-mail address; Registered Users of the E-Filing System shall also update any change of e-mail address in the E-Filing System. If a participant is endangered, the participant may ask the court to keep the participant's name and address confidential and, if the court grants the request, the name and address shall be provided to the court in a separate information statement that shall not be accessible to the public, parties, or participants, but shall be accessible to the attorneys and the guardian ad litem.

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RULE 28. EMERGENCY PROTECTIVE CARE ORDER AND NOTICE

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Rule 28.02. Ex Parte Order for Emergency Protective Care

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Subd. 2. Habitual Truant, Runaway, Sexually Exploited Child, ~~Prostitution~~, Delinquent Under Age 10, Incompetent to Proceed, and Domestic Abuse Matters. In addition to the provisions of subdivision 1, the court may issue an ex parte order for emergency protective care if it finds from the facts set forth in the petition or any supporting affidavits or sworn testimony that:

(a) there is a prima facie showing that pursuant to Minnesota Statutes § 260C.007, subd. 6, the child is a sexually exploited child ~~has engaged in prostitution~~, is a habitual truant, is a runaway, has committed a delinquent act before becoming ten (10) years of age, has been found incompetent to proceed or not guilty by reason of mental

illness or mental deficiency, or has been found by the court to have committed domestic abuse; and

(b) the child failed to appear after having been personally served with a summons or subpoena, reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons; and

(c) continuation of the child in the custody of the parent or legal custodian is contrary to the child's welfare.

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RULE 30. EMERGENCY PROTECTIVE CARE HEARING

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Rule 30.09. Factors

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Subd. 2. Determination Regarding Reasonable or Active Efforts. Based upon the information provided to the court in the petition, ~~sworn~~ affidavit, certified report, or on the record, the court shall make a determination whether reasonable efforts, or active efforts in the case of an Indian child, were made to prevent the child's out-of-home placement. The court shall also determine whether there are available services that would prevent the need for further placement. In the alternative, the court shall determine that reasonable efforts are not required if the court makes a prima facie determination that one of the circumstances under subdivision 3 exists.

Subd. 3. Cases Permitting Bypass ~~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 § 260.012(a)~~260C.012(a)~~ exists.

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

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RULE 31. METHODS OF FILING AND SERVICE

Rule 31.01. Types of Filing

Subd. 1. Generally; Electronic Filing. When a document is required to be filed electronically through the E-Filing System, the document shall be filed in accordance with Rule 14 of the General Rules of Practice for the District Courts. Otherwise, any ~~Any~~ document may be filed with the court ~~either~~ personally, by U.S. mail, electronically through the E-Filing System, or by facsimile transmission. ~~When authorized by order of the Minnesota Supreme Court, documents may be filed electronically by following the procedures of that order and will be deemed filed in accordance with the provisions of that order.~~

Subd. 2. Filing by Facsimile Transmission.

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

(b) Within five (5) days after the court has received the transmission, the party filing the document shall forward the following to the court:

(1) a $25 transmission fee for each fifty (50) pages, or part thereof, of the filing, unless otherwise provided by statute or rule or otherwise ordered by the court;

(2) any bulky exhibits or attachments; and

(3) the applicable filing fee or fees, if any.

(c) If a document is filed by facsimile, the sender's original must not be filed but must be maintained in the files of the party transmitting it for filing and made available to the court or any party to the action upon request.

(d) Upon failure to comply with the requirements of this rule, the court in which the action is pending may make such orders as are just including, but not limited to, an order striking pleadings or parts thereof, staying further proceedings until compliance is complete, or dismissing the action, proceeding, or any part thereof.

* * * *

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. 5~~ 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.**

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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 substitutes for personal service when authorized by the court. Service by publication means the publication in full of the summons, notice, or other documents ~~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 diligent ~~unsuccessful~~ efforts to locate the person ~~party~~ to be served. Service by publication shall be completed in a location approved by the court. The published summons shall be directed to the person for whom personal service was not accomplished and shall not include the child's name or initials. In cases involving an Indian child, if the identity or location of the parent or Indian custodian and the child's Indian tribe cannot be determined, the summons and petition shall be served upon the Secretary of the Interior pursuant to 25 U.S.C. § 1912.

~~**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. 4~~5~~. Electronic Service. When authorized ~~by order of the Minnesota Supreme Court~~ or required by Rule 14 of the General Rules of Practice for the District Courts, documents, except those required by these rules to be served personally or by registered U.S. mail return receipt requested, may, or, where required, shall be served ~~by~~ electronically ~~means other than facsimile transmission~~ by following the procedures of that ~~order~~ rule and will be deemed served in accordance with the provisions of that ~~order~~ rule.

Subd. 5~~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.

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

(c) If the serving party does not receive the completed acknowledgment form within twenty (20) days of the date it is mailed, service is not valid upon that party. The serving party shall then serve the document by any means authorized under this rule ~~subdivision 2~~.

(d) The court ~~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.~~

Rule 31.03. Service by ~~Facsimile Transmission~~ Electronic Means

Unless these rules require personal service or service through the E-Filing System, any document may be served by ~~facsimile transmission~~ e-mail or other electronic means agreed upon in writing or on the record by the person to be served. ~~The facsimile shall have the same force and effect as the original~~.

2015 Advisory Committee Comment

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

Rule 31.06. Completion of Service

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

2015 Advisory Committee Comment

With respect to completion of service, Rule 14.03(e) of the General Rules of Practice for the District Courts provides "[s]ervice is complete upon completion of the electronic transmission of the document to the E-Filing System notwithstanding whether the document is subsequently

rejected for filing by the court administrator. Service by facsimile transmission, where authorized, is complete upon the completion of the facsimile transmission." Similar to service by U.S. mail, which is complete when sent rather than when received, the intent of Rule 31.06 is that service through the E-Filing System is complete when the document is transmitted to the E-Filing System and service by e-mail is complete when the e-mail is sent.

Rule 31.07. Proof of Service

Subd. 1. Generally. On or before the date set for appearance, the person serving the document shall file with the court an ~~notarized~~ affidavit of service stating:

(a) whether the document was served;

(b) the method of service;

(c) the name of the person served; and

(d) the date and place of service.

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

Subd. 2. Exceptions.

(a) **Social Worker and Guardian ad Litem Court Reports.** Social workers and guardians ad litem are not required to file proof of service when serving the court reports required under Rule 38 and, instead, shall include with their report a ~~non-notarized~~ certificate of distribution under oath or penalty of perjury under Minnesota Statutes § 358.116 stating:

(1) the name of the person served~~,~~;

(2) the method of service~~,~~;

(3) the date and place of service~~,~~; and

(4) the name of the person submitting the certification of distribution.

(b) **Court administrators.** If the court administrator served the document, the court administrator may file a written statement in lieu of an affidavit.

RULE 32. SUMMONS AND NOTICE

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Rule 32.02. Summons

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Subd. 3. Service

(a) **Parents, Parties, and Attorneys ~~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 parents or legal guardian~~, and the summons shall be served personally or by U.S. mail upon all other parties and attorneys~~. Service of the summons and petition upon parties and attorneys shall be made through the E-Filing System or by personal service, U.S. mail, e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court. Alleged parents and participants shall be served a notice of hearing and petition pursuant to Rule 32.03. The court may authorize alternative personal service pursuant to Rule 31.02, subd. 5~~6~~.

(b) **Habitual Truant, Runaway, and Sexually Exploited Child ~~Prostitution~~ Matters.**

(1) **Initial Service.** Notwithstanding the requirements of subdivisions 2(a) and 3(a), when the sole allegation is that the child is a habitual truant, a runaway, or a sexually exploited child ~~engaged in prostitution~~, initial service may be made as follows:

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

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

(2) **Failure to Appear.** If the child or the child's parent or legal custodian or the person with custody or control of the child fails to appear in response to

the initial service, the court shall order such person to be personally served with a summons.

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

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Subd. 5. Timing of Service of Summons and Petition.

(a) **Generally.** The summons and petition shall be served either at or before the emergency protective care hearing held pursuant to Rule 30, or at least three (3) days prior to the admit/deny hearing, whichever is earlier. At the request of a party, the hearing shall not be held at the scheduled time if the summons and petition have been served less than three (3) days before the hearing. If service is made outside the state or by publication, the summons shall be ~~personally~~ served~~, mailed,~~ or last published at least ten (10) days before the hearing. In cases where publication of a child in need of protection or services petition is ordered, published notice shall be made one time with the last publication at least ten (10) days before the date of the hearing. Service by publication shall be made pursuant to Rule 31.02, subd. 3.

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Rule 32.03. Notice of Emergency Protective Care or Admit/Deny Hearing

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Subd. 2. Upon Whom.

(a) **Emergency Protective Care Hearing.** If the initial hearing is an emergency protective care hearing, ~~written notice is not required to be served. Instead,~~ the court administrator, or designee, shall ~~use whatever method is available to~~ inform all

parties and participants identified by the petitioner in the petition, and their attorneys, of the date, time, and location of the hearing.

(b) **Admit/Deny Hearing.** If the initial hearing is an admit/deny hearing, the court administrator shall serve a summons and petition upon all parties identified in Rule 21, and a notice of hearing and petition upon all participants identified in Rule 22, the county attorney, any attorney representing a party in the matter, and the child through the child's attorney, if represented, or the child's physical custodian.

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Subd. 4. Method of Service ~~by Mail or Delivery at Hearing~~.

(a) **Emergency Protective Care Hearing**. If the initial hearing is an emergency protective care hearing, written notice is not required to be served. Instead, the court administrator, or designee, shall use whatever method is available, including, but not limited to, phone calls, personal service, the E-Filing System, or e-mail or other electronic means agreed upon in writing by the person to be served, to inform all parties and participants identified by the petitioner in the petition, and their attorneys, of the date, time, and location of the hearing. ~~Notice shall be by U.S. mail, or may be delivered at a hearing. The court may order service of notice to be by personal service.~~

(b) **Admit/Deny Hearing**. If the initial hearing is an admit/deny hearing, the court administrator shall serve the notice of hearing and petition through the E-Filing System or by personal service, U.S. mail, e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

Rule 32.04. Notice of Subsequent Hearings

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

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

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

(d) **Method of Service.** If not served by the close of the current hearing, the notice may be served by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as directed by the court. ~~or mailed at least five (5) days before the date of the hearing or ten (10) days before the date of the hearing if mailed to an address outside the state. If written notice is delivered at the end of the hearing, later written notice is not required.~~

2015 Advisory Committee Comment

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

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Rule 32.06. Petitioner's Notice Responsibility Under Indian Child Welfare Act

Pursuant to 25 U.S.C. § 1912(a), in any juvenile protection proceeding where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe of the pending proceedings and of the right of intervention pursuant to Rule 23. Such notice shall be by registered U.S. mail with return receipt requested, unless personal service has been accomplished. If the identity or location of the parent or Indian custodian and the tribe cannot be determined,

such notice shall be given to the Secretary of the Interior in like manner, who shall have fifteen (15) days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior, provided that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty (20) additional days to prepare for such proceeding. The original or a copy of each notice shall be filed with the court together with any return receipts or other proof of service.

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RULE 33. PETITION

Rule 33.01. Drafting; Filing; Service

Subd. 1. Generally. A petition may be drafted and filed by the county attorney or any responsible person. A petition shall be served pursuant to Rule 32.02. If the petition contains any confidential information or confidential documents as attachments that are inaccessible to the public under Rule 8.04 of these rules ~~that is inaccessible to the public~~, the petitioner shall file the confidential information or confidential documents in the manner required under Rule 8.04, subd. 5~~with the court the original petition and a copy of the petition from which the inaccessible information has been redacted~~.

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Rule 33.02. Content

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

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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.

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Subd. 4. Permanent Placement Matters.

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

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RULE 35. ADMISSION OR DENIAL

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Rule 35.03. Admission

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Subd. 3. Questioning of Person Making Admission.

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(b) Child in Need of Protection or Services Matters, and Habitual Truant, Runaway, and Sexually Exploited Child ~~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 a sexually exploited child ~~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, 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.

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RULE 37. CASE AND OUT-OF-HOME PLACEMENT PLANS

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Rule 37.02. Child in Court-Ordered Foster Care: Out-of-Home Placement Plan

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Subd. 3. Content.

(a) Generally. The out-of-home placement plan shall include a statement about whether the child and parent, legal custodian, or Indian custodian, participated in the preparation of the plan. If a parent or legal custodian refuses to participate in the preparation of the plan or disagrees with the services recommended in the plan by the responsible social services agency, the agency shall state in the plan the attempts made to engage the parent, legal custodian, and child in case planning and note such refusal or disagreement. The plan shall also include a statement about whether the child's guardian ad litem; the child's tribe, if the child is an Indian child; and the child's foster parent or representative of the residential facility have been consulted in the plan's preparation. The agency shall document whether the parent, legal custodian, or Indian custodian; child, if appropriate; the child's tribe, if the child is an Indian child; and foster parents have received a copy of the plan. When a child is in foster care due solely or in part to the

child's emotional disturbance, the child's mental health treatment provider shall also be consulted in preparation of the plan and the agency shall document such consultation in the plan filed with the court.

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

(1) the educational records of the child required under Minn. Stat. § 260C.212, subd. 1 (c)(8);

(2) information pertaining to the oversight of the child's health as provided in Minn. Stat. § 260C.212, subd. 1 (c)(9);

(3) the health records of the child required under Minn. Stat. § 260C.212, subd. 1 (c)(10); and

(4) records of the child's diagnostic and assessment information, specific services relating to meeting the mental health care needs of the child, and treatment outcomes as provided in Minn. Stat. § 260C.212, subd. 1 (c)(12).

Subd. 4. Procedure for Approving or Ordering Out-of-Home Placement Plan Prior to Disposition.

(a) **Court's Approval of Plan.** Upon the filing of the out-of-home placement plan, together with the information about whether the parent or legal custodian; the child, if appropriate; the child's tribe, if the child is an Indian child; and the foster parents have received a copy of the plan, the court may, based upon the allegations in the petition, approve the responsible social services agency's implementation of the plan if it was developed jointly with the parent and in consultation with others required under this Rule and Minnesota Statutes § 260C.212, subd. 1. The court shall serve ~~send~~ written notice of

the approval of the plan upon ~~to~~ all parties and the county attorney, or may state such approval on the record at a hearing after the plan has been filed with the court and provided to the parties, foster parents, and the child, as appropriate. If the court directs that written notice of the approval of the case plan be served, such notice may be served by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as directed by the court.

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RULE 38. REPORTS TO THE COURT

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

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

(b) **Notice of Termination of Agreement.** In the event an adoption placement agreement terminates, the agency shall report that the agreement and adoptive placement have terminated. The agency shall file and serve a copy of the report upon the parties entitled to notice under Minnesota Statutes § 260C.607, subd. 2, ~~a copy of the report~~ and shall send a copy of the report to the commissioner of human services by U.S. mail. Service of the report by a Registered User of the E-Filing System upon another Registered User shall be made in compliance with Rule 14.03 of the General Rules of Practice for the District Courts. All other service of the report shall be by personal service, U.S. mail, or e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

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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 based upon personal observation, first-hand knowledge, or information and belief. The certified objection shall be supported by a ~~sworn~~ statement made under oath or penalty of perjury under Minnesota Statutes § 358.116, stating ~~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

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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 made under oath or penalty of perjury under Minnesota Statutes § 358.116, stating ~~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 39. TRIAL

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Rule 39.05. Decision

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Subd. 2. Child in Need of Protection or Services Matters and Habitual Truant, Runaway, and Sexually Exploited Child ~~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.

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

Rule 42.01. Timing

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Subd. 6. Timing for Cases Where Reasonable Efforts For Reunification Are Not Required. When the court finds that the petition states a prima facie case that one or more of the ~~five~~ circumstances under Minnesota Statutes § 260.012(a) and Rule 30.09, subd. 3, exist where reasonable efforts for reunification are not required, the court shall order that an admit/deny hearing under Rule 34 be conducted within thirty (30) days and a trial be conducted within ninety (90) days of its prima facie finding. Unless a permanency or termination of parental rights petition under Rule 33 has already been filed, the county attorney requesting the prima facie determination shall file a permanency or termination of parental rights petition that permits the completion of service by the court at least ten (10) days prior to the admit/deny hearing.

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

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Subd. 4. Service. The court shall serve the motion and petition filed under subdivision 2 together with a notice of hearing personally, by U.S. mail, through the E-Filing System, or by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

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

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Rule 43.04. Required Permanency Review Hearing

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Subd. 2. Petition. When the agency requests the court's approval of its determination that there are compelling reasons to continue the voluntary foster care arrangement, the agency shall file a "Petition for Permanency Review Regarding a Child in Voluntary Foster Care for Treatment."

(a) **Drafted or Approved by County Attorney.** The "Petition for Permanency Review Regarding a Child in Voluntary Foster Care for Treatment" shall be drafted or approved by the county attorney.

(b) **Oath and Content.** The petition shall be under oath or penalty of perjury under Minnesota Statutes § 358.116 and include:

(1) the date of the voluntary foster care agreement;

(2) whether the voluntary foster care placement is due to the child's developmental disability or emotional disturbance;

(3) the plan for the ongoing care of the child and the parent's participation in the plan;

(4) a description of the parent's visitation and contact with the child;

(5) either:

(i) the date of the court finding that the voluntary foster care placement was in the best interests of the child, if required under Minnesota Statutes § 260D.06; or

(ii) the date the agency filed the motion under Rule 42.14 and Minnesota Statutes § 260D.09(b);

(6) the agency's reasonable efforts to finalize the permanency plan for the child, including returning the child to the care of the child's family;

(7) the length of time, including cumulated time, the child has been in foster care;

(8) a citation to Minnesota Statutes, Chapter 260D, as the basis for the petition; and

(9) a statement of what findings are requested from the court.

(c) **Out-of-Home Placement Plan.** An updated copy of the out-of-home placement plan required under Minn. Stat. § 260C.212, subd. 1, shall be filed with the petition.

(d) **Manner of Service.** The court shall serve the petition together with a notice of hearing personally, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court, upon the county attorney; the responsible social services agency; the parent; the parent's attorney; the foster parent or foster care facility; the child, if age twelve (12) or older; the child's attorney, if one is appointed; the child's guardian ad litem, if one is appointed; and the child's Indian tribe, if the child is an Indian child.

Subd. 3. Hearing Regarding Petition for Child in Voluntary Foster Care for Treatment.

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(c) **Court Actions Based on Consent of Parent.** At the permanency review hearing, the court may take the following actions based on the contents of the ~~sworn~~ petition and the consent of the parent:

(1) approve the agency's compelling reasons that the voluntary foster care arrangement is in the best interests of the child; and

(2) find that the agency has made reasonable efforts to finalize a plan for the permanent plan for the child.

* * * *

Rule 43.05. Annual Review

Subd. 1. Required Annual Review.

(a) **Timing.** After the court conducts a permanency review hearing under Rule 43.04 and Minnesota Statutes § 260D.07, the matter shall be returned to the court for further review of the child's foster care placement at least every twelve (12) months while the child is in foster care.

(b) **Annual Report to the Court.** When the child continues in foster care, the responsible social services agency shall annually file a report that sets forth facts that address the required determinations the court shall make under subdivision 2. The agency's report shall be accompanied by proof of the agency's service of the report ~~by U.S. mail~~ upon the parent, the child if age twelve (12) or older, the child's guardian ad litem, if one has been appointed, and counsel for any party and the child. Service of the report by a Registered User of the E-Filing System upon another Registered User shall be made in compliance with Rule 14.03 of the General Rules of Practice. All other service of the report shall be by personal service, U.S. mail, or e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court. The report shall be filed with the court at least thirty (30) days prior to the time required for annual review under this rule.

(c) **Timing of Hearing.** The court shall set a date for the annual review hearing not later than twelve (12) months after the ~~P~~permanency ~~R~~review ~~H~~hearing and at least every twelve (12) months thereafter as requested in the report from the agency.

(d) **Service.** At least ten (10) days prior to the date set for the annual review hearing, the court shall give notice ~~by U.S. mail~~ of the date and time of the hearing to the county attorney; the responsible social services agency; the parent; the parent's attorney; the foster parent or foster care facility; the child, if age twelve (12) or older; the child's attorney, if one is appointed; the child's guardian ad litem, if one is appointed; and the child's Indian tribe, if the child is an Indian child. The notice may be served personally, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

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RULE 44. REVIEW OF VOLUNTARY PLACEMENT MATTERS

Rule 44.01. Generally

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Subd. 2. Jurisdiction. The court assumes jurisdiction to review a voluntary foster care placement of a child pursuant to Minnesota Statutes § 260C.227 ~~260C.212, subd. 8~~, upon the filing of a petition pursuant to Minnesota Statutes § 260C.141, subd. 2.

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Rule 44.02. Petition and Hearing

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Subd. 2. Service of Petition. Upon the filing of the petition, the court administrator shall serve the petition, together with out-of-home placement plan, upon the parties ~~by U.S. mail~~ and shall schedule a hearing pursuant to subdivision 3. The petition shall be served personally, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

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RULE 47. APPEAL

Rule 47.01. Applicability of Rules of Civil Appellate Procedure

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

RULE 48. TRANSFER TO CHILD'S TRIBE

Rule 48.01. Transfer of Juvenile Protection Matter to the Tribe

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Subd. 4. Objection to Transfer by Parent. A parent of an Indian child may object to transfer of a juvenile protection matter to the Indian child's tribe.

(a) **Form of Objection.** The parent's objection shall be in writing or stated on the record. The writing may be in any form sufficient for the court to determine that the parent objects to the request to transfer the matter to the Indian child's tribe.

(b) **Timing of Filing and Service.** Any written objection shall be filed with the court and served upon those who are served with the motion pursuant to Rule 15.02, subd. 1, either:

(1) within fifteen (15) days of service of the motion, written request, or on-the-record request to transfer the juvenile protection matter to the Indian child's tribe under subdivision 1; or

(2) at or before the time scheduled for hearing on a motion to deny transfer for good cause, if any, under subdivision 6.

(c) **Method of Filing and Service.** ~~Service of any notice of~~ Any written objection by a Registered User of the E-Filing System shall be served upon another Registered User in compliance with Rule 14.03 of the General Rules of Practice for the District Court. All other service of the written objection shall be made by personal service, U.S. mail, or e-mail or other electronic means agreed upon in writing by the person to be served. ~~shall be by U.S. mail, facsimile, or personal service and~~ Service of the written objection shall be accomplished by the parent's attorney or by the court administrator when the parent is not represented by counsel. The court shall include a parent's on-the-record objection to the transfer as a finding in its order denying the motion to transfer.

* * * *

Rule 48.03. Court Administrator's Duties

Upon receiving an order transferring a juvenile protection matter to tribal court, the court administrator shall file the order and serve it on all parties, participants, the Indian child's parents, and the Indian child ~~as directed by the court~~ according to the

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

AMENDMENTS TO THE RULES OF ADOPTION PROCEDURE

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

RULE 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, subd. 3, to be the biological father of the child.

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

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

(4) **"Adoption matter"** means any proceeding for adoption of a child or an adult in the juvenile courts of Minnesota, including a stepparent adoption, relative adoption, direct placement adoption, intercountry adoption, adoption resulting from a juvenile protection matter, proceeding under Minnesota Statutes § § 260C.601—260C.637, and any other type of adoption proceeding.

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

(8~~7~~) **"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, means an organization or department of government designated or authorized by law to place children for adoption or any person, group of persons, organization, association, or society licensed or certified by the Commissioner of Human Services to place children for adoption, including a Minnesota federally recognized tribe.

(9~~8~~) **"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).

(10~~9~~) **"Child"** means a person under the age of eighteen (18) years.

(11~~10~~) **"Child placing agency"** means a private agency making or supervising an adoptive placement.

(12~~11~~) **"Commissioner"** means the commissioner of human services of the State of Minnesota or any employee of the Department of Human Services to whom the commissioner has delegated authority regarding children under the commissioner's guardianship.

(13~~12~~) **"Contested adoption"** means an adoption matter where:

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

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

(c) a legal custodian or legal guardian who is not a parent has withheld consent.

(14~~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.

(15~~14~~) **"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.

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

(17~~15~~) **"Father."** See "adjudicated father" and "putative father" as defined in this rule.

(18~~16~~) **"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 (1) a member of an Indian tribe or (2) eligible for membership in an Indian tribe.

(19~~17~~) **"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.

(20~~18~~) **"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).

(21~~19~~) **"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(32~~28~~).

(22~~20~~)**"Legal custodian"** means a person, including a legal guardian, who by court order or statute has sole or joint legal custody of the child.

(23~~21~~)**"Legal guardian"** means a person who is the court-appointed legal guardian of the child pursuant to Minnesota Statutes § 260C.325, subds. 1 and 3, or Minnesota Statutes, Chapter 525 or an equivalent law in another jurisdiction.

(24~~22~~)**"Local social services agency"** means the agency in the county of the petitioner's residence.

(25~~23~~)**"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.

(26~~24~~)**"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. "Petitioner" 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.

(27~~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.

(28~~26~~)**"Placement activities"** means any of the following:

(a) placement of a child;

(b) arranging or providing short-term foster care pending an adoptive placement;

(c) facilitating placement by maintaining a list, in any form, of biological parents or prospective adoptive parents;

(d) completing or updating a child's social and medical history as required under Minnesota Statutes § 259.41 and § 260C.611;

(e) conducting an adoption study;

(f) witnessing consents to an adoption; or

(g) engaging in any activity listed in clauses (1) to (6) for purposes of fulfilling any requirements of the Interstate Compact on the Placement of Children, Minnesota Statutes § 260.851.

(29~~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.

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

(31~~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 stepparent 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(22~~19~~).

(32~~29~~) **"Responsible social services agency"** means the county agency acting as agent of the commissioner of human services when the commissioner is legal guardian of the child.

(33~~30~~) **"Working day"** refers solely to revocation of consents and means Monday through Friday, excluding any holiday as defined under Minnesota Statutes § 645.44, subdivision 5.

(34~~31~~) **"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

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Rule 3.09. General Rules of Practice for the District Courts

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

2015 Advisory Committee Comment

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

Rule 5 of the General Rules of Practice provides, in part: "Lawyers who are admitted to practice in the trial courts of any other jurisdiction may appear in any of the courts of this state provided (a) the pleadings are also signed by a lawyer duly admitted to practice in the State of Minnesota, and (b) such lawyer admitted in Minnesota is also present before the court, in chambers or in the courtroom or participates by telephone in any hearing conducted by telephone." General Rule 5 is being amended in 2015 to provide an "out-of-state lawyer is subject to all rules that apply to lawyers admitted in Minnesota, including rules related to e-filing." Consistent with

the letter and spirit of the Indian Child Welfare Act, the Juvenile Protection Rules Committee does not want to place any barriers to participation by Indian tribes in adoption matters. For that reason, Rule 3.09 is added to provide that the requirements of Rule 5 dealing with *pro hac vice* and electronic filing are not applicable to attorneys who represent Indian tribes.

Rule 3.10. Rules of Public Access to Records of the Judicial Branch

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

2015 Advisory Committee Comment

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

RULE 4. TIME; TIMELINES

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

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

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RULE 7. ACCESS TO ADOPTION CASE RECORDS AND BIRTH RECORD INFORMATION

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Rule 7.02. Petition to Access Adoption Case Records and Birth Record Information

Subd. 2. Service of Petition.

(a) **Request for Access to Identifying Information in Birth Record-Commissioner of Health.** Where access to identifying information in the birth record is sought, the court administrator shall serve the petition on the Commissioner of Health by U.S. mail or through the E-Filing System if the Commissioner has the resources and technical capacity to accept electronic service. Upon service of the petition on the Commissioner of Health, the Commissioner shall supply to the court any affidavit of notification it has from the Department of Human Services pursuant to Minn. Stat. § 259.89, and any other information the Commissioner of Health has regarding the legal basis for its refusal to disclose the requested information, including whether:

(1) the biological parent has consented to disclosure of identifying information in the adoption record or birth record;

(2) the biological parent has filed an affidavit objecting to the release of identifying information which remains unrevoked; and

(3) the biological parent is living or deceased.

(b) **Request for Access to Agency Records-Agency Supervising Adoptive Placement.** When access to records of the agency responsible for supervising the adoptive placement is requested, the court administrator shall serve the petition on the director of the agency by U.S. mail or through the E-Filing System if the agency has the resources and technical capacity to accept electronic service.

(c) **Other Persons.** The court may order the petition to be served on such other persons as are necessary to its determination regarding whether nondisclosure of the requested information is of greater benefit than disclosure. If the court orders service upon the biological parent when the biological parent's address is known to the Department or the agency, the court may order the Department or the agency to disclose the biological parent's name and address to the court administrator who shall maintain the information in a confidential manner and cause the petition to be served on the

biological parent in a confidential manner by certified U.S. mail designated "deliver to addressee only."

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RULE 10. ORDERS

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Rule 10.03. Service ~~Delivery; Mailing~~

Subd. 1. Court Orders–Persons to be Served and Method of Service. Service of court ~~Court~~ orders shall be made ~~delivered at the hearing or~~ by the court administrator upon ~~to~~ each party and such other persons as the court may direct. Service may be made personally at the hearing, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court. If a party is represented by counsel, ~~delivery or~~ service shall be upon such counsel. Filing and service ~~mailing~~ of an order by the court administrator shall be accomplished within ten (10) days of the date the judicial officer delivers the order to the court administrator.

Subd. 2. Adoption Decree–Persons to be Served and Method of Service. The findings of fact, conclusions of law, order for judgment, and adoption decree issued pursuant to Rule 45 shall be served by the court administrator personally at the hearing, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court upon ~~delivered at the hearing or by the court administrator to~~:

(a) each party;

(b) the Commissioner of Human Services for children who are:

(i) under guardianship of the Commissioner or a licensed child-placing agency according to Minnesota Statutes § 260C.201, subd. 11, or § 260C.317;

(ii) placed by the commissioner, commissioner's agent, or licensed child-placing agency after a consent to adopt according to Minnesota Statutes § 259.24,

or under an agreement conferring authority to place for adoption according to Minnesota Statutes § 259.25; or

(iii) adopted after a direct adoptive placement approved by the district court under Minnesota Statutes § 259.47;

(c) the Secretary of the Interior and the child's tribal social services agency, if the child is an Indian child; and

(d) such other persons as the court may direct.

If a party is represented by counsel, delivery or service shall be upon such counsel. Filing and service ~~mailing~~ of the adoption decree by the court administrator shall be accomplished within five (5) days of the date the judicial officer delivers the adoption decree to the court administrator. Upon request and payment of the applicable fee, the court administrator shall provide a certified copy of the adoption decree to persons entitled to receive a copy as permitted by statute or these rules.

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RULE 13. SUBPOENAS

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Rule 13.03. Service

A subpoena may be served by the sheriff, a deputy sheriff, or any other person over the age of eighteen (18) who is not a party to the proceeding. Service of a subpoena upon a person named in the subpoena shall be made by delivering a copy of the subpoena to the named person or by leaving a copy at the person's usual place of abode with a person of suitable age and discretion residing at such abode. Upon written agreement of the witness, a ~~A~~ subpoena may be served by U.S. mail, through the E-Filing System, or by e-mail or other electronic means ~~upon agreement of the witness~~.

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RULE 15. MOTIONS

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Rule 15.02. Service and Notice of Motion

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Subd. 2. How Made. Service of a motion by a Registered User of the E-Filing System upon another Registered User shall be made in compliance with Rule 14.03 of the General Rules of Practice for the District Courts. In all other circumstances, service of a motion shall be made by personal service, U.S. mail, or e-mail or other electronic means agreed upon in writing by the person to be served ~~may be made by personal service, by mail, or by transmitting a copy by facsimile transmission~~.

Subd. 3. Time.

(a) **Motion.** Except for motions pursuant to Rule 29, no motion shall be heard until the moving party serves ~~a copy of~~ the following documents on the other parties and files them ~~original~~ with the court ~~administrator~~ at least fourteen (14) days prior to the hearing:

(1) notice of motion and motion;

(2) proposed order;

(3) any affidavits and exhibits to be submitted in conjunction with the motion; and

(4) any memorandum of law the party intends to submit.

(b) **Response.** Any party responding to the motion shall serve ~~a copy of~~ the following documents on the moving party and other interested parties and shall file them ~~original~~ with the court ~~administrator~~ at least seven (7) days prior to the hearing:

(1) any memorandum of law the party intends to submit; and

(2) any relevant affidavits and exhibits.

* * * *

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

Rule 16.01. Signing of Pleadings, Motions, and Other Documents

Subd. 1. Party Represented by an Attorney. When a party is represented by an attorney, every pleading, motion, and other similar document filed with the court shall be personally signed by at least one attorney of record in the attorney's individual name and shall state the attorney's address, e-mail address, telephone number, and attorney registration number.

Subd. 2. Party Not Represented by an Attorney. A party who is not represented by an attorney shall personally sign the pleading, motion, or other similar document filed with the court and shall state the party's address, e-mail address if the party is a Registered User of the E-Filing System, and telephone number. If a party asserts that providing the address, e-mail address, and telephone number is not in the best interests of the child, the information ~~the address and telephone number~~ may be provided to the court in a separate informational statement and shall not be accessible to the public or to the parties. Upon notice of motion and motion, the court may disclose the address, e-mail address, and telephone number as it deems appropriate. Service of a motion by a Registered User of the E-Filing System upon another Registered User shall be made in compliance with Rule 14.03 of the General Rules of Practice. All other service of a motion shall be made by personal service, U.S. mail, or e-mail or other electronic means agreed upon in writing by the person to be served.

Subd. 3. Signing Constitutes Certification. Except when otherwise specifically provided by rule or statute, pleadings need not be verified by affidavit or accompanied by affidavit. The signature of an attorney or party constitutes a certification that:

(a) the pleading, motion, or other document has been read;

(b) to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, the pleading, motion, or other document is well-grounded in fact and

is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and

(c) it is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

~~When authorized by order of the Minnesota Supreme Court, t~~The filing, serving, or submitting of a document ~~using an~~ through the E-Filing System ~~established by order of the court~~ constitutes certification of compliance with the signature requirements of Rule 16~~these rules~~.

Rule 16.02. Sanctions

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

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RULE 19. SETTLEMENT

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Rule 19.03. Content of Settlement Agreement

Any settlement agreement shall include information that identifies:

(a) the parties to the agreement;

(b) the attorneys for the parties, if any;

(c) the judicial officer receiving the settlement;

(d) the date, time, and place the settlement was reached;

(e) any and all necessary statutory grounds and factual allegations to support the settlement agreement; and

(f) notarized signatures ~~and notarizations~~ of all parties to the settlement.

* * * *

RULE 20. PARTIES

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Rule 20.03. Parties' Addresses

It shall be the responsibility of the petitioner to set forth in the petition the names and addresses of all parties if known to the petitioner after reasonable inquiry. It shall be the responsibility of each party to inform the court administrator of any change of address or e-mail address; Registered Users of the E-Filing System shall also update any change of e-mail address in the E-Filing System. For good cause shown, the court may grant a party's request to keep the party's address confidential.

* * * *

RULE 25. METHODS OF FILING AND SERVICE

Rule 25.01. Types of Filing

Subd. 1. Generally; Electronic Filing. When a document is required to be filed electronically through the E-Filing System, the document shall be filed in accordance with Rule 14 of the General Rules of Practice for the District Courts. Otherwise, ~~A~~any document may be filed with the court ~~either~~ personally, by U.S. mail, electronically through the E-Filing System or by facsimile transmission. ~~When authorized by order of the Minnesota Supreme Court, documents may be filed electronically by following the procedures of that order and will be deemed filed in accordance with the provisions of that order~~.

Subd. 2. Filing by Facsimile Transmission. Any document not required to be filed electronically through the E-Filing System may be filed with the court by facsimile transmission. Filing shall be deemed complete at the time the facsimile transmission is received by the court. The facsimile shall have the same force and effect as the original. Only facsimile transmission equipment that satisfies the published criteria of the supreme court shall be used for filing in accordance with this rule.

* * * *

Rule 25.02. 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. Any social services reports or guardian ad litem reports may be served directly by the social worker and guardian ad litem. Whenever personal service is required under these rules, the court may authorize alternative personal service pursuant to Rule 25.02, subd. 5.

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

(b) **Service Outside United States.** Unless otherwise provided by law, service upon an individual, other than an infant or an incompetent person, may be effected in a place outside the United States:

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

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

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

(b) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(c) unless prohibited by the law of the foreign country, by:

(i) delivery to the individual personally of a copy of the summons and the complaint; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the court administrator to the person to be served; or

(3) by other means not prohibited by international agreement as may be directed by the court.

Subd. 2. U.S. Mail. Service by U.S. Mail means placing ~~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 substitutes for personal service when authorized by the court. Service by publication means the publication in full of the summons, notice of hearing, or other documents ~~papers~~ in the regular issue of a qualified newspaper, once each week for the number of weeks specified pursuant to Rule 31.04, subd. 2. ~~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 diligent ~~unsuccessful~~ efforts to locate the person ~~party~~ to be served. Service by publication shall be completed by the petitioner in a location approved by the court. The published summons shall be directed to the person for whom personal service was not accomplished and shall not include the child's name or initials. ~~If the summons is required to be published, the case caption shall identify the~~

~~child by the child's initials rather than by full name.~~ In cases involving an Indian child, if the identity or location of the parent or Indian custodian and the child's Indian tribe cannot be determined, the summons and petition shall be served upon the Secretary of the Interior pursuant to 25 U.S.C. § 1912.

~~**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. 4~~5~~. Electronic Service. When authorized ~~by order of the Minnesota Supreme Court~~ or required by Rule 14 of the General Rule of Practice, documents, except those required by these rules to be served personally or by registered U.S. mail return receipt requested, may, or where required, shall be served ~~by~~ electronically ~~means other than facsimile transmission~~ by following the procedures of that ~~order~~ rule and will be deemed served in accordance with the provisions of that ~~order~~ rule.

Subd. 5. Alternative Personal Service.

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

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

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

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

2015 Advisory Committee Comment

Rule 25.02, subd. 5, 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 25.03. Service by ~~Facsimile Transmission~~ Electronic Means

Unless these rules require personal service or service through the E-Filing System, any document may be served by ~~facsimile transmission~~ e-mail or other electronic means upon written or on the record agreement of the person to be served ~~parties. The facsimile shall have the same force and effect as the original.~~

2015 Advisory Committee Comment

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

* * * *

Rule 25.06. Completion of Service

Personal service is complete upon delivery of the document. Service by U.S. mail is complete upon mailing to the last known address of the person to be served. ~~Service~~

~~by facsimile is complete upon completion of the facsimile transmission.~~ Completion of service by electronic means is governed by Rule 14.03(e) of the Minnesota Rules of General Practice for the District Courts. ~~Service through the E-Filing System is complete upon completion of the electronic transmission to the E-Filing System.~~

2015 Advisory Committee Comment

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

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RULE 29. DIRECT PLACEMENT ADOPTION

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Rule 29.03. Content

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Subd. 2. Emergency Direct Placement. In an emergency situation, a notice of motion and motion for a preadoptive custody order in a direct placement adoption shall be in writing and shall contain or have attached:

(a) affidavits from the prospective adoptive parents and biological parents stating that an emergency order is needed because of the unexpected premature birth of

the child or other extraordinary circumstances which prevented the completion of the requirements under subdivision 1;

(b) affidavits from the biological parents stating their support of the motion or, if there is no affidavit from the biological father, an affidavit from the biological mother that describes her good faith efforts, or efforts made on her behalf, to identify and locate the biological father for purposes of securing his consent. In the following circumstances the biological mother may instead submit an affidavit stating on which of the following grounds she is exempt from making efforts to identify and locate the father:

(1) the child was conceived as the result of incest or rape;

(2) efforts to locate the father by the affiant or anyone acting on the affiant's behalf could reasonably result in physical harm to the biological mother or child; or

(3) efforts to locate the father by the affiant or anyone acting on the affiant's behalf could reasonably result in severe emotional distress of the biological mother or child;

(c) a statement that the biological parents:

(1) have received the written statement of their legal rights and responsibilities prepared by the Department of Human Services; and

(2) have been notified of their right to receive counseling; and

(d) either:

(1) the adoption study report pursuant to Rule 37; or

(2) ~~sworn~~ affidavits stating whether the prospective adoptive parents or any person residing in the household have been convicted of a crime.

*** * * ***

RULE 30. INTERCOUNTRY ADOPTIONS

Rule 30.01. Adoption of a Child by a Resident of Minnesota Under the Laws of a Foreign Country

Subd. 1. Validity of a Foreign Adoption. The adoption of a child by a resident of Minnesota under the laws of a foreign country is valid and binding under the laws of Minnesota if the validity of the foreign adoption has been verified by the granting of an IR-3 or IH-3 visa for the child by the United States Citizenship and Immigration Services.

Subd. 2. New Birth Record.

* * * *

(b) **Documents to be Submitted.** The court shall issue the decree described in subdivision 2(a) upon receipt of the following documents:

(1) a ~~signed, sworn, and notarized~~ petition signed by the adoptive parent under oath or penalty of perjury under Minnesota Statutes § 358.116 ~~by the adoptive parent~~:

(i) stating that the adoptive parent completed the adoption of the child under the laws of a foreign country;

(ii) stating that the adoption is valid in this state under Rule 30.01; and

(iii) requesting that the court issue a decree confirming and recognizing the adoption and authorizing the Commissioner of Health to issue a new birth record for the child;

(2) a copy of the child's original birth record, if available;

(3) a copy of the final adoption certificate or equivalent as issued by the foreign jurisdiction;

(4) a copy of the child's passport, including the United States visa indicating IR-3 or IH-3 immigration status; and

(5) a certified English translation of any of the documents listed in (2) through (4) above.

* * * *

Rule 30.03. Post-Adoption Report

If a child is adopted by a resident of Minnesota under the laws of a foreign country or if a resident of Minnesota brings a child into the state under an IR-3, IH-3, ~~or~~ IR-4, or IH-4 visa issued for the child by the United States Citizenship and Immigration Services, the post-adoption reporting requirements of the country in which the child was adopted, applicable at the time of the child's adoption, shall be given full faith and credit by the courts of Minnesota and apply to the adoptive placement of the child.

RULE 31. NOTICE OF FINAL HEARING OR TRIAL

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Rule 31.04. Service of Notice of Hearing

Subd. 1. Timing. A notice of hearing shall be served, within or without the state, at least fourteen (14) ~~ten (10)~~ days before the date of a final hearing in an uncontested matter and at least thirty (30) days before the date of the commencement of the trial in a contested matter.

~~Subd~~. 2. Method of Service-Parent.

(a) Generally.

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

~~(b)~~(2) **Service by Publication.** If personal service cannot be made upon the parent, the petitioner or petitioner's attorney shall file an affidavit setting forth the diligent effort that was made to locate the parent, and the names and addresses of the known kin of the child. If satisfied that the parent cannot be served personally, the court shall order three (3) weeks of published notice to be given pursuant to Rule 25.02, subd. 3, the last publication to be at least ten (10) days before the date set for the hearing. Service by publication shall be completed by the petitioner in a location approved by the court. Where service is made by publication, the court may cause such further notice to be given as it deems just. If, in the course of the proceedings, the court determines that the interests of justice will be promoted, it may continue the proceeding and require that such notice as it deems proper shall be served on any person. In the course of the

proceedings the court may enter reasonable orders for the protection of the child if the court determines that the best interests of the child require such an order.

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

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

Subd. 5~~3~~. Method of Service–Others~~U.S. Mail~~.

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

(b) The petitioner shall serve the notice of hearing by U.S. mail upon the child's guardian ad litem; the child, if age ten (10) or older; the child's Indian custodian, if the child is an Indian child; the child's legal custodian or legal guardian, if other than the Commissioner of Human Services; any person who has intervened as a party; any person who has been joined as a party; the responsible social services agency; and any person who has timely complied with the requirements of Minnesota Statutes § 259.52.

~~**Subd. 4. Registered Mail.** The petitioner shall serve the notice of hearing by registered mail with return receipt requested upon the Indian tribe if the child is an Indian child.~~

2015 Advisory Committee Comment

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

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RULE 34. COMMUNICATION OR CONTACT AGREEMENT

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Rule 34.06. Service of Order

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

* * * *

RULE 35. PETITION

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

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Rule 35.05. Content

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Subd. 6. Missing Information. If any information required by subdivision 2 or 3 is unknown at the time of the filing of the petition, as soon as such information becomes known to the petitioner it shall be provided to the court and parties either orally on the record, by ~~sworn~~ affidavit, or by amended petition. If presented orally on the record, the court shall annotate the petition to reflect the updated information.

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RULE 37. ADOPTION STUDY AND BACKGROUND STUDY

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Rule 37.03. Direct Placement Adoption; Background Study Incomplete

Unless otherwise ordered by the court, in a direct placement adoption the child may be placed in the preadoptive home prior to completion of the background study if each prospective adopting parent has completed and filed with the court an ~~sworn~~ affidavit stating whether the affiant or any person residing in the household has been convicted of a crime. The affidavit shall also: . . . . .

* * * *

RULE 38. POST-PLACEMENT ASSESSMENT REPORT

Rule 38.01. Timing

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Subd. 2. Failure to Comply. If, through no fault of the petitioner, the agency fails to complete the assessment and file the report within ninety (90) days of the date it

received a copy of the adoption petition, the court may hear the petition upon giving the agency five (5) days' notice ~~by mail~~ of the time and place of the hearing.

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RULE 49. VENUE

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Rule 49.03. Transfer of Venue Procedures

(a) Transfer of Venue. If the court grants a motion to transfer venue to another county, the court shall do so by ordering a continuance and providing all documents filed in the adoption proceeding to the other court through the court information system ~~by forwarding to the court administrator of the appropriate court a certified copy of all papers filed, together with an order of transfer~~. The transferring court also shall provide copies of the order of transfer to the Commissioner of Human Services and any agency participating in the proceedings. The judge of the receiving court shall accept the order of the transfer and any other documents transmitted and hear the case.

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

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AMENDMENTS TO THE RULES OF GUARDIAN AD LITEM PROCEDURE

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

RULE 901. SCOPE OF RULES; IMPLEMENTATION

Rule 901.01. Scope of Rules

These Rules govern the appointment, responsibilities, and removal of guardians ad litem appointed to advocate for the best interests of the child, minor parent, or incompetent adult in family and juvenile court cases. These Rules do not govern the appointment of a guardian ad litem under Minnesota Rules of Civil Procedure 17.02 in child support and paternity matters. These Rules also do not govern guardians ad litem appointed pursuant to Minnesota Statutes §§ 245.487-.4888, chapter ~~§~~ 253B, § 256B.77, §§ 494.01-494.05, § 501B.19, § 501B.50, § 508.18, §§ 524.1-403, and § 540.08.

For purposes of Rules 902 to 907:

(a) The phrase "family court case" refers to the types of proceedings set forth in the Comment to Rule 301 of the Minnesota Rules of Family Court Procedure, including, but not limited to, marriage dissolution, legal separation, and annulment proceedings; child custody enforcement proceedings; domestic abuse and harassment proceedings; support enforcement proceedings; contempt actions in family court; parentage determination proceedings; and other proceedings that may be heard or treated as family court matters.

(b) The phrase "juvenile court case" refers to the juvenile ~~child~~ protection matters set forth in Rule 2.01~~(k)~~ of the Minnesota Rules of Juvenile Protection Procedure, including all of the following matters: child in need of protection or services, neglected and in foster care, termination of parental rights, review of out of home placement, and other matters that may be heard or treated as child protection matters; guardianship and adoption proceedings. The phrase "juvenile court case" also refers to the juvenile delinquency matters ~~proceedings~~ set forth in Rule 1.01 of the Minnesota Rules of Juvenile Delinquency Procedure.

~~**2004 Advisory Committee Comment – 2006 Amendment**~~

~~The previous Rules of Guardian Ad Litem Procedure also addressed the qualifications, recruitment, screening, training, selection, supervision, and evaluation of guardians ad litem. The administration and oversight of these issues is now the responsibility of the Office of the State Court Administrator. The issues are now included in a Program Standards manual. It is the responsibility of the Office of the State Court Administrator to prepare that manual, with the advice and consent of the Judicial Council. The minimum standards set forth in the previous rules are to be maintained in the manual, together with the procedures governing complaints about the performance of a guardian ad litem. Also to be included in the manual are standards regarding knowledge and appreciation of the prevailing social and cultural standards of the Indian and other minority communities. The manual is to be published in both print and electronic forms and is available to the public on the Guardian Ad Litem page of the Judicial Branch website: www.mncourts.gov.~~

2015 Advisory Committee Comment

Minnesota Statutes § 480.35 created the State Guardian ad Litem Board effective July 1, 2010. At that time, administration and oversight of the qualifications, recruitment, screening, training, selection, supervision, and evaluation of guardians ad litem transferred from the Office of the State Court Administrator to the State Guardian ad Litem Board. These administrative and oversight procedures are now addressed in the Guardian ad Litem Program Requirements and Guidelines (Non-statutory), formerly titled the Guardian Ad Litem System Program Standards or Program Standards manual. It is the responsibility of the Board to prepare the Requirements and Guidelines (Non-statutory). The minimum standards set forth in the previous rules are to be maintained in the Requirements and

Guidelines (Non-statutory), along with procedures governing complaints about the performance of a guardian ad litem. Also included are standards regarding knowledge and appreciation of the prevailing social and cultural standards of Indian and other minority communities. The Requirements and Guidelines (Non-statutory) are published in both print and electronic formats and are available to the public on the State Guardian ad Litem Board website http://mn.gov/guardian-ad-litem.

Rule 901.02. Implementation

The State Guardian ad Litem Board ~~chief judge of the judicial district~~ shall be responsible for insuring the implementation of the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court. The responsibilities set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court shall be carried out ~~in each judicial district~~ at the direction of the Program Administrator ~~judicial district administrator~~.

RULE 902. MINIMUM QUALIFICATIONS

Before a person may be recommended for service as a guardian ad litem pursuant to Rule 903, the person must satisfy the minimum qualifications set forth in the Guardian ad ~~Ad~~ Litem Program Requirements and Guidelines (Non-statutory) System Program Standards as established by the State Guardian ad Litem Board ~~Office of the State Court Administrator with the advice and consent of the Judicial Council~~. The Requirements and Guidelines (Non-statutory) ~~Program Standards~~ shall be published in print and electronic forms and be available to the public.

~~2006 Advisory Committee Comment~~

~~The Guardian Ad Litem Program Standards are available on the Guardian Ad Litem Program page located on the Supreme Court's public website: www.mncourts.gov.~~

2015 Advisory Committee Comment

The Guardian ad Litem Requirements and Guidelines (Non-statutory), formerly titled the Program Standards, are available on the State Guardian ad Litem Board website http://mn.gov/guardian-ad-litem.

RULE 903. APPOINTMENT OF GUARDIAN AD LITEM

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Rule 903.02. Juvenile Court Appointment

Subd. 1. Generally. A guardian ad litem shall not be appointed or serve except upon written order of the court. The order shall set forth:

(a) the statute or rule providing for the appointment of the guardian ad litem;

(b) the provisions for parental fee collection as applicable under Minnesota Statutes §§ 260B.331, subd. 6(a), and 260C.331, subd. 6(a), and as established by the State Guardian ad Litem Board ~~Judicial Council~~, and

(c) in an adoption proceeding, authorization for the guardian ad litem to review and receive a copy of the adoption study report under Rule 37 of the Rules of Adoption Procedure and the post-placement assessment report under Rule 38 of the Rules of Adoption Procedure to the extent permitted by Minnesota Statutes § 259.53, subd. 3.

If the court has issued an order appointing a person as a guardian ad litem in a child in need of protection or services proceeding, the court may, but is not required, to issue an order reappointing the same person in the termination of parental rights or other permanent placement determination proceeding. An order is required only if a new person is being appointed as guardian ad litem.

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Rule 903.03. Family Court Appointment

A guardian ad litem shall not be appointed or serve except upon written order of the court. The order shall set forth:

(a) the statute or rule providing for the appointment of the guardian ad

litem;

(b) the specific duties to be performed by the guardian ad litem in the case;

(c) to the extent appropriate, deadlines for the completion of the duties set forth;

(d) to the extent appropriate~~;~~, the duration of the appointment; and

(e) the provisions for parental fee collection as applicable under Minnesota Statutes §§ 257.69, subd. 2(a), and 518.165, subd. 3(a), and as established by the State Guardian ad Litem Board ~~Judicial Council~~.

Rule 903.04. Other Roles Precluded

Subd. 1. Generally. A guardian ad litem under the supervision of the State Guardian ad Litem Board~~Office of the State Court Administrator~~ shall not be ordered to, and shall not perform, the following roles in a case in which the person serves as a guardian ad litem:

(a) custody evaluator pursuant to Minnesota Statutes § 518.167; or

(b) parenting time evaluator; or

(c) parenting time consultant; or

(d) family group decision making facilitator; or

(e) early neutral evaluator; or

(f) mediator, as that role is prescribed in Minnesota Statutes § 518.619 and Rule 310 of the ~~Minnesota~~ General Rules of Practice for the District Courts ~~of Family Court Procedure~~; or

(g) arbitrator or individual authorized to decide disputes between parties; or

(h) parenting time expeditor, as that role is prescribed in Minnesota Statutes §§ ~~518.619 and~~ 518.1751; or

(i) substitute decision-maker under Minnesota Statutes § 253B.092; or

(j) evaluator charged with conducting a home study under Minnesota Statutes §§ 245A.035 or § 259.41; or

(k) attorney for the child.

Subd. 2. Roles Distinguished. Nothing in this rule shall prevent a properly qualified person who also serves in other cases as a guardian ad litem from serving in any of the roles in subdivision 1 on a privately-paid basis. A guardian ad litem under the supervision of the State Guardian ad Litem Board~~Office of the State Court Administrator~~ is not the same as a mediator, arbitrator, facilitator, custody evaluator, or neutral as those titles and roles are described in Rule 114 of the ~~Minnesota~~ General Rules of ~~General~~ Practice for the District Courts.

RULE 904. ~~COMPLAINT PROCEDURE;~~ REMOVAL OR SUSPENSION OF GUARDIAN AD LITEM FROM PARTICULAR CASE

Rule 904.01. Use of Complaints and Investigation Reports ~~Complaint Procedure~~

~~Complaints about the performance of a guardian ad litem shall be governed by procedures and policies set forth in the Guardian Ad Litem System Program Standards established by the Office of the State Court Administrator with the advice and consent of the Judicial Council.~~ Unless offered into evidence by the guardian ad litem or authorized by written order following an *in camera* review by the court, neither any ~~the~~ complaints about the performance of a guardian ad litem, nor any reports of any investigation of such complaints, ~~and complaint investigation reports~~ shall ~~not~~ be received as evidence or used in any manner in any proceeding governed by these Rules.

Rule 904.02. Removal or Suspension of a Guardian Ad Litem From Particular Case

~~**Subd. 1.**~~ A guardian ad litem appointed to serve in a particular case may be removed or suspended from the case only by order of the presiding judge. Removal or suspension may be upon initiation of the presiding judge or after hearing upon the motion of a party pursuant to~~subdivision 2 of this~~ Rule 904.03.

Rule 904.03. Motion to Remove Filed by Party

~~**Subd. 2.**~~ A party to the case who wishes to seek the removal or suspension of a guardian ad litem for cause must proceed by written motion before the judge presiding over the case. A motion to remove or suspend a guardian ad litem for cause shall be served upon the parties and the guardian ad litem and filed and supported in compliance with the applicable rules of court. At the time the motion is served, a copy of the motion and all supporting documents shall be provided to the district guardian ad litem manager by the party making the motion.

Rule 904.04. Mandatory Removal By Presiding Judge

~~**Subd. 3.**~~ The presiding judge shall remove a guardian ad litem from a particular case:

(a) when it is shown by written communication from the district guardian ad litem manager or the manager's designee that the ~~individual is a contract guardian ad litem who does not have a current contract with the State of Minnesota, or the~~ guardian ad litem has been removed from the state program for cause; or

(b) upon notice of any felony, gross misdemeanor, or misdemeanor conviction of the guardian ad litem of an offense involving children or domestic assault; or

(c) upon notice of a finding by the Minnesota Department of Human Services of maltreatment of a child by the guardian ad litem.

Rule 904.05. Permissive Removal By Presiding Judge

~~**Subd. 4.**~~ The presiding judge may remove or suspend a guardian ad litem from a particular case:

(a) for failure to comply with a directive of the court, including provisions of the order appointing the guardian ad litem; or

(b) for failure to comply with the responsibilities set forth in these Rules; or

(c) upon notice of formal sanction of the guardian ad litem by any professional or occupational licensing board; or

(d) upon formal request from the district guardian ad litem program for good cause; or

(e) for other good cause shown.

As an alternative to removal or suspension from a specific case, the presiding judge may ask the district guardian ad litem manager to provide appropriate remedial action for the guardian ad litem.

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