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REPORT TO THE MINNESOTA SUPREME COURT  
FROM  
THE SUPREME COURT ADVISORY COMMITTEE ON  
RULES GOVERNING ACCESS TO RECORDS OF THE JUDICIARY

AUGUST 17, 1987

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TABLE OF CONTENTS

INTRODUCTION AND RECOMMENDATION.....	1
DISCUSSION OF PROPOSED RULES.....	2
PROPOSED RULE 1.....	2
PROPOSED RULE 2.....	5
PROPOSED RULE 3.....	6
PROPOSED RULE 4.....	8
PROPOSED RULE 5.....	17
PROPOSED RULE 6.....	21
PROPOSED RULE 7.....	21
PROPOSED RULE 8.....	21
PROPOSED RULE 9.....	21

APPENDIX

PROPOSED RULES.....	A-1
INTERIM RULES.....	A-11

## INTRODUCTION AND RECOMMENDATION

This advisory committee was established by the Court for the purpose of studying the operation of the Interim Rules on Access to Public Records and making recommendations concerning the need for their revision. In addition to analyzing the Interim Rules, the committee also examined the various records maintained by the court system and received comments from media representatives and court personnel. As a result of this study, the advisory committee submits the proposed rules set forth in the appendix to this report and recommends that they be adopted as a replacement for the Interim Rules.<sup>1</sup>

Perhaps the most significant difference between the proposed rules and the Interim Rules is the format. For example, the long list of inaccessible records set forth in Interim Rule 3, subdivision 2 has been organized into three categories: case

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<sup>1</sup> For the convenience of the Court and the public, a copy of the Interim Rules is also set forth in the appendix to this report.

The committee examined the background and history of the Interim Rules, as well as other public access laws, including the Minnesota Government Data Practices Act (Minn. Stat. c. 13), the Uniform Information Practices Code (drafted by the National Conference of Commissioners on Uniform State Laws and approved at the July 25 - August 1, 1980 annual conference; to date, this act has not been adopted by any of the fifty states), and the federal Freedom of Information and Privacy Acts (5 U.S.C. §§ 552, 552a). The committee favored the approach embodied in the Interim Rules and attempted to refine that approach.

records; administrative records; and vital statistics records.<sup>2</sup> For each category there is a separate appendix listing federal and state laws that govern access to the records. In addition, the proposed rules begin with an explanation of their scope,<sup>3</sup> followed by a policy statement which also serves as a roadmap for the rules.<sup>4</sup> The committee believes that this format will make it easier for both the public and court personnel to locate pertinent provisions.

It should be noted that this report also contains a minority proposal regarding the appropriate procedure for restricting access to case records.<sup>5</sup> It is possible that representatives of both the majority and minority may wish to provide supplemental comments on this issue.

#### PROPOSED RULE 1

The scope of the proposed rules is set forth in rule 1.

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<sup>2</sup> Proposed rules 4,5,and 6, respectively.

<sup>3</sup> Proposed rule 1.

<sup>4</sup> Proposed rule 2.

<sup>5</sup> See pages 10 to 17 of this report.

Executive branch agencies, including the Tax Court<sup>6</sup> and the Workers' Compensation Court of Appeals,<sup>7</sup> appear to be beyond the scope of the inherent and statutory rulemaking authority of the Supreme Court.<sup>8</sup> The committee felt that it was necessary to point this out in the rules as the public commonly associates these agencies with the judicial branch.

Whether court services departments fall within the scope of the rulemaking authority is unclear, as the delivery of these services can take on many forms.<sup>9</sup> The committee agreed that a single set of access standards should apply to all court services departments. By referring to section 13.84, proposed rule 1 establishes comprehensive, uniform access standards and obviates the need to determine the status of the various court services

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<sup>6</sup> Minn. Stat. § 271.01, subd. 1.

<sup>7</sup> Minn. Stat. § 175A.01, subd. 1.

<sup>8</sup> According to the statutory provision that authorizes the Court to promulgate rules regarding access to records of the judiciary, the term "judiciary" means "any office, officer, department, division, board, commission, committee, or agency of the courts of this state, whether or not of record, including but not limited to the board of law examiners, the lawyer's professional responsibility board, the board of judicial standards, the lawyer's trust account board, the state law library, the state court administrator's office, the district court administrator's office, and the office of the court administrator." Minn. Stat. § 13.90, subd. 1.

<sup>9</sup> See, e.g., Minn. Stat. §§ 241.31, subd. 1; 260.311; 401.02, subd. 3.

departments and personnel.

The accessibility to records of the various Boards and Commissions of the Supreme Court is clearly within the Court's rulemaking power,<sup>10</sup> as evidenced by existing procedural and administrative rules.<sup>11</sup> Unlike the proposed rules or the Interim Rules, however, some of these procedural and administrative rules are constructed around a presumption of inaccessibility.<sup>12</sup> This, coupled with the rigor of examining the records and practices of each of the Boards and Commissions, convinced the committee to exclude these records from the scope of the proposed rules. The nonexclusive list of Boards and Commissions set forth in Appendix A of the proposed rules clarifies the scope of this exclusion.

Proposed rule 1 also explains that accessibility to records of the Boards and Commissions is governed by "independent rules promulgated or approved" by the Supreme Court. These rules are generally published, while policies of the Boards and Commissions may not be. Publication provides notice to the public. The proposed rule also recognizes that ultimately, it is up to the

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<sup>10</sup> See, e.g., Minn. Stat. §§ 13.90; 480.05.

<sup>11</sup> See, e.g., Rule 5, Minn. Rules of the Board on Judicial Standards; Rule 20, Minn. Rules on Lawyers Professional Responsibility.

<sup>12</sup> Id.

Supreme Court, not the Boards and Commissions, to determine whether particular records are inaccessible to the public. Thus, proposed rule 1 contemplates that the Court would incorporate the provisions of Interim Rule 3, subdivision 2 (o) and (p) into existing rules governing the Board of Law Examiners and The Interest on Lawyers Trust Account program, respectively, assuming that the Court wishes to continue these provisions.

Finally, proposed rule 1 recognizes that the court system does not retain records or exhibits indefinitely. Exhibits are often returned to litigants while records with historical value may be transferred to the State Historical Society's archives.<sup>13</sup>

#### PROPOSED RULE 2

Proposed rule 2 continues the policy, established by Interim Rule 2, that records are presumed to be accessible to the public. The rule points out that there are exceptions to this policy and directs the reader to the three categories of exceptions set forth in rules 4, 5, and 6. The rule also contains the traditional proviso that records that are inaccessible to the public may be made accessible by order of a court.<sup>14</sup>

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<sup>13</sup> Once transferred to archives, accessibility to a record is governed by Minnesota Statutes, section 138.17. Minn. Stat. § 13.03, subd. 7.

<sup>14</sup> See, e.g., the provisions listed in Appendices B, C, and D of the proposed rules. This clause permits a court to issue orders authorizing, among other things, the discovery of otherwise inaccessible records (cf. Minn. Stat. § 13.03, subd.

### PROPOSED RULE 3

Proposed rule 3 defines the terms used in the rules. The limitations on the scope of the rules are reinforced by the definition of the term "court," which is limited to tribunals established as a part of the judicial branch.

The scope of the rules is also limited by the definition of the term "records," which encompasses " any recorded information that is collected, created, received, maintained or disseminated by a court or court administrator." Documents that have not been filed or otherwise collected or received by a court or court administrator are excluded from the scope of the rules. Accessibility to these documents would require access to lawyer's offices, which is a step that the committee was unwilling to take.<sup>15</sup>

The term "record" would include, for example, documents

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6), and the preparation of summary data. Cf. Minn. Stat. §§ 13.03, subd. 19; 13.05, subd. 7.

<sup>15</sup> If these documents were included within the scope of the rules, a provision making them inaccessible to the public would be necessary. The committee felt that such a provision would be viewed by some attorneys as an absolute restriction on their ability to release these documents to the press and the public.



submitted directly to a judge in support of a motion. It would also include court reporter's stenographic notes that have been filed with a court administrator. However, many court reporters, and in particular freelance reporters, claim that they own the notes; they store the notes themselves, instead of filing them with the court administrator.<sup>16</sup> When these reporters retire and relocate, the notes are unavailable and no transcript can be prepared. The committee concluded that it could not resolve the ownership issue within the context of the proposed rules.<sup>17</sup> Nevertheless, the committee felt that it would be useful to clarify a court reporter's responsibility to make the notes available to the court for the preparation of a transcript.

The term "record" is not synonymous with "file," as a file may contain many records. Case files often contain both records that are accessible to the public and records that are

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<sup>16</sup> The statutes currently require that as soon as a trial is ended the reporter shall file a stenographic report or a tape recording of it, "with the court administrator, or elsewhere, if the judge shall so direct." Minn. Stat. § 486.03.

<sup>17</sup> The committee also learned that notes that are available in court administrator's offices are often unorganized and unindexed. Electronic recordings may also be unavailable due to failure to retain a tape or the inability to locate a particular proceeding within a tape or set of tapes. The Conference of Chief Judges and Assistant Chief Judges has been requested to examine these availability and ownership issues. Memorandum from Sue K. Dosal, State Court Administrator, to Stephen E. Forestell, Staff to the Administration Committee of the Conference, dated February 9, 1987.

inaccessible to the public.<sup>18</sup> Under the proposed rules, the public has a right of access to the former.

The three categories of records set forth in proposed rule 3, subdivision 5, (a)-(c), correspond to proposed rules 4, 5, and 6. Each rule lists records within a category that are inaccessible to the public.

#### PROPOSED RULE 4

Case records that are inaccessible to the public are listed in proposed rule 4, subdivision 1, (a)-(f). Part (a), Domestic Abuse Records, is identical to Interim Rule 3, subdivision 2(a), which was taken from Minnesota Statutes, section 13.80. This provision is necessary as chapter 13 no longer applies to the judiciary.<sup>19</sup>

Part (b), Court Services Records, recognizes that court services departments aren't the only repository of court services records; many of these end up in case files. Traditionally,

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<sup>18</sup> The committee chose not to use the term "public record" to denote records that are accessible to the public as that term dilutes the distinction between public ownership and public accessibility. Instead, the committee chose the term "accessible [or inaccessible] to the public."

<sup>19</sup> Minn. Stat. § 13.90, subd. 2.

court administrators have considered these records inaccessible to the public. This has not been made clear, however, in existing statutes or court rules.<sup>20</sup> This provision was modeled after Minnesota Statutes, section 13.84, subdivision 6.

Part (c), Judicial Work Products and Drafts, is taken from Interim Rule 3, subdivision 2(f). The phrase "used in the process of preparing a final decision or order" encompasses all research performed by a judge or a law clerk, unless that research becomes a part of the decision or order, e.g. by incorporation or attachment. The word "final" as used in the context of this rule means simply that the decision or order is not a preliminary draft.

Under part (d) of proposed rule 4, subdivision 1, accessibility to trial court criminal and juvenile case records is governed by existing procedural rules.<sup>21</sup> Part (d) also provides a consistent standard of accessibility to juvenile matters at the appellate and trial court levels.<sup>22</sup> This

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<sup>20</sup> See, e.g., Minn. R. Crim. P. 20.02 (mental illness defense examination report); Minn. Stat. § 253B.07 (commitment proceedings; exam reports).

<sup>21</sup> Minn. R. Crim. P. 25, 26.03, subd. 6, 34; Minn. R. P. Juv. Ct. 34, 64.

<sup>22</sup> The appellate court file in juvenile matters has traditionally been accessible to the public. This inconsistency has not been viewed as a problem in recent years. One reason may be that the appellate courts have adopted an informal policy of

appellate provision may not be necessary, however, as the legislature has recently enacted essentially the same provision.<sup>23</sup> Nevertheless, the committee felt that it should indicate its position and give the Supreme Court an opportunity to accept or reject it by placing the matter in front of the Court in a proposed rule.

Part (e) incorporates all other case records that are made inaccessible to the public pursuant to statute. To account for oversights and future enactments, the list in Appendix B is nonexclusive. Part (f) recognizes that access to civil case records can be restricted by court order.

The procedure for restricting access to case records is discussed in proposed rule 4, subdivision 2, and the accompanying note citing pertinent rules and cases. The committee recognized

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identifying juveniles by initials only, as have a number of appellate practitioners. In addition, several local newspapers have gone a step farther and do not print either names or initials. The committee considered, but rejected, a rule that limited the inaccessibility to a juvenile's name only, rather than the entire file. The administrative burden of sorting and screening all of the documents is too great for the appellate court clerk's office to handle.

<sup>23</sup> 1987 Minn. Laws c. 331, § 4, amends Minn. Stat. § 260.161, subd. 2, to the effect that "none of the records relating to an appeal from a nonpublic juvenile court proceeding, except the written appellate opinion, shall be open to public inspection or their contents disclosed except...by order of a court... "

that, in regard to criminal case records, the appropriate procedure already exists.<sup>24</sup> The majority felt that although a comprehensive procedure for civil case records is desirable, such a procedure should be made a part of the rules of civil procedure rather than a part of the proposed rules on access. Thus, the majority recommends that the advisory committee on the rules of civil procedure be requested to consider the adoption of the following rule as a part of the rules of civil procedure:

RULE \_\_. RESTRICTING PUBLIC ACCESS TO RECORDS.

This rule shall govern the issuance of any court order restricting public access to civil case records deemed accessible to the public pursuant to the Rules on Access to Records of the Judiciary. Where a restrictive order is sought in connection with discovery, this rule shall be applied, where practicable, in a manner consistent with the provisions of rule 26(c) of these rules.

Subd. 1. Motion and Notice. A restrictive order may be issued only upon motion and after notice and hearing. The motion and notice shall be subject to the provisions of Rules 5.01, 6.04, and 7.02 of these rules.

Subd. 2. Hearing.

- (a) At the hearing, the moving party shall have the burden of establishing a factual basis for the issuance of the order under the conditions specified in part (b) of this subdivision.
- (b) The court may issue a protective order under this rule upon a finding that:
  - (1) The moving party has shown strong countervailing reasons

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<sup>24</sup> Minn. R. Crim P. 25.

why access to the records should be restricted and has therefore overcome the presumption in favor of access; and

- (2) The interests asserted for restricting access to the records outweigh the interests favoring access.

In determining the strength of the interests favoring access, the court should consider, among other things: (i) the presumption in favor of access; (ii) the public nature of the case; (iii) the type of information involved - pretrial discovery documents or trial exhibits; (iv) if a final determination has been made, the degree to which the trial court relied on the records in reaching its decision; and (v) alternatives less restrictive than the proposed order, including deleting identities or other protected information from the records before release and limiting the restrictive order to the period of time necessary to accomplish the goals of the order.

In determining the strength of the interests asserted for restricting access, the court should consider, among other things: (i) the likelihood of interference with the fair and impartial administration of justice; (ii) the burden that alternatives less restrictive than the proposed order will impose on the court and the litigants; (iii) the likelihood of danger to persons or property; and (iv) the likelihood of revealing a common law trade secret or a trade secret as defined in M.S.A. 325C.01.

- (c) The hearing may be closed to the

public only to the extent that closure is necessary inform the court of the nature of the information sought to be protected. The court shall hear and decide openly all matters which do not present the risk of revealing the information sought to be protected.

- (d) A verbatim record shall be made of the hearing.

Subd. 3. Findings. The court must make written findings of facts and statement of the reasons supporting the conclusions upon which an order granting or denying the motion is based.

Subd. 4. Modification. A restrictive order may be modified or terminated only upon order of the court and upon written findings in support thereof.

This proposal is based on the Court's recent decision in Minneapolis Star and Tribune v. Schumacher,<sup>25</sup> which held that the public has a common law right, not a constitutional right, to inspect and copy settlement documents and related records.<sup>26</sup> The above proposal would extend the holding to other civil case records. Subdivision 1 of the above proposal does not require that the media be notified of a proposed order. Subdivision 2(b)(2) of the above proposal includes a number of factors that the committee felt were relevant to a determination of whether to seal a particular civil case record. The above proposal also contemplates that persons challenging a trial court's order sealing a civil file may move to intervene as of right under the

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<sup>25</sup> 392 N.W.2d 197 (Minn. 1986).

<sup>26</sup> Id. at 203.

rules of civil procedure.<sup>27</sup>

The minority of the committee felt that the public has the same right of access to civil case records as it has to criminal case records. The minority proposes that the Court adopt a single rule governing access to all case records and that this rule be a part of the Court's rules on access rather than a part of the rules of civil and criminal procedure. The minority's proposal would be a substitute for rule 4, subdivision 2 of the proposed rules set forth in the appendix to this report, and would provide as follows:

Subd. 2. Restrictive Orders. Any case record deemed accessible to the public by these rules may be the subject of a court order restricting access to the records which shall be governed by the following:

(a) Motion and Notice.

- (1) A restrictive order may be issued only upon motion and after notice of hearing.
- (2) Notice of the hearing shall be given in the time and manner and to such interested persons, including the news media, as the court may direct.

(b) Hearing.

- (1) At the hearing, the moving party shall have the burden of establishing a factual basis for the issuance of the order under the conditions specified in Section (c).

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<sup>27</sup> Id. at 207; Minn. R. Civ. P. 24.01.



- (2) The public and the news media shall have a right to be represented at the hearing and to present evidence and arguments in support of or in opposition to the motion. If it is necessary to hold a closed hearing for the purpose of informing the court of the nature of the record sought to be protected, all counsel representing interested parties shall be allowed to attend the closed portion of the hearing if they agree not to reveal the nature of the records if the court finds that they should be closed.
  - (3) A verbatim record shall be made of the hearing.
- (c) Grounds for Restrictive Order. The court may issue a restrictive order under this rule only if the court concludes on the basis of the evidence presented at the hearing that:
- (1) Access to the records will present a real and substantial likelihood of one or more of the following:
    - (i) A substantial interference with the fair and impartial administration of justice.
    - (ii) Revealing a common law trade secret or a trade secret as defined in M.S.A. 325C.01.
    - (iii) Physical danger to persons or property.
    - (iv) Identifying victims of sexual assault.
  - (2) All alternatives to the restrictive order are inadequate. before issuing a restrictive order, the court shall consider at least the following alternatives:

- (i) Deleting identities or other protected information from the records before release.
  - (ii) Change of venue.
  - (iii) Juror sequestration.
  - (iv) Limiting the restrictive order to the period of time necessary to accomplish the goals of the order.
- (d) Findings of Fact. The court shall make written findings of fact and statement of the reasons supporting the conclusions upon which an order granting or denying the motion is based.
- (e) Appellate Review.
- (1) Anyone represented at the hearing or aggrieved by an order granting or denying a restrictive order may petition the Court of Appeals for review, which shall be the exclusive method of obtaining review. Non-party petitioners need not intervene in the underlying case.
  - (2) The Court of Appeals shall determine upon the hearing record whether the moving party has sustained the burden of justifying the restrictive order under the conditions specified in this rule, and may reverse, affirm, or modify the order issued.

The above language is based on Rule 25 of the Rules of Criminal Procedure,<sup>28</sup> which recognizes that the public has a constitutionally protected right of access to criminal case records. The proposal extends this right, and accompanying

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<sup>28</sup> As amended by order of the Supreme Court dated June 29, 1987.

procedures,<sup>29</sup> to civil case records. Moreover, it contemplates that Rule 25 would eventually be deleted as redundant.

#### PROPOSED RULE 5

Proposed rule 5 governs accessibility to administrative records. Subdivisions 1 and 2, Employee Records and Applicant Records, are identical to Interim Rule 3, subdivision 2(c) and (d), and provide a uniform standard of access to all government personnel records.<sup>30</sup> Although a judge is considered an employee under these provisions, records of disciplinary matters involving a judge are outside the scope of the rules.<sup>31</sup>

Subdivision 3, Correspondence, is essentially the same as Interim Rule 3, subdivision 2(e). Correspondence with other elected officials is subject to the same access standard.<sup>32</sup>

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<sup>29</sup> The public and the news media are entitled to notice of the proposed order and are entitled to participate at the hearing without the necessity of formal intervention. Minn. R. Crim. P. 25.01, subds. 1(b), 5. The majority's recommendation does not include these procedures.

<sup>30</sup> See Minn. Stat. § 13.43.

<sup>31</sup> Proposed rule 1 excludes records of the Board on Judicial Standards.

<sup>32</sup> Minn. Stat. § 13.33.

Subdivision 4, Schedules and Assignments, is taken from Interim Rule 3, subdivision 2(i), which was designed primarily to prevent judge shopping. The committee felt that the Interim Rule was inappropriate as it gives an advantage to local practitioners who have become familiar with local scheduling practices. The committee agreed that if judge shopping becomes a problem, there are other appropriate methods of addressing it. Appellate opinion assignments have, however, traditionally been inaccessible to the public, and the proposed rule continues this tradition.

Subdivision 5, Security Records, is essentially the same as Interim Rule 3, subdivision 2(j) and statutes governing the executive branch.<sup>33</sup> Several examples were added to clarify the scope of this provision.<sup>34</sup>

Subdivisions 6 and 7, State Owned Trade Secrets and Copyrighted Materials, are essential to state court administration's software licensing program, which allows state court administration to recover some of its computer development

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<sup>33</sup> Minn. Stat. § 13.37, subd. 1(a).

<sup>34</sup> See Minneapolis Star & Tribune v. Schumacher, supra, n. 26, at 392 N.W.2d 207 n.5 (settlement documents not included under Interim Rule 3, subd. 2(j) or (r)(iii)).

costs.<sup>35</sup> These provisions are essentially the same as Interim Rule 3, subdivision 2(k) and (l).<sup>36</sup>

Subdivision 8, Competitive Bidding Records, is new, although the court systems use of competitive bidding procedures is not new.<sup>37</sup> The provision parallels existing law applicable to executive branch bidding records.<sup>38</sup>

Subdivision 9, Compliance Records, and its predecessor Interim Rule 3, subdivision 2(m), prohibit access to reports prepared by state court administration that identify judges who have exceeded the 90 day decision deadline. By law,<sup>39</sup> these reports are submitted to the Board on Judicial Standards, which

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<sup>35</sup> See, e.g., 1987 Minn. Sess. Laws c. 404, § 179 (authorizing the licensing program); 1985 Minn. Laws 1st Spec. c. 13, § 3 (same). Licensing revenues are generated from use of the software by government entities located outside of this state.

<sup>36</sup> State law clearly contemplates that government entities may have proprietary interests of this nature. Minn. Stat. §§ 13.03, subd. 5; 13.37, subd. 1(b).

<sup>37</sup> The matter was overlooked when the Interim Rules were promulgated. See Order of the Minnesota Supreme Court, # C4-85-1848, dated march 25, 1987 (incorporating essentially the provisions of this proposed subdivision; promulgated pursuant to Interim Rule 3, subd. 2(s)).

<sup>38</sup> Minn. Stat § 13.37, subd. 2.

<sup>39</sup> Minn. Stat. § 546.27.

is prohibited from releasing such information unless and until the board has filed a formal complaint and response on the matter with the Supreme Court.<sup>40</sup>

Subdivision 10, Library Records, is identical to Interim Rule 3, subdivision 2(n) and the law that applies to other government libraries.<sup>41</sup> Subdivision 11, Passport Records, is identical to Interim Rule 3, subdivision 2(q) and is based on federal law.<sup>42</sup>

Subdivision 12, Attorney Work Product, is taken from Interim Rule 3, subdivision 2(g) and (h) and Minnesota Statutes, section 13.30. Public access to the theories, conclusions, and opinions of counsel representing the judiciary would circumvent discovery rules that prohibit opposing parties from obtaining these records.

Subdivision 13 incorporates records that are inaccessible to the public pursuant to state and federal laws and orders of the

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<sup>40</sup> Rule 5, Rules of Board on Judicial Standards.

<sup>41</sup> Minn. Stat. § 13.40.

<sup>42</sup> 22 C.F.R. § 51.33. The Code of Federal Regulations may not be readily accessible to the public or to many court administrators. Thus, the proposal repeats the federal provision rather than merely citing it in Appendix C.

Minnesota Supreme Court. It is contemplated that the Court will issue orders regarding access to records only as a temporary measure pending further amendments to these rules.<sup>43</sup>

#### PROPOSED RULE 6

Proposed rule 6, Vital Statistics Records, recognizes that most court administrators serve as deputy registrars for vital statistics information. Accessibility to these records is prescribed by the statutes listed in Appendix D.

#### PROPOSED RULES 7, 8, AND 9

Proposed rules 7, 8, and 9 are procedural. They are based on Interim Rules 4 - 7. Specific time periods established under the Interim Rules have been replaced with the standard "as promptly as practical."<sup>44</sup> The rationale is that these maximum periods tend to become the minimum. Another change from the Interim Rules is that written requests for access to records are

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<sup>43</sup> Cf. Minn. Stat. § 13.06 (authorizing the Commissioner of Administration to classify executive branch data as inaccessible to the public; classification expires ten days after the end of the second complete regular legislative session that follows the Commissioner's action).

<sup>44</sup> Proposed rule 7, subd. 2. Cf. Interim Rules 5, subds. 1, 2, 7; 7.

required only when the request is complex or involves a large number of records.<sup>45</sup>

The proposed rules clarify that an explanation for delaying or denying a request for access to records shall be given in writing if desired by the person who made the request. In addition, the proposed rules do not attempt to prioritize the duties of records custodians.<sup>46</sup> Problems, if they arise, can be treated on an ad hoc basis.

The proposed rules retain the procedure that provides for referral of questions to the state court administrator's office.<sup>47</sup> The proposed rules also continue the appeal provision that authorizes the state court administrator's office to review a local court administrator's determination of a request for access to records.<sup>48</sup> The proposed rules make it clear that this appeal procedure need not be exhausted before other relief is

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<sup>45</sup> Proposed rule 7, subd. 1. Cf. Interim Rule 4, subd. 3.

<sup>46</sup> See Interim Rules 5, subds. 2,8; 6, subd. 1 (inspection or copying of records may not unreasonably disrupt ongoing court or administrative activities)

<sup>47</sup> Proposed rule 7, subd. 4; Interim Rule 5, subd. 7.

<sup>48</sup> Proposed Rule 9; Interim Rule 7.



sought.<sup>49</sup>

Both the proposed rules and the Interim Rules permit access to original versions of records where practicable.<sup>50</sup> The committee recognized that access to original exhibits may create special security problems, and a separate provision was added to accommodate these problems.<sup>51</sup>

Finally, both the proposed rules and the Interim Rules authorize the assessment of a reasonable fee to cover the cost of providing certain commercially valuable compilations of information.<sup>52</sup> The language is taken from the law governing executive branch agencies.<sup>53</sup> Beyond this, however, the committee felt that determinations of whether particular photocopying fees are reasonable should be decided by the legislature as the fees are currently controlled by statute and local government entities

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<sup>49</sup> Proposed rule 9; see Minneapolis Star & Tribune v. Schumacher, 392 N.W.2d 197, 209 n.7 (Minn. 1986).

<sup>50</sup> Proposed rule 8, subd. 1; Interim Rule 6, subd. 2.

<sup>51</sup> Proposed rule 8, subd. 2. This provision does not make all exhibits accessible to the public; a particular exhibit may be inaccessible to the public pursuant to proposed rule 4, subdivision 1.

<sup>52</sup> Proposed rule 8, subd. 3.

<sup>53</sup> Minn. Stat. § 13.03, subd. 3.

rely on these fees to fund services.<sup>54</sup>

Respectfully submitted,

Michael B. Johnson

Michael B. Johnson

Staff to the Committee

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<sup>54</sup> See, e.g., Minn. Stat. § 357.02 (establishing a fee of \$5 plus 25 cents per page after the first page for certified copies of instruments and \$3 plus 25 cents per page after the first page for uncertified copies). The legislature has given every indication that it is responsive to copy fee issues. See, e.g., 1987 Minn. Sess. Laws c. 816 (requires court administrators to furnish conviction records of prior D.W.I. to prosecutors without charge).

**PROPOSED  
RULES OF PUBLIC ACCESS  
TO RECORDS OF THE JUDICIAL BRANCH**

**Rule 1. Scope of Rules.**

These rules govern access to the records of all courts and court administrators of the judicial branch of the state of Minnesota. They do not govern access to records of the Tax Court or the Workers' Compensation Court of Appeals, which are part of the executive branch of the state. In addition, these rules do not govern access to records of the various Boards or Commissions of the Supreme Court as they are governed by independent rules promulgated or approved by the Supreme Court. A partial list of Boards and Commissions is set forth in Appendix A.

Finally, except as provided in Rule 4, subdivision 1(b) with respect to case records, these rules do not govern access to records of court services departments or probation authorities. Access to these records is governed by other applicable court rules and statutes, including Minnesota Statutes, section 13.84 and its successor.

Nothing in these rules shall affect the disposition of records pursuant to Minnesota Statutes, section 138.17 or its successor or prevent the return of documents or physical objects to any person or party pursuant to a court rule or order.

**Rule 2. General Policy.**

Records of all courts and court administrators in the state of Minnesota are presumed to be open to any member of the public for inspection or copying at all times during the regular office hours of the office having custody of the records. Some records, however, are not accessible to the public, at least in the absence of a court order, and these exceptions to the general policy are set out in Rules 4, 5, and 6.

**Rule 3. Definitions.**

**Subd. 1. Custodian.** The custodian is the person responsible for the safekeeping of any records held by any court or court administrator's or clerk of court's office. In the absence of the person usually responsible, the person who is temporarily responsible for the records is the custodian.

**Subd. 2. Judge.** "Judge" means any justice, judge, judicial officer, referee, court-appointed arbitrator or other person exercising adjudicatory powers.

**Subd. 3. Court.** "Court" means the Supreme Court, the Court of Appeals, District, Juvenile, Family, Conciliation, County and Probate Court, and any other court established as part of the judicial branch of the state.

**Subd. 4. Court Administrator.** "Court administrator" means a person employed or appointed for the purpose of administering the operations of any court or court system, including the offices of judicial district administrator, court administrators of the respective counties, and state-wide court administrative agencies.

**Subd. 5. Records.** "Records" means any recorded information that is collected, created, received, maintained, or disseminated by a court or court administrator, regardless of physical form or method of storage. A "record" does not necessarily constitute an entire file, as a file may contain several "records." Court reporters' notes shall be available to the court for the preparation of a transcript.

- (a) **Case Records.** "Case records" means all records of a particular case or controversy.
- (b) **Administrative Records.** "Administrative records" means all records pertaining to the administration of the courts or court systems.
- (c) **Vital Statistics Records.** "Vital statistics records" means all certificates or reports of birth, death, fetal death, induced abortion, marriage, dissolution and annulment, and related records.

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

**Subd. 1. Accessibility.** All case records are accessible to the public except the following:

- (a) **Domestic Abuse Records.** Records maintained by a court administrator pursuant to the domestic abuse act, Minnesota Statutes, section 518B.01, until a temporary court order made pursuant to subdivision 5 or 7 of section 518B.01 is executed or served upon the record subject who is the respondent to the action;
- (b) **Court Services Records.** Records on individuals maintained by a court, other than records that have been admitted into evidence, that are gathered at the request of a court:
  - (1) to determine an individual's need for counseling, rehabilitation, treatment or assistance with personal conflicts,

- (2) to assist in assigning an appropriate sentence or other disposition in a case,
- (3) to provide the court with a recommendation regarding the custody of minor children, and
- (4) to provide the court with a psychological evaluation of an individual.

Provided, however, that the following information on adult individuals is accessible to the public: name, age, sex, occupation, and the fact that an individual is a parolee, probationer, or participant in a diversion program, and if so, at what location; the offense for which the individual was placed under supervision; the dates supervision began and ended and the duration of supervision; information which was public in a court or other agency which originated the data; arrest and detention orders; orders for parole, probation or participation and the extent to which those conditions have been or are being met; identities of agencies, units within agencies and individuals providing supervision; and the legal basis for any change in supervision and the date, time and locations associated with the change.

- (c) Judicial Work Product and Drafts. All notes, memoranda or drafts thereof prepared by a judge or by a court employed attorney, law clerk, legal assistant or secretary and used in the process of preparing a final decision or order, except the official minutes prepared pursuant to Minnesota Statutes, sections 546.24-.25.
- (d) Criminal Cases; Juvenile Cases. Case records that are made inaccessible to the public pursuant to the rules of criminal procedure or the rules of procedure for the juvenile courts. Case records arising from an appeal from juvenile court proceedings that are not open to the public, except the written opinion resulting from the appeal, are inaccessible to the public unless otherwise provided by rule or order of the appellate court.
- (e) Records Controlled by Statute. Case records that are made inaccessible to the public pursuant to state statutes, other than Minnesota Statutes, chapter 13. A partial list is set forth in Appendix B.
- (f) Civil Cases. Case records made inaccessible to the public by protective or other order of the court.

**Subd. 2. Restricting Access; Procedure.** Procedures for restricting access to case records shall be as provided in the rules of civil and criminal procedure.

#### **Committee Note**

The factors to consider in seeking a protective order in regard to criminal case records are discussed in Rule 25, Rules of Criminal Procedure, Minneapolis Star & Tribune v. Kammeyer, 341 N.W.2d 550 (Minn. 1983), and Northwestern Publications, Inc. v. Anderson, 359 N.W.2d 254 (Minn. 1977). For civil cases, see Rule 26.03, Rules of Civil Procedure and Minneapolis Star & Tribune v. Schumacher, 392 N.W.2d 197 (Minn. 1986).

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

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

**Subd. 1. Employee Records.** Records on individuals collected because the individual is or was an employee of, performs services on a voluntary basis for, or acts as an independent contractor with the judicial branch, provided, however, that the following information is accessible to the public: name; actual gross salary; salary range; contract fees; actual gross pension; the value and nature of employer paid fringe benefits; the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary; job title; job description; education and training background; previous work experience; date of first and last employment; the status of any complaints or charges against the employee, whether or not the complaint or charge resulted in a disciplinary action; the final disposition of any disciplinary action and supporting documentation; work location; a work telephone number; honors and awards received; payroll time sheets or other comparable data, that are only used to account for employee's work time for payroll purposes, to the extent that they do not reveal the employee's reasons for the use of sick or other medical leave or other information that is not public; and city and county of residence;

**Subd. 2. Applicant Records.** Records on individuals collected because the individual is or was an applicant for employment with the judicial branch, provided, however, that the following information is accessible to the public: veteran status; relevant test scores; rank on eligible lists; job history; education and training; work availability; and, after the applicant has been certified by the appointing authority to be a finalist for a position in public employment, the name of the applicant;

**Subd. 3. Correspondence.** Correspondence between individuals and judges; but such correspondence may be made accessible to the public by the sender or the recipient.

**Subd. 4. Schedules and Assignments.** The identity of appellate judges or justices assigned to or participating in the preparation of a written decision or opinion, until the decision or opinion is released;

**Subd. 5. Security Records.** Records that would be likely to substantially jeopardize the security of information, possessions, individuals, or property in the possession or custody of the courts against theft, tampering, improper use, illegal disclosure, trespass, or physical injury such as security plans or codes;

**Subd. 6. State Owned Trade Secrets.** Records revealing a common law trade secret or a trade secret as defined in M.S.A. 325C.01 that is the property of the state and is maintained by a court or court administrator.

**Subd. 7. Copyrighted Material.** Computer programs and related records, including but not limited to technical and user manuals, for which the judicial branch has acquired or is in the process of acquiring, a patent or copyright;

**Subd. 8. Competitive Bidding Records.**

- (a) **Sealed Bids.** Sealed bids, including the number of bids received, shall be inaccessible to the public prior to the opening of the bids at the time specified in the judicial branch bid request.
- (b) **Submission of Trade Secret.** A common law trade secret or a trade secret as defined in Minn. Stat. 325C.01, that is required to be submitted pursuant to a judicial branch bid request, shall be inaccessible to the public provided that:
  - (1) the bidder marks the document(s) containing the trade secret "CONFIDENTIAL;"
  - (2) the bidder submits as part of the bid a written request to maintain confidentiality; and
  - (3) the trade secret information is not publicly available, already in the possession of the judicial branch, or known to or ascertainable by the judicial branch from third parties.

**Subd. 9. Compliance Records.** Records and reports and drafts thereof maintained by the State Judicial Information

Systems and the Trial Court Information Systems for purposes of compliance with Minnesota Statutes, section 546.27;

**Subd. 10. Library Records.** Records maintained by the state law library which link a patron's name with materials requested or borrowed by the patron or which links a patron's name with a specific subject about which the patron has requested information or materials;

**Subd. 11. Passport Records.** Passport applications and accompanying documents received by court administrators, and lists of applications that have been transmitted to the United States Passport Office;

**Subd. 12. Attorney Work Product.** The work product of any attorney or law clerk employed by or representing the judicial branch that is produced in the regular course of business or representation of the judicial branch.

**Subd. 13. Other.** Matters that are made inaccessible to the public pursuant to:

- (a) state statute, other than Minnesota Statutes, chapter 13, or
- (b) federal law; or
- (c) order of the Supreme Court.

A partial list is set forth in Appendix C.

#### **Rule 6. Vital Statistics Records.**

Vital statistics records held by any court or court administrator shall be accessible to the public except as provided by statute. A partial list is set forth in Appendix D.

#### **Rule 7. Procedure for Requesting Access.**

**Subd. 1. To Whom Request is Made.** A request to inspect or obtain copies of records that are accessible to the public shall be made to the custodian and may be made orally or in writing. The custodian may insist on a written request only if the complexity of the request or the volume of records requested would jeopardize the efficiency and accuracy of the response to an oral request. All requests must include sufficient information to reasonably identify the data being sought, but the requesting person shall not be required to have detailed knowledge of the agency's filing system or procedures, nor shall the requesting person be required to disclose the purpose of the request.

**Subd. 2. Response.** The custodian shall respond to the request as promptly as practical.



**Subd. 3. Delay or Denial; Explanation.** If a request cannot be granted promptly, or at all, an explanation shall be given to the requesting person as soon as possible. The requesting person has the right to at least the following information: the nature of any problem preventing access, and the specific statute, federal law, or court or administrative rule that is the basis of the denial. The explanation shall be in writing if desired by the requesting person.

**Subd. 4. Referral in Certain Cases.** If the custodian is uncertain of the status of the record, the custodian may ask for a determination from the office of the state court administrator. The state court administrator shall promptly make a determination and forward it either by phone or by mail to the custodian.

#### **Rule 8. Inspection and Photocopying.**

**Subd. 1. Access to Original Records.** Upon request to a custodian, a person shall be allowed to inspect or to obtain copies of original versions of records that are accessible to the public in the place where such records are normally kept, during regular working hours. However, if access to the original records would result in disclosure of information to which access is not permitted, jeopardize the security of the records, or prove otherwise impractical, copies, edited copies, reasonable facsimiles or other appropriate formats may be produced for inspection. Unless expressly allowed by the custodian, records shall not be removed from the area where they are normally kept.

**Subd. 2. Access to Certain Evidence.** Physical objects admitted into evidence shall be available for public inspection under such condition as the court administrator may deem appropriate to protect the security of the evidence.

**Subd. 3. Fees.** When a request involves any person's receipt of publicly accessible information that has commercial value and is an entire formula, pattern, compilation, program, device, method, technique, process, data base, or system developed with a significant expenditure of public funds by the judicial branch, the custodian may charge a reasonable fee for the information in addition to costs of making, certifying, and compiling the copies. The custodian may grant a person's request to permit the person to make copies, and may specify the condition under which this copying will be permitted.

#### **Rule 9. Appeal from Denial of Access.**

If the custodian, other than a judge, denies a request to inspect records, the denial may be appealed in writing to the office of the state court administrator. The state court administrator shall promptly make a determination and forward it

by mail to the interested parties as soon as possible. This remedy need not be exhausted before other relief is sought.

## APPENDIX A

Boards and Commissions that are governed by independent rules promulgated by the Supreme Court include, but are not limited to, the following:

- Lawyers Professional Responsibility Board
- Lawyer Trust Account Board
- Client Security Fund Board
- State Board of Legal Certification
- Board of Continuing Education
- State Board of Law Examiners
- State Bar Advisory Council
- Board on Judicial Standards
- Standing Committee on No Fault Arbitration
- Legal Services Advisory Committee

## APPENDIX B

Statutes making certain case records inaccessible to the public include, but are not limited to, the following:

Minnesota Statute	Type of Record or Proceeding
144.343, subd. 6	Abortion notification proceedings
144.218, subd. 2; 259.27;	Adoption proceedings
259.31; 259.49; 260.161	
257.56	Artificial insemination
253B.23, subd. 9	Commitments
254.09	Compulsory treatment
626A.06, subd. 9	Wiretap warrants
609.3471	Identity of juvenile victims of sexual assault
609.115	Presentence investigation report
169.126	Alcohol problem assessment report
638.02	Pardon
242.31; 152.18 subds. 1,2,3	Expunged records
518.168(d)	Custody proceedings
260.161	Juvenile court records
257.70	Paternity proceedings
525.22	Wills deposited for safekeeping

## APPENDIX C

State and federal laws making certain administrative records inaccessible to the public include, but are not limited to, the following:

Citation*	Type of Record
M.S. §§ 593.42, subd. 5; 593.47	Jury data
22 C.F.R. § 51.33	Passport records
M.S. § 260.195, subd. 6	Juvenile placements
M.S. § 626A.17	Report of wiretap warrants
Rule 9, R. Reg. Attorneys	Registered Attorneys Mailing List
Rule 5, R. Jud. Ed.	Supreme Court Continuing Education Office records

\*M.S. denotes Minnesota Statutes; C.F.R. denotes the Code of Federal Regulations; R. Reg. Attorneys denotes Rules of the Supreme Court for Registration of Attorneys, amended by Supreme Court Order dated Feb. 13, 1986; R. Jud. Ed. denotes Rules of the Supreme Court for Judicial Education of Members of the Judiciary, promulgated pursuant to Supreme Court Order dated Oct. 11, 1979.

## APPENDIX D

The following statutes and regulations issued pursuant to statute, govern the accessibility of vital statistics records:

Citation*	Type of Record
M.S. §§ 144.218; 144.1761; 144.216; 257.73	Original birth certificate prior to: adoption of child; marriage of natural parents; acknowledgement or adjudication of paternity; and filing of corrected certificate.
M.S. § 144.225; M.R. 4600.6000	Birth certificates and marriage license applications disclosing child born out of wedlock
M.R. 4600.5800	Birth and death certificates; commercial use.

\*M.S. denotes Minnesota Statutes; M.R. denotes Minnesota Rules, which is a compilation of rules promulgated by agencies in the executive branch.

## INTERIM RULES ON ACCESS TO PUBLIC RECORDS

### Rule 1. Scope of Rules.

These rules govern public access to public records maintained by the judicial branch of the State of Minnesota.

### Rule 2. Policy.

All public records within the judicial branch shall be open to inspection by any member of the public at all times during the regular office hours maintained by the custodian of those records.

### Rule 3. Definitions.

**Subdivision 1.** When used in these rules, the words listed below have the meanings given them.

**Subd. 2.** "Public records" mean any recorded information, regardless of its physical form, storage media or conditions of use, that is collected, created, received, maintained, or disseminated by any component of the judicial branch, **except:**

- (a) records maintained by a court administrator pursuant to the domestic abuse act, Minnesota Statutes, Section 518B.01, until a temporary court order made pursuant to subdivision 5 or 7 of Section 518B.01 is executed or served upon the record subject who is the respondent to the action;
- (b) records on individuals maintained by a judicial branch court services department or probation authority, that are:
  - (i) gathered at the request of a municipal, district, or county court to determine the need for any treatment, rehabilitation, counseling, or any other need of a

defendant, parolee, probationer, or participant in a diversion program, and used by the court to assist in assigning an appropriate sentence or other disposition in a case; or

- (ii) gathered at the request of a family court for purposes of, but not limited to, individual, family, marriage, chemical dependency and marriage dissolution adjustment counseling, including recommendations to the court as to the custody of minor children in marriage dissolution cases; or
- (iii) gathered by psychologists in the course of providing the court or its staff with psychological evaluations or in the course of counseling individual clients referred by the court for the purpose of assisting them with personal conflicts or difficulties;

Provided, however, that the following information on adult individuals is public: name, age, sex, occupation, and the fact that an individual is a parolee, probationer, or participant in a diversion program, and if so, at what location; the offense for which the individual was placed under supervision; the dates supervision began and ended and the duration of supervision; information which was public in a court or other agency which originated the data; arrest and detention orders; orders for parole, probation or participation and the extent to which those conditions have been or are being met; identifiers of agencies, units within agencies and individuals providing supervision; and the legal basis for

any change in supervision and the date, time and locations associated with the change.

- (c) records on individuals collected because the individual is or was an employee of, performs services on a voluntary basis for, or acts as an independent contractor with the judicial branch, provided, however, that the following information is public: name; actual gross salary; salary range; contract fees; actual gross pension; the value and nature of employer paid fringe benefits; the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary; job title; job description; education and training background; previous work experience; date of first and last employment; the status of any complaints or charges against the employee, whether or not the complaint or charge resulted in a disciplinary action; the final disposition of any disciplinary action and supporting documentation; work location; a work telephone number; honors and awards received; payroll time sheets or other comparable data, that are only used to account for employee's work time for payroll purposes, to the extent that they do not reveal the employee's reasons for the use of sick or other medical leave or other information that is not public;
- (d) records on individuals collected because the individual is or was an applicant for employment with the judicial branch, provided, however, that the following information is public: veteran status; relevant test scores; rank on eligible list; job history; education and training; work availability; and,

after the applicant has been certified by the appointing authority to be a finalist for a position in public employment, the name of the applicant;

- (e) correspondence between individuals and justices or judges;
- (f) memoranda, notes, or preliminary drafts prepared by or under the direction of any justice, judge, referee, judicial officer, board member, or commissioner within the judicial branch that relate to the adjudication, resolution, or disposition of any past, present, or future case, controversy, or legal issue;
- (g) the work product of any attorney or law clerk employed by or representing the judicial branch that is produced in the regular course of business or representation of the judicial branch;
- (h) information collected by the judicial branch as part of an active investigation undertaken for the purpose of the commencement or defense of a pending civil legal action, or which is retained in anticipation of a pending civil legal action;
- (i) schedules and related records, other than court orders regarding assignments of justices, judges, referees and judicial officers, the public disclosure of which would affect the orderly and effective administration of justice;
- (j) records that have not been filed with the court administrator, admitted into evidence, or otherwise made a part of a civil or criminal case, the disclosure of which would be



likely to substantially jeopardize the security of information, possessions, individuals, or property against theft, tampering, improper use, illegal disclosure, trespass, or physical injury;

- (k) records, including a formula, pattern, compilation, program, device, method, technique or process that was supplied by the judicial branch, that is the subject of efforts by the judicial branch that are reasonable under the circumstances to maintain its secrecy, and that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use;
- (l) computer programs and related components of a program for which the judicial branch has acquired a patent or copyright;
- (m) records maintained by the State Judicial Information System and the Trial Court Information System for purposes of compliance with Minnesota Statutes, Section 546.27;
- (n) records maintained by a library operated by the judicial branch, which links a patron's name with materials requested or borrowed by the patron or which links a patron's name with a specific subject about which the patron has requested information or materials;
- (o) all records of the office of the Board of Law Examiners except the names of applicants admitted to practice and information ordered to be released by the Supreme Court pursuant to the Rules for Admission to the Bar, or by other order;

- (p) information reported by lawyers to the Supreme Court or the Lawyers Trust Account Board for purposes of compliance with Rule 1.15 of the Minnesota Rules of Professional Conduct;
- (q) passport applications and accompanying documents received by court administrators, and lists of applications that have been transmitted to the United States Passport Office;
- (r) matters that are made inaccessible to the public pursuant to:
  - (i) state statute, other than Minnesota Statutes, Chapter 13; or
  - (ii) federal law; or
  - (iii) rules promulgated by the Minnesota Supreme Court regarding judicial or administrative proceedings, including but not limited to, rules governing the Lawyers Professional Responsibility Board, the Board on Judicial Standards, and the Board of Continuing Legal Education;
- (s) any other records determined by order of the Supreme Court to be inaccessible to the public;

If a request is made for information which is not maintained in tangible form by the judicial branch in the regular course of business, the request shall be considered a request for information rather than a request to inspect a public record, and is not subject to the provisions of these rules.

**Subd. 3.** "Court administrator" means the court administrator pursuant to Laws 1985, Chapter 273, or the clerk of the appellate courts pursuant to Rule 101.02, subdivision 5 of the Minnesota Rules of Civil Appellate Procedure.

**Subd. 4.** "Judicial district administrator" means the district administrator pursuant to Minnesota Statutes, Section 484.68.

**Subd. 5.** "State court administrator" means the court administrator pursuant to Minnesota Statutes, Section 480.13.

**Rule 4. Manner of Making Request.**

**Subdivision 1. Custodian of Records.** A request to inspect or to obtain copies of public records shall be made to the custodian of those records. The court administrator is the custodian of records of judicial proceedings within the court where the records are located, vital statistics records, and drivers license and permit application records. The judicial district administrator is the custodian of administrative records for the judicial district in which the records are located. The state court administrator is the custodian of records relating to overall administration of the courts of the State of Minnesota. The state law librarian is the custodian of the records of the State Law Library. The custodian of the records maintained by any board, commission, or committee shall be the individual designated by the board, commission, or committee. The custodian of the records of any other office shall be the individual designated by the appointing authority or, if the office is an elective office, the individual occupying the office.

**Subd. 2. Designee.** The custodian may appoint one or more designees to respond to inspection and copy requests.

**Subd. 3. Form of Request.**

(a) A request to inspect or obtain copies of public records shall be made in writing to the custodian of the records unless otherwise allowed by the custodian.

- (b) A written request to inspect or obtain copies of administrative records shall include:
- (i) the name, mailing address, and telephone number of the requesting person;
  - (ii) the specific documents which the person wishes to inspect or to have copied;
- (c) A request to inspect or obtain copies of records other than administrative records shall be made in the manner designated by the custodian of the records.

**Rule 5. Response.**

**Subdivision 1.** The custodian shall acknowledge the request orally or in writing no later than five working days after the request is made. The response shall indicate whether the records are public, and if so, when and where inspection may take place or copies may be obtained. The custodian must inform the requestor that the records will be available for inspection in no fewer than five working days.

**Subd. 2.** If the custodian determines the records can be made available for inspection or can be copied without unreasonable disruption to ongoing court or administrative activities, inspection or copying shall take place within five working days after the custodian receives the request.

**Subd. 3.** If the custodian determines the records cannot be made available for inspection or cannot be copied within five days after the custodian receives the request, the custodian shall notify the requestor of when and where inspection may take place or when and where copies will be provided, and shall inform the requestor of the reasons for the delay. Inspection must be permitted or copies provided within a reasonable time from the date of the request.

**Subd. 4.** If the records do not exist, the response shall so indicate.

**Subd. 5.** If the request does not provide sufficient information to locate the records, the request shall be returned, and the requestor notified.

**Subd. 6.** If access to the records is not permitted under these Rules, the response shall indicate the statute, federal law, or court or administrative rule that is the basis for denial of the inspection request.

**Subd. 7.** If either the court administrator or judicial district administrator, as custodian, cannot determine whether access to records of judicial proceedings or administrative records is permitted, the response shall state that the inspection request has been referred to the office of the state court administrator for determination. A response from the state court administrator shall be forwarded to the custodian or the person making the request no later than five working days after the state court administrator receives the referral.

**Subd. 8.** If the custodian determines that the number of records requested is so great that inspection or reproduction would create an unreasonable disruption to ongoing court or administrative activities, the custodian may require that the request be limited, or the custodian may limit the request.

**Subd. 9.** If the person making the request does not inspect or obtain the copies of the records during the time period permitted by the custodian, the request shall be deemed withdrawn, but may be renewed.

**Rule 6. Inspection and Photocopying.**

**Subdivision 1. Priority of Ongoing Court or Administrative Activities.** Inspection and copying shall be conducted in a manner

which will not disrupt ongoing court or administrative activities.

**Subd. 2. Access to Original Records.** The requesting person shall be allowed to inspect or to obtain copies of original versions of public records in the place where such records are normally kept, during regular working hours. However, if access to the original records would result in disclosure of information to which access is not permitted, jeopardize the security of the records, or prove otherwise impractical, copies, edited copies, reasonable facsimilies or other appropriate formats may be produced for inspection. Unless expressly allowed by the custodian, records shall not be removed from the area where they are normally kept.

**Subd. 3. Fees.** Before providing copies, the custodian may require payment of the copying fee established by law or court rule. When a request involves any person's receipt of public information that has commercial value and is an entire formula, pattern, compilation, program, device, method, technique, process, data base, or system developed with a significant expenditure of public funds by the judicial branch, the custodian may charge a reasonable fee for the information in addition to costs of making, certifying, and compiling the copies. The custodian may grant a person's request to permit the person to make copies, and may specify the condition under which this copying will be permitted.

**Rule 7. Appeal to State Court Administrator in Certain Cases.** A denial of or limitation upon a request to inspect public administrative records or public records of judicial proceedings may be appealed in writing to the state court administrator, and a written response will be sent to the requesting person no later than five working days after the state court administrator receives the appeal.