

STATE OF MINNESOTA

IN SUPREME COURT

C4-94-1646

PROMULGATION OF SPECIAL RULES OF PROCEDURE  
GOVERNING PROCEEDINGS UNDER THE  
MINNESOTA COMMITMENT AND TREATMENT ACT

**ORDER**

WHEREAS, the Supreme Court Civil Commitment Rules Committee has recommended rules governing commitment proceedings; and

WHEREAS, on May 26, 1999, the Supreme Court held a hearing on the proposed amendments; and

WHEREAS, the Supreme Court has reviewed the proposals and is fully advised in the premises, and

WHEREAS, the November 5, 1999, order promulgating the Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act included an incorrect cross reference in an advisory committee comment and an incorrect statutory citation format;

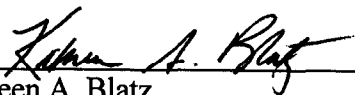
IT IS ORDERED that:

1. The attached Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act are adopted effective January 1, 2000. These rules apply to actions pending on the effective date and to those filed thereafter.
2. The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the comments made therein.
3. The Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment Act of 1982 are repealed effective January 1, 2000.

4. The November 5, 1999, order is hereby rescinded.

DATED: November *10*, 1999

BY THE COURT:

  
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Kathleen A. Blatz  
Chief Justice

OFFICE OF  
APPELLATE COURTS

NOV 10 1999

**FILED**

# **SPECIAL RULES OF PROCEDURE GOVERNING PROCEEDINGS UNDER THE MINNESOTA COMMITMENT AND TREATMENT ACT**

## **RULE 1 - GENERAL**

- (a) Scope. The Special Rules shall apply in proceedings under the 1997 Minnesota Commitment and Treatment Act, Minn. Stat. ch. 253B and its amendments.
- (b) Rules Superseded. The Special Rules shall supersede any other body of rules otherwise applicable (e.g., the Rules of Civil Procedure for the District Courts, Probate Court Rules, etc.) in conflict with these Special Rules.
- (c) Citation. These Special Rules may be cited as Commitment and Treatment Act Rules.

### **Advisory Comment - - 1999**

The Act, as codified under Minn. Stat. ch. 253B, is detailed and the practitioner must be familiar with both the Act and these rules.

## **RULE 2 – COMPUTATION OF TIME**

Except as provided by these Special Rules, the Minnesota Rules of Civil Procedure govern the computation of any time periods prescribed by Minn. Stat. ch. 253B. If a respondent is represented by an attorney, whenever an act is required within a certain time after a written demand or service of a document upon a party or entity other than the court, time shall begin to run once both the party and the parties' attorneys have received notice of the document, regardless of the method of service, and shall not include weekends and holidays. The 72-hour absence that triggers missing respondent procedures under Minn. Stat. § 253B.141, subd. 1, commences when the respondent was due to return to the facility and includes weekends and holidays.

### **Advisory Committee Comment - -1999**

These rules contemplate that service may be effected personally, by mail, or by fax. There are instances in the statute when a notice or a report does not need to be "given" to an attorney. The rule ensures that the attorneys know the basis of any hearing scheduled by the court upon receipt of a filed document. When a party requests a hearing after notice that the treatment center or designated agency intends to take some action (as in the case of revocation of provisional discharge), this rule expands the period of time if the notice was mailed to the attorneys. If the notice was faxed, the time to request the hearing is not expanded.

### **RULE 3 – SERVICE**

Whenever a person is required to give or serve any document under this chapter to any party, attorney, or entity other than the court, service may be made in any manner allowed under the Minnesota Rules of Civil Procedure. Attorneys for both parties must also be served whether or not service upon counsel is specifically required by statute.

### **Advisory Committee Comment - - 1999**

*See comment to Rule 2.*

### **RULE 4 – CONSECUTIVE HOLD ORDERS PROHIBITED**

A person held under a 72-hour emergency hold must be released by the facility within 72 hours unless a court order to hold the person is obtained. A consecutive hold order not issued by the district court is expressly prohibited, whether or not issued by the same physician or other authority.

## **RULE 5 – CASE CAPTIONS**

Civil commitment proceedings shall be captioned in the name of the person subject to the petition as follows: *In the Matter of the Civil Commitment of: (Full Name of Respondent), Respondent.*

### **Advisory Committee Comment - - 1999**

A person subject to commitment proceedings is referred to as the respondent throughout these rules. The court and counsel shall be sensitive to the correct pronunciation of a respondent's name.

## **RULE 6 - COMMENCEMENT**

A proceeding for commitment or early intervention is commenced upon filing a petition with the District Court pursuant to Minn. Stat. ch. 253B.

The petition should be filed in the county of financial responsibility as defined in Minn. Stat. § 253B.045, subd. 2. If the county of financial responsibility refuses to file a petition, the county where the respondent is present must file the petition if statutory conditions for commitment are present. Financial responsibility for the costs of the proceedings and treatment will be resolved by subsequent administrative process.

### **Advisory Committee Comment - - 1999**

The committee has attempted to address concerns where conflicts occur between the county of financial responsibility (respondent's residence) and the county where respondent is present, regarding who shall file the petitions, and to provide guidance in light of short statutory time constraints. The committee did not intend to remove discretion from the county attorney in the county where the respondent is present. If statutory conditions are present for commitment and the county attorney in the county where the respondent is present determines that a commitment is necessary and reasonable for the protection of the respondent or others, then the petition must be filed. Ultimate financial responsibility will be resolved in accordance with Minn. Stat. § 256G.01-.12.

*See also* Minn. Stat. § 253B.07, subd. 2a, when dealing with a person subject to Minn. R. Crim. P. 20.01 or 20.02. It is not the intent of the committee to affect venue when the

person is subject to a proceeding governed by Minn. R. Crim. P. 20.01 or 20.02 or Minn. R. Juv. Del. P. 20.01 or 20.02.

A petition for commitment as a sexual psychopathic personality or a sexually dangerous person may also be filed in a county where a related criminal conviction was entered. *See* Minn. Stat. § 253B.185, subd. 1.

## **RULE 7 – PETITIONS**

A petition filed pursuant to Minn. R. Crim. P. 20.01 or Minn. R. Juv. Del. P. 20.01 is sufficient if it contains a judicial determination that the defendant is incompetent to stand trial or be sentenced for the offense. A petition filed pursuant to Minn. R. Crim. P. 20.02 or Minn. R. Juv. Del. P. 20.02 is sufficient if it contains a judicial determination that the defendant was found not guilty, by reason of mental illness or mental deficiency, of the crime with which the defendant was charged.

### **Advisory Committee Comment - - 1999**

This rule clarifies that petitions pursuant to Minn. R. Crim. P. 20 or Minn. R. Juv. Del. P. 20 need not include all of the specific requirements of the law relating to petitions for judicial commitment, which arise from referrals to the pre-petition screening team. For example, an examiner's statement in support of commitment is not required, since the basis of the petition is a judicial determination.

## **RULE 8 – SUMMONS**

Once a petition has been filed, the court shall issue a summons to be personally served upon the respondent. The summons shall direct the respondent to appear at the times and places stated in the summons for psychiatric, psychological, and medical examination and court hearing. The summons shall state in bold print that an order to apprehend and hold the respondent may be issued if the respondent does not appear as directed. The court need not issue a summons if the respondent is already under a medical or judicial hold.

The court shall direct that a copy of the pre-petition screening report, the petition, and the examiner's supporting statement be personally served upon the respondent with the summons if issued, and that a copy be distributed to the petitioner, the proposed patient, the patient's counsel, the county attorney, and any person authorized by the patient, and any other person as the court directs.

#### **RULE 9 – APPOINTMENT AND ROLE OF COUNSEL**

Immediately upon the filing of a petition for commitment or early intervention the court shall appoint a qualified attorney to represent the respondent at public expense at any subsequent proceeding under this chapter. The attorney shall represent the respondent until the court dismisses the petition or the commitment and discharges the attorney.

The respondent may employ private counsel at the respondent's expense. If private counsel is employed, the court shall discharge the appointed attorney.

In order to withdraw, counsel must file a motion and obtain the court's approval.

Counsel for the respondent is not required to file an appeal or commence any proceeding under Minn. Stat. ch. 253B if, in the opinion of counsel, there is an insufficient basis for proceeding.

#### **RULE 10 – ATTORNEY-CLIENT PRIVILEGE**

The content of attorney-client communications by telephone, mail, or conference at the facility, shall not be monitored, censored, or made part of a respondent's medical record. The facility may open and inspect, but not read, a letter or package, and must do so in the respondent's presence.

## **RULE 11 – EXAMINER’S LIST**

The court administrator shall prepare and maintain a list of examiners. A statement of the manner and rate of compensation of examiners shall be attached to the list. Examiners shall be paid at a rate of compensation fixed by the court. If a party seeks appointment of an examiner not on the list, or at a rate of compensation exceeding that fixed by the court, the party shall seek approval of the court prior to appointment.

## **RULE 12 – EXAMINER REPORTS**

Each court-appointed examiner shall examine the respondent and prepare a separate report stating the examiner’s opinion and the facts upon which the opinion is based. The report shall address:

- (a) Whether the respondent is mentally ill, mentally retarded, chemically dependent, mentally ill and dangerous to the public, a sexually dangerous person, or a sexual psychopathic personality;
- (b) Whether the examiner recommends commitment;
- (c) The appropriate form, location, and conditions of treatment, including likelihood of the need for treatment with neuroleptic medication;
- (d) The respondent’s capacity to make decisions about neuroleptic medication, if needed; and
- (e) If the petition alleges that the respondent is mentally ill and dangerous to the public, whether there is a substantial likelihood that respondent will engage in acts capable of inflicting serious physical harm on another.



- (f) If the petition alleges that the respondent is a sexual psychopathic personality and/or a sexually dangerous person, the report shall address each element set out in Minn. Stat. § 253B.02, subd. 18b and 18c respectively, including an opinion as to the likelihood that the respondent will engage in future dangerous behavior.

The court shall send a copy of the examiner's report to the petitioner's attorney, the respondent and respondent's attorney immediately upon receiving the report.

### **RULE 13 – MEDICAL RECORDS**

The county attorney, respondent, respondent's attorney, court-appointed examiner, guardian ad litem, substitute decision-maker, and their agents and experts retained by them shall have access to all of the respondent's medical records and the reports of the court-appointed examiners. The records and reports may not be disclosed to any other person without court authorization or the respondent's signed consent. Except for a preliminary hearing, each party shall disclose to the other party or parties at least 24 hours in advance of the hearing which of the respondent's medical records the party intends to introduce at hearing.

### **RULE 14 – LOCATION OF HEARING, RULES OF DECORUM, ALTERNATIVE METHODS OF PRESENTING EVIDENCE**

The judge or judicial officer shall assure the decorum and orderliness of any hearing held pursuant to Minn. Stat. ch. 253B. The judge or judicial officer shall afford to respondent an opportunity to be dressed in conformity with the dignity of court appearances.

A hearing may be conducted or an attorney for a party, a party, or a witness may appear by telephone, audiovisual, or other electronic means if the party intending to use electronic means notifies the other party or parties at least 24 hours in advance of the hearing and the court

approves. If a witness will be testifying electronically, the notice must include the name, address, and telephone number where the witness may be reached in advance of the hearing. This rule does not supersede Minn. Stat. §§ 595.02 - 595.08 (competency and privilege). Respondent's counsel will be physically present with the patient. The court shall insure that the respondent has adequate opportunity to speak privately with counsel, including, where appropriate, suspension of the audio recording or allowing counsel to leave the conference table to communicate with the client in private.

#### **RULE 15 – EVIDENCE**

The Court may admit all relevant, reliable evidence, including but not limited to the respondent's medical records, without requiring foundation witnesses.

#### **RULE 16 – RIGHTS OF PATIENTS**

In every order for commitment, the committing court shall order that the Rights of Patients, provided at Minn. Stat. § 253B.03, be incorporated in the order by reference.

#### **RULE 17 – PETITION TO DETERMINE NEED FOR CONTINUED CARE**

Upon the filing of a petition to determine the need for continued care pursuant to Minn. Stat. § 253B.17, the court shall cause the hearing to be held within 14 days of filing. The hearing may be continued for up to 30 days upon showing of good cause. The court shall give the respondent, respondent's attorney, county attorney, guardian ad litem, and substitute decision-maker, as well as such other interested persons as the court may direct, at least 10 days notice of the date and time of the hearing.

## **RULE 18 - RECOMMITMENT**

For recommitments pursuant to Minn. Stat. § 253B.13, the court shall append the immediately preceding commitment file to the file on the new petition.

## **RULE 19 – TERMINATION OF EARLY INTERVENTION**

Any petition for involuntary commitment filed at the termination of court-ordered early intervention under Minn. Stat. § 253B.065 shall be treated as an initial commitment petition and not a recommitment.

## **RULE 20 – TERMINATION OF COMMITMENT**

The court shall order termination of the commitment when the commitment expires, or upon a direct discharge by the treatment facility, or upon a discharge by the Commissioner of Human Services.

The order shall also discharge the court-appointed attorney.

### **Advisory Committee Comment - - 1999**

Minn. Stat. § 253B.12, subd. 1(e), provides for an order terminating the commitment if a 60-90 day report is not timely filed or if the report describes the respondent as not in need of further institutional care and treatment. There is no similar provision for terminating the commitment if the report required by Minn. Stat. § 253B.16 is not filed or if there is a final discharge under Minn. Stat. § 253B.16 or if a provisional discharge expires under Minn. Stat. § 253B.15, subd. 9. This rule insures a formal termination of the proceeding and discharge of the respondent's court-appointed attorney.

## **RULE 21 – PUBLIC ACCESS TO RECORDS**

- (a) Except as provided in these Special Rules, and as limited by court order, all court files relating to civil commitment shall be available to the public for inspection, copying, or release.
- (b) The court administrator shall create a separate section or file in which the pre-petition screening report, court appointed examiner's report, and all medical records shall be filed. Records in that section or file shall not be disclosed to the public except by express order of the district court. This provision shall not limit the parties' ability to mention the contents of the pre-petition screening report, court appointed examiner's report and medical records in the course of proceedings under Minn. Stat. ch. 253B.

## **RULE 22 – STAYED ORDERS (MENTALLY ILL AND DANGEROUS TO THE PUBLIC, SEXUALLY DANGEROUS PERSONS, AND SEXUAL PSYCHOPATHIC PERSONALITIES)**

Stayed orders for commitment as mentally ill and dangerous to the public, sexually dangerous person, or a sexual psychopathic personality may be issued only by agreement of the parties and approval by the court.

## **RULE 23 – EVALUATION AND FINAL HEARINGS IN CASES GOVERNED BY MINN. STAT. § 253B.18 AND MINN. STAT. § 253B.185**

- (a) For persons who have been committed as mentally ill and dangerous to the public, sexually dangerous persons, or as sexual psychopathic personalities, the head of

the treatment facility shall file the report required by Minn. Stat. § 253B.18. The evaluation may be conducted at a secure treatment facility or at a correctional facility. If transport is needed, the court shall designate the agency responsible to do it.

- (b) Prior to making the final determination with regard to a person initially committed as mentally ill and dangerous to the public, as a sexually dangerous person, or as a sexual psychopathic personality, the court shall hold a hearing. The head of the treatment facility shall file the report required by Minn. Stat. § 253B.18, subd. 2. The hearing for final determination shall be held within 14 days of the court's receipt of the report from the head of the treatment facility or within 90 days of the date of initial commitment, whichever is earlier, unless continued by agreement of the parties, or by the court for good cause shown. As its final determination, the court may, subject to Minn. R. Crim. P 20.01, subd. 4:
- (1) Discharge the respondent's commitment;
  - (2) Commit the respondent as mentally ill only, in which case the respondent's commitment shall be deemed to have commenced upon the date of initial commitment, for purposes of determining the maximum length of the determinate commitment; or
  - (3) Commit the respondent for an indeterminate period as mentally ill and dangerous to the public, as a sexually dangerous person, or as a sexual psychopathic personality.
- (c) At the request of respondent, the court shall appoint an examiner of the respondent's choice for purposes of the hearing required by this rule.

(d) The written report of the head of the treatment facility pursuant to Minn. Stat. § 253B.18, subd. 2, shall address the criteria for commitment and whether there has been any change in the respondent's condition since the commitment hearing. The report shall provide the following information:

- (1) the respondent's diagnosis;
- (2) the respondent's present condition and behavior;
- (3) the facts, if any, that establish that the respondent continues to satisfy the statutory requirements for commitment;
- (4) a description of treatment efforts and response to treatment by the respondent during hospitalization;
- (5) the respondent's prognosis;
- (6) the respondent's individual treatment plan;
- (7) an opinion as to whether the respondent is in need of further care and treatment;
- (8) an opinion as to the program or facility best able to provide further care and treatment, if needed;
- (9) an opinion as to whether respondent is dangerous to the public or himself.

All supportive data and documentation shall be attached to the report.

(e) At the hearing, the court shall consider all competent evidence relevant to the respondent's present need for continued commitment. The burden of proof at the hearing is upon the proponent of indeterminate commitment to establish by clear and convincing evidence that the statutory requirements for commitment under Minn. Stat. ch. 253B continue to be met.

**Advisory Committee Comment - - 1999**

This rule is intended to require final resolution, with due diligence, of the commitment process of a respondent who is mentally ill and dangerous to the public, a sexually dangerous person, or a sexual psychopathic personality. An initial hearing should not be "reviewed" years later. The rule is not intended to dictate where a committed person should be confined. If a commitment is sustained upon review and the individual is still subject to commitment to the Commissioner of Corrections the balance of the sentence is to be served in a correctional institution.