

STATE OF MINNESOTA

IN SUPREME COURT

C1-01-927, C0-95-1475, CX-89-1863, ADM04-8001

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

The Supreme Court Advisory Committee on the Rules of Juvenile Protection Procedure has recommended certain amendments to the Rules of Juvenile Protection Procedure, the Rules of Adoption Procedure, the Rules of Guardian Ad Litem Procedure, and related changes to the Rules of Civil Procedure and Rules of General Practice concerning guardians ad litem.

On September 19, 2006, the court held a hearing on the proposed amendments.

The court has reviewed the proposals and is advised in the premises.

IT IS ORDERED that:


1. The attached amendments to the Rules of Juvenile Protection Procedure, the Rules of Adoption Procedure, the Rules of Guardian Ad Litem Procedure, the Rules of Civil Procedure, and the Rules of General Practice be, and the same are, prescribed and promulgated to be effective on January 1, 2007.

2. These amendments shall apply to all actions or proceedings pending on or commenced on or after the effective date.

3. The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the comments.

Dated: December 1, 2006

BY THE COURT:



Russell A. Anderson
Chief Justice

OFFICE OF
APPELLATE COURTS

DEC 1 - 2006

FILED

AMENDMENTS TO THE RULES OF JUVENILE PROTECTION PROCEDURE
EFFECTIVE JANUARY 1, 2007

Note to publishers: Deletions are indicated by a line drawn through the words; additions are underlined.

RULE 2. DEFINITIONS

Rule 2.01. Definitions

* * *

(e) **“Foster care”** ~~as defined in Minnesota Statutes § 260C.007, subd. 18,~~ 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 ~~care of a child in any facility which for gain or otherwise regularly provides one or more children, when unaccompanied by their parents, with a substitute for the care, food, lodging, training, education, supervision, or treatment they need but which for any reason cannot be furnished by their parent or legal custodian in their homes.~~

* * *

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

* * *

(r) **“Reasonable efforts”** ~~as defined in Minnesota Statutes § 260.012(b) means the exercise of due diligence by the responsible social services agency to use appropriate and available services to meet the needs of the child and the child’s family to prevent removal of the child from the child’s parent or legal custodian or, upon removal, services to eliminate the need for removal and reunite the family. “Reasonable efforts” includes efforts by the responsible social services agency to secure for the child a legally permanent home in a timely fashion when reunification efforts are no longer applicable.~~ **“Reasonable efforts to prevent placement”** as defined in Minnesota

30 Statutes § 260.012(d) means: (1) the agency has made reasonable efforts to prevent the
31 placement of the child in foster care; or (2) given the particular circumstances of the child
32 and family at the time of the child’s removal, there are no services or efforts available
33 which could allow the child to safely remain in the home. “Reasonable efforts” are made
34 upon the exercise of due diligence by the responsible social services agency to use
35 culturally appropriate and available services to meet the needs of the child and the child’s
36 family.

37 (s) **“Reasonable efforts to finalize a permanent plan for the child”** as
38 defined in Minnesota Statutes § 260.012(e) means due diligence by the responsible social
39 services agency: (1) to reunify the child with the parent or guardian from whom the child
40 was removed; (2) to assess a noncustodial parent’s ability to provide day-to-day care for
41 the child and, where appropriate, provide services necessary to enable the noncustodial
42 parent to safely provide the care, as required by Minnesota Statutes § 260C.212, subd. 4;
43 (3) to conduct a relative search as required under section 260C.212, subd. 5; and (4) when
44 the child cannot return to the parent or guardian from whom the child was removed, to
45 plan for and finalize a safe and legally permanent alternative home for the child,
46 preferably through adoption or transfer of permanent legal and physical custody of the
47 child. “Reasonable efforts” are made upon the exercise of due diligence by the
48 responsible social services agency to use culturally appropriate and available services to
49 meet the needs of the child and the child’s family.

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

55 (~~t~~)(u) **“Relative”** as defined in Minnesota Statutes § 260C.007, subd. 27, means a
56 person related to the child by blood, marriage, or adoption, or an individual who is an
57 important friend with whom the child has resided or had significant contact. For an
58 Indian child, relative includes members of the extended family as defined by the law or

59 custom of the Indian child’s tribe or, in the absence of laws or custom, nieces, nephews,
60 or first or second cousins, as provided in the Indian Child Welfare Act of 1978, 25
61 U.S.C. § 1903.

62 ~~(u)~~(v) **“Removed from Home”** means the child has been taken out of the care of
63 the parent or legal custodian, including a substitute caregiver, and placed in foster care or
64 in a shelter care facility.

65 ~~(v)~~(w) **“Shelter care facility”** as adapted from Minnesota Statutes § 260C.007,
66 subd. 30, means a physically unrestricting facility, including but not limited to, a hospital,
67 a group home, or a facility licensed for foster care pursuant to Minnesota Statutes
68 Chapter 245A, used for the temporary care of a child during the pendency of a juvenile
69 protection matter.

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

74 **RULE 4. TIME; TIMELINE**

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77 78 **Rule 4.03. Timeline**

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80 ~~**Subd. 2. Permanent Placement Matters.**—Pursuant to Rule 42.01, when the~~
81 ~~child is in protective care, or legal or physical custody is transferred to the responsible~~
82 ~~social services agency, the court shall conduct a hearing:~~

83 ~~(a) —within six (6) months of the date the child is removed from the home of the~~
84 ~~parent or legal custodian if the child is under eight (8) years of age at the time the petition~~
85 ~~is filed to review the progress of the case, the parent’s progress on the out of home~~
86 ~~placement plan, and the provision of services; or~~

87 (b) ~~within twelve (12) months of the date the child is removed from the home~~
88 ~~of the parent or legal custodian to determine the permanent status of the child unless a~~
89 ~~termination of parental rights petition has been filed.~~

90 In the case of a child who is alleged to be in need of protection or services, the
91 court in its first order shall set the date or deadline for the permanent placement
92 determination hearing and the permanency progress review hearing required for a child
93 who is under age eight (8) at the time the petition is filed alleging the child to be in need
94 of protection or services. Not later than when the court sets the date or deadline for the
95 permanent placement determination hearing and the permanency progress review
96 hearing, the court shall notify the parties and participants of the following requirements
97 of Minnesota Statutes § 260C.201, subd. 11 and subd. 11a:

98 (a) **Requirement of Six (6) Month Hearing for Child Under Eight (8)**
99 **Years of Age.** For a child who is under eight (8) years of age at the time a child in need
100 of protection or services petition is filed concerning the child, the court shall conduct a
101 permanency progress review hearing not later than six (6) months after the child is placed
102 in foster care or in the home of a noncustodial parent to review the progress of the case,
103 the parent's progress on the out-of-home placement plan, and the provision of services.

104 (b) **Requirement of Twelve (12) Month Hearing.** Regardless of the age of
105 the child at the time a child in need of protection or services petition is filed concerning
106 the child, the court shall conduct a permanent placement determination hearing not later
107 than twelve (12) months after the child is placed in foster care or in the home of a
108 noncustodial parent to determine the permanent status of the child.

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110 ~~**1999 Advisory Committee Comment**~~

111 ~~Rule 4.03, subd. 2, complies with Minnesota Statutes § 260C.201,~~
112 ~~subd. 11 and 11a, and provides that a permanent placement progress~~
113 ~~determination hearing must be held within six (6) months of a child's~~
114 ~~removal from the home if the child is under eight (8) years of age at the~~
115 ~~time the petition is filed.~~

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RULE 7. REFEREES AND JUDGES

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Rule 7.07. Removal of Judge

Subd. 3. Notice Motion to Remove.

(a) **Procedure.** A party or the county attorney may file with the court and serve upon all other parties a notice motion to remove. The notice motion shall be served and filed within ten (10) days of the date the party receives notice of the name of the judge who is to preside over the proceeding, but not later than the commencement of the proceeding.

(b) **Presiding Judge.** A notice motion to remove shall not be filed against a judge who has presided at a motion or any other proceeding in the matter of which the party or the county attorney had notice. A judge who has presided at a motion or other proceeding may not be removed except upon an affirmative showing of prejudice on the part of the judge.

(c) **Showing of Prejudice.** After a party or the county attorney has once disqualified a presiding judge as a matter of right, that party may disqualify the substitute judge, but only by making an affirmative showing of prejudice. A showing that the judge might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice. ~~Upon the filing of a motion to remove, or if a litigant makes an affirmative showing of prejudice against a substitute judge, the chief judge of the judicial district shall assign any other judge of any court within the district to hear the matter. If there is no other judge of the district who is qualified, the chief judge shall immediately notify the Chief Justice of the Minnesota Supreme Court.~~

(d) **Assignment of Another Judge.** Upon the filing of a notice to remove, or if a party or the county attorney makes an affirmative showing of prejudice against a substitute judge, the chief judge of the judicial district shall assign any other judge of any court within the district to hear the matter. If there is no other judge of the district who is

147 qualified, the chief judge shall immediately notify the Chief Justice of the Minnesota
148 Supreme Court.

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150 **RULE 8. ACCESSIBILITY OF JUVENILE PROTECTION CASE RECORDS**

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152 **2006 Advisory Committee Comment**

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

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162 **RULE 10. ORDERS**

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164 **Rule 10.03. Method and Timing of Service; Persons to be Served; Delivery; Mailing**

165 ~~Court orders shall be delivered at the hearing or mailed by the court administrator~~
166 ~~to each party, the county attorney, and such other persons as the court may direct.~~
167 Service of court orders shall be made by the court administrator and may be made by
168 delivery at the hearing, by U.S. Mail, or as otherwise directed by the court. If a party is
169 represented by counsel, delivery or service shall be upon counsel. If service of the
170 summons was by publication and the person has not appeared either personally or
171 through counsel, service of court orders upon the person is not required. Service Filing
172 ~~and mailing~~ of the order by the court administrator must be accomplished within five (5)
173 ~~ten (10)~~ days of the date the judicial officer delivers the order to the court administrator.

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RULE 15. MOTIONS

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Rule 15.03. Ex Parte Motion and Hearing

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Subd. 2. Hearing. When the court issues an ex parte order removing a child from the care of a parent or legal custodian, the court shall schedule a hearing to review the order within seventy-two (72) hours of the child’s removal. Upon issuance of an ex parte order in cases of domestic child abuse, the court shall schedule a hearing pursuant to the requirements of Minnesota Statutes § 260C.148. Upon issuance of any other ex parte order, a hearing shall be scheduled on the request of a party or the county attorney at the earliest possible date.

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Rule 15.05. Motion to Strike Document

~~Any party or the county attorney may bring a motion to strike a document or any portion of a document.~~ If a motion to strike a document or any portion of a document is granted, the document or portion of document shall be marked by the judge as stricken, but the document shall remain in the court file.

Rule 15.06. Timing of Decision

Orders regarding motions shall be filed with the court administrator within ten (10) days of the conclusion of the hearing. Orders shall be served by the court administrator pursuant to Rule 10.03.

RULE 16. SIGNING OF PLEADINGS, MOTIONS AND OTHER PAPERS

~~**Rule 16.01. Signing of Pleadings, Motions and Other Papers**~~

~~**Subd. 1. Party Represented by an Attorney.** When a party is represented by an attorney, every pleading, motion, and other paper 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, telephone number, and attorney registration number.~~

205 ~~**Subd. 2. Party Not Represented by an Attorney.** A party who is not~~
206 ~~represented by an attorney shall personally sign the pleading, motion, or other paper filed~~
207 ~~with the court and shall state the party's address and telephone number. If providing the~~
208 ~~address and telephone number would endanger the party, the address and telephone~~
209 ~~number may be provided to the court in a separate information statement and shall not be~~
210 ~~accessible to the public or to the parties. Upon notice and motion, the court may disclose~~
211 ~~the address and telephone number as it deems appropriate.~~

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

215 (a) ~~the pleading, motion, or other paper has been read;~~

216 (b) ~~to the best of the signer's knowledge, information, and belief formed after~~
217 ~~reasonable inquiry that the pleading, motion or other paper is well grounded in fact and is~~
218 ~~warranted by existing law or a good faith argument for the extension, modification, or~~
219 ~~reversal of existing law; and~~

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

222 **Rule 16.01. Signature**

223 ~~**Subd. 1. Generally.** Except as otherwise provided in these rules, every pleading,~~
224 ~~written motion, and other paper shall be signed by at least one attorney of record in the~~
225 ~~attorney's individual name, or, if the party is not represented by an attorney, shall be~~
226 ~~signed by the party. Each paper shall state the signer's name, address, telephone number,~~
227 ~~and attorney registration number if signed by an attorney. If providing a party's address~~
228 ~~and telephone number would endanger the party, the address and telephone number may~~
229 ~~be provided to the court in a separate information statement and shall not be accessible to~~
230 ~~the public or to the parties. Upon notice and motion, the court may disclose the address~~
231 ~~and telephone number as it deems appropriate. Except when otherwise specifically~~
232 ~~provided by rule or statute, pleadings need not be verified or accompanied by affidavit.~~

233 An unsigned paper shall be stricken unless omission of the signature is corrected
234 promptly after being called to the attention of the attorney or party.

235 **Subd. 2. Exception – Social Worker and Guardian Ad Litem Reports.**

236 Reports filed by social workers and guardians ad litem under Rule 38 need not be signed.

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238 **Rule 16.02. Representations to Court**

239 By presenting to the court, whether by signing, filing, submitting, or later
240 advocating, a pleading, motion, report, or other paper, an attorney or unrepresented party
241 is certifying to the best of the person’s knowledge, information, and belief, formed after
242 an inquiry reasonable under the circumstances, that:

243 (a) it is not being presented for any improper purpose, such as to harass or to
244 cause unnecessary delay or needless increase in the cost of litigation;

245 (b) the claims, defenses, and other legal contentions therein are warranted by
246 existing law or by a nonfrivolous argument for the extension, modification, or reversal of
247 existing law or the establishment of new law;

248 (c) the allegations and other factual contentions have evidentiary support or, if
249 specifically so identified, are likely to have evidentiary support after a reasonable
250 opportunity for further investigation or discovery; and

251 (d) the denials of factual contentions are warranted on the evidence or, if
252 specifically so identified, are reasonably based on a lack of information or belief.

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255 **RULE 17. DISCOVERY**

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257 **Rule 17.06-53.06. Regulation of Discovery**

258 **Subd. 1. Continuing Duty to Disclose.** Whenever a party or the county attorney
259 discovers additional material, information, or witnesses subject to disclosure, that party or
260 the county attorney shall promptly notify the other parties and the county attorney of the
261 existence of the additional material or information and the identity identify—of the
262 witnesses.

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RULE 18. DEFAULT

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Rule 18.02. Default Order

268 If the petition is proved by the applicable standard ~~burden~~-of proof, the court may
269 enter an order granting the relief sought in the petition as to that parent, legal custodian,
270 or Indian custodian.

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RULE 21. PARTIES

Rule 21.01. Party Status

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

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RULE 25. RIGHT TO REPRESENTATION; APPOINTMENT OF COUNSEL

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Rule 25.02. Appointment of Counsel

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286 **Subd. 2. Parent or Legal Custodian.** Each parent or legal custodian has the right
287 to effective assistance of counsel in connection with a juvenile court proceeding.

288 (a) **Juvenile Protection Matters.** Except in proceedings where the sole basis
289 for the petition is habitual truancy, if the child's parent or legal custodian desires counsel
290 but is financially unable to employ it, the court shall appoint counsel to represent the

291 parent or legal custodian in any juvenile protection matter in which the court determines
292 that such appointment is appropriate.

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

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

302 (d) **Timing.** The appointment of counsel for the parent, legal custodian, or
303 Indian custodian shall occur as soon as practicable after the request is made.

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305 **Rule 25.03. Reimbursement**

306 When counsel is appointed for a child ~~or a child's parent or legal custodian~~, the court
307 may inquire into the ability of the parent or legal custodian to pay for the attorney's services
308 and, after giving the parent or legal custodian a reasonable opportunity to be heard, may
309 order the parent or legal custodian to pay the attorney's fees. The parent or legal custodian
310 shall have an ongoing duty to disclose any change in the person's financial circumstances.

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312 **Rule 25.06. Withdrawal or Discharge of Counsel**

313 An attorney representing a party in a juvenile protection matter, including a public
314 defender, shall continue representation until such time as:

315 (a) all district court proceedings in the matter have been completed, including
316 filing and resolution of all post-trial motions under Rules 45 and 46;

317 (b) the attorney has been discharged by the client in writing or on the record;

318 (c) the court grants the attorney's ex parte motion for withdrawal upon good
319 cause shown; or

320 (d) the court approves the attorney’s ex parte written substitution of counsel.

321 If the court grants an attorney’s ex parte motion for withdrawal, the withdrawing
322 attorney shall serve upon all parties and the county attorney a copy of the order
323 permitting withdrawal.

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RULE 26. GUARDIAN AD LITEM

326 **Rule 26.01. Appointment for Child**

327 **Subd. 1. Mandatory Appointment Generally Required.** Pursuant to the
328 procedures set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family
329 Court, the ~~The~~ court shall issue an order appointing a guardian ad litem to advocate for
330 the best interests of the child in each child in need of protection or services matter,
331 termination of parental rights matter, other permanent placement matter, and adoption
332 matter all—cases—where such appointment is mandated by Minnesota Statutes
333 ~~section~~ § 260C.163, subd. 5. If the court has issued an order appointing a person as a
334 guardian ad litem in a child in need of protection or services matter, the court may, but is
335 not required to, issue an order reappointing the same person in the termination of parental
336 rights or other permanent placement matter. An appointment order is required only if a
337 new person is being appointed as guardian ad litem.

338 **Subd. 2. Discretionary Appointment.** Pursuant to the procedures set forth in the
339 Rules of Guardian Ad Litem Procedure in Juvenile and Family Court, Except as provided
340 ~~in subdivision 1,~~ in all other cases, except as provided in subdivision 1, the court may
341 appoint a guardian ad litem to advocate for the best interests of the child as permitted by
342 Minnesota Statutes ~~section~~ § 260C.163, subd. 5.

343 * * *

344 **Rule 26.02. Discretionary Appointment for Child’s Parent or Legal Custodian**

345 **Subd. 1. Appointment.** Pursuant to the procedures set forth in the Rules of
346 Guardian Ad Litem Procedure in Juvenile and Family Court, the ~~The~~ court may sua
347 sponte or upon the written or on-the-record request of a party or participant appoint a

348 guardian ad litem for a parent who is a party or the legal custodian if the court determines
349 that the parent or legal custodian:

350 (a) is incompetent to assist counsel in the matter or understand the nature of the
351 proceedings; or

352 (b) it appears at any stage of the proceedings that the parent is under
353 eighteen (18) years of age and is without a parent or legal custodian, or that considered in
354 the context of the matter the minor parent's parent or legal custodian is unavailable,
355 incompetent, indifferent to, hostile to, or has interests in conflict with the interests of the
356 minor parent.

357 **Subd. 2. Attorney Not Discharged.** Appointment of a guardian ad litem for a
358 parent or legal custodian shall not result in discharge of counsel for the parent or legal
359 custodian.

360 **Subd. 3. Responsibilities; Rights.** The guardian ad litem shall carry out the
361 responsibilities set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and
362 Family Court. The guardian ad litem shall have the rights set forth in the Rules of
363 Guardian Ad Litem Procedure in Juvenile and Family Court.

364 ~~(c) In every appointment under this rule, the guardian ad litem shall perform the~~
365 ~~following responsibilities:~~

366 ~~(1) conduct an investigation to determine the facts relevant to the~~
367 ~~situation of the minor parent or incompetent adult and the family, which must include,~~
368 ~~unless specifically excluded by the court: reviewing relevant documents; meeting with~~
369 ~~and observing the minor parent or incompetent adult in the home setting and considering~~
370 ~~the minor parent's, or incompetent adult's wishes, as appropriate; and interviewing~~
371 ~~parents, caregivers, and others relevant to the case;~~

372 ~~(2) advocate for the minor parent's or incompetent adult's best interests~~
373 ~~by participating in appropriate aspects of the case and advocating for appropriate~~
374 ~~community services when necessary;~~

375 (3) ~~maintain the confidentiality of information related to a case, with the~~
376 ~~exception of sharing information as permitted by law to promote cooperative solutions~~
377 ~~that are in the best interests of the minor parent or incompetent adult;~~

378 (4) ~~monitor the minor parent's or incompetent adult's best interests~~
379 ~~throughout the judicial proceeding; and~~

380 (5) ~~present written reports on the minor parent's or incompetent adult's~~
381 ~~best interests that include conclusions and recommendations and the facts upon which~~
382 ~~they are based.~~

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384 **Rule 26.05. Reimbursement**

385 The court may inquire into the ability of the parent or legal custodian to pay for
386 the guardian ad litem's services and, after giving the parent or legal custodian a
387 reasonable opportunity to be heard, may order the parent or legal custodian to pay the
388 guardian ad litem's fees. The parent or legal custodian shall have an ongoing duty to
389 disclose any change in the person's financial circumstances.

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391 **RULE 28. EMERGENCY PROTECTIVE CARE ORDER AND NOTICE**

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393 **Rule 28.02. Ex Parte Order for Emergency Protective Care**

394 **Subd. 1. Generally.** When the court makes individualized, explicit findings, the
395 court may issue an ex parte order for emergency protective care if it finds from the facts
396 set forth in the petition or any supporting affidavits or sworn testimony that:

397 (a) the child has left or been removed from a court-ordered placement; or

398 (b) there is a prima facie showing that the child is in surroundings or conditions
399 that endanger the child's health, safety, or welfare and that require that responsibility for
400 the child's care and custody ~~and care~~ be immediately assumed by the ~~court~~ responsible
401 social services agency; and

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

404 * * *

405 **RULE 30. EMERGENCY PROTECTIVE CARE HEARING**

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407 **Rule 30.09. Factors**

408 **Subd. 1. Generally.** Except in cases described in subdivision 3, or when the
409 parental rights of the parent to a sibling of the child have been terminated involuntarily,
410 or the child is presumed to be an abandoned infant as defined in under Minnesota
411 Statutes § 260C.301, subd. 2, at the emergency protective care hearing the court shall
412 require petitioner to present information regarding the following issues:

413 (a) whether the responsible social services agency made reasonable efforts, or
414 active efforts in the case of an Indian child, to prevent placement or eliminate the need
415 for removal of the child from the home;

416 (b) whether there are services the court could order that would allow the child
417 to safely return home;

418 (c) whether responsible relatives or other responsible adults are available to
419 provide services or to serve as placement options if licensed;

420 (d) whether the placement proposed by the agency is the least restrictive and
421 most home-like setting that meets the needs of the child;

422 (e) whether restraining orders, or orders expelling an allegedly abusive parent
423 or legal custodian from the home, are appropriate;

424 (f) whether orders are needed for examinations, evaluations, or immediate
425 services;

426 (g) the terms and conditions for parental visitation; and

427 (h) what consideration has been given for financial support of the child.

428 * * *

429 **Subd. 3. ~~Egregious Harm~~ Cases Permitting By-Pass of Child In Need of**
430 **Protection or Services Proceedings.**

431 (a) **Permanency Determination.** At the emergency protective care hearing, or
432 at any time prior to adjudication, and upon notice and request of the county attorney, the
433 court shall determine whether ~~make the following determinations:~~

434 (i) ~~whether a termination of parental rights~~ a petition has been filed
435 stating a prima facie case that:

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

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

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

442 (ii) ~~whether the county attorney has determined not to proceed with a~~
443 ~~termination of parental rights petition under Minnesota Statutes § 260C.307; or~~

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

447 (5) (iii) ~~whether a termination of parental rights petition or other~~
448 ~~petition according to Minnesota Statutes § 260C.201, subd. 11, has been filed alleging a~~
449 ~~prima facie case that the provision of services or the provision of further future services~~
450 for the purpose of rehabilitation and reunification is futile and therefore unreasonable
451 under the circumstances.

452 (b) **Permanency Hearing Required.** Once the court makes the determination
453 required in subdivision 3(a), the court shall schedule a ~~permanency~~ permanent placement
454 determination hearing pursuant to Rule 42 within thirty (30) days ~~unless the county~~
455 ~~attorney files a petition to terminate parental rights.~~

456 * * *

457 **Rule 30.10. Protective Care Findings and Order**

458 At the conclusion of the emergency protective care hearing the court shall issue a
459 written order which shall include findings pursuant to Rules 30.08 and 30.09 and which
460 shall order:

461 (a) that the child:

462 (1) continue in protective care;

463 (2) return home with conditions in place to assure the safety of the child
464 or others;

465 (3) return home with reasonable conditions of release; or

466 (4) return home with no conditions;

467 (b) conditions pursuant to subdivision (a), if any, to be imposed upon the
468 parent, legal custodian, or a party;

469 (c) services, if any, to be provided to the child and the child's family;

470 ~~(d) where the child shall be placed;~~

471 ~~(d-e)~~ terms of parental and sibling visitation pending further proceedings; and

472 ~~(e-f)~~ the parent's responsibility for costs of care pursuant to Minnesota
473 Statutes § 260C.331, subd. 1.

474

475

2006 Advisory Committee Comment

476 When the court orders a child into "protective care," the court is
477 ordering the child placed in foster care. That means the responsible social
478 services agency has the right to temporary physical custody and control of
479 the child. See Rule 2.01(p); Minn. Stat. §§ 260C.178, subd. 1;
480 and 260C.007, subd. 18. The responsible social services agency must make
481 an individualized determination that the placement selected is in the best
482 interests of the child using the eight factors set out in the statute. Minn.
483 Stat. § 260C.201, subd. 1(a)(2)(ii), and § 260C.212, subd. 2. The agency
484 documents its use of the eight best interest factors in the Out-of-Home
485 Placement Plan required under Minn. Stat. § 260C.212, subd. 1, and
486 Rule 37.02. The court reviews the agency's use of the eight statutory best
487 interest factors during the hearing required under Rule 41 and Minn.
488 Stat. § 260C.193, subd. 3.
489

490 When a child is in foster care, the agency is responsible for the cost
491 of placement, and may seek reimbursement from the child and parent under
492 Minn. Stat. § 260C.331, subd. 1, and, in the case of eligible children, from
493 the federal government under Title IV-E of the Social Security
494 Act, 42 U.S.C. § 670 et al. Federal reimbursement to counties for the cost
495 of foster care in Minnesota is about 50% of the cost and offers the
496 opportunity for significant savings to counties. One of the requirements for
497 federal reimbursement is that the agency be the entity responsible for
498 selecting the placement. The federal regulation that accompanies Title IV-
499 E states “FFP [Federal Financial Participation – that is Title IV-E
500 reimbursement] is not available when a court orders a placement with a
501 specific foster care provider.” See 45 CFR § 1356.21(g). The Minnesota
502 Department of Human Services recommends that orders for specific
503 placements be limited to help ensure that Title IV-E reimbursements are not
504 jeopardized. See DHS Bulletin 01-68-04. The only specific authority
505 under Minnesota’s statutes for the court to order a particular placement is
506 Minn. Stat. § 260C.193, subd. 3, which permits the court to order a child
507 placed with a relative who qualifies to be licensed if the agency has not
508 made efforts to locate a relative as required under Minn. Stat. § 260C.212,
509 subd. 5. For these reasons, Rule 30.10 omits any requirement that the court
510 order the child placed in a particular facility or with a particular relative.

511 **RULE 31. METHODS OF FILING AND SERVICE**

512 **Rule 31.01. Types of Filing**

513 **Subd. 1. Generally.** Any paper may be filed with the court either personally, by
514 U.S. mail, or by facsimile transmission.

515 **Subd. 2. Filing by Facsimile Transmission.**

516 (a) Any paper may be filed with the court by facsimile transmission. Filing
517 shall be deemed complete at the time that the facsimile transmission is received by the
518 court. The facsimile shall have the same force and effect as the original. Only facsimile
519 transmission equipment that satisfies the published criteria of the supreme court shall be
520 used for filing in accordance with this rule.

521 ~~Subd. 3. Fees; Original Document.~~ (b) Within five (5) days after the court has
522 received the transmission, the party filing the document shall forward the following to the
523 court:
524

525 (1) a \$25 \$5 transmission fee for each 50 pages, or part thereof, of the
526 filing, unless otherwise provided by statute or rule or otherwise ordered by the court;

527 (2) ~~the original signed document~~ any bulky exhibits or attachments; and

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

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

532 ~~Subd. 4. Noncompliance.~~ (d) Upon failure to comply with the requirements
533 of this rule, the court in which the action is pending may make such orders as are just
534 including, but not limited to, an order striking pleadings or parts thereof, staying further
535 proceedings until compliance is complete, or dismissing the action, proceeding, or any
536 part thereof.

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2006 Advisory Committee Comment

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Rule 31.01, subd. 2, regarding facsimile filing is amended in format and substance consistent with the amendments made to the Rules of Civil Procedure. Specifically, it is amended to delete the requirement that an "original" document follow the filing by facsimile. The requirement of a double filing causes confusion and unnecessary burdens for court administrators, and with the dramatic improvement in quality of received faxes since initial implementation of the Civil Rule in 1988, it no longer serves a useful purpose. Under the amended rule, the document filed by facsimile is the original for all purposes unless an issue arises as to its authenticity, in which case the version transmitted electronically and retained by the sender can be reviewed.

The filing fee for fax filings is changed from \$5.00 to \$25.00 because fax filings, even under the streamlined procedures of the amended rule, still impose significant administrative burdens on court staff, and it is therefore appropriate that this fee, unchanged since its adoption in the Rules of Civil Procedure in 1988, be increased. A number of committee members expressed the view that facsimile filing was, and still is, intended to be a process used on a limited basis in exigent or at least unusual circumstances. It is not intended to be a routine filing method.

561 The rule does not provide a specific mechanism for collecting the
562 transmission fee required under the rule. Because prejudice may occur to a
563 party if a filing is deemed ineffective, the court should determine the
564 appropriate consequences of failure to pay the necessary fee.
565

566 **Rule 31.02. Types of Service**

567 **Subd. 1. Personal Service.** Personal service means personally delivering the
568 original document to the person to be served or leaving it at the person's home or usual
569 place of abode with a person of suitable age and discretion residing therein, unless the
570 court authorizes service by publication. Unless otherwise provided by these rules or
571 ordered by the court, the sheriff or other person not less than 18 years of age and not a
572 party to the action may make personal service of a summons or other process. The social
573 services reports and guardian ad litem reports required under Rule 38 may be served
574 directly by the social worker and guardian ad litem.

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

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

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

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

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

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

591 (c) unless prohibited by the law of the foreign country, by:
592 (i) delivery to the individual personally of a copy of the
593 summons and the complaint; or
594 (ii) any form of mail requiring a signed receipt, to be
595 addressed and dispatched by the court administrator to the party to be served; or
596 (3) by other means not prohibited by international agreement as may be
597 directed by the court.

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

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

606 * * *

607 **Rule 31.04. Service Upon Counsel; Social Services Agency**

608 Unless personal service upon a party is required, service upon counsel for a party
609 or counsel for a participant shall be deemed service upon the party or participant. Service
610 upon the county attorney shall be deemed to be service upon the responsible social
611 services agency. Reports and other documents that are not court orders shall not be
612 served directly upon a represented party.

613 * * *

614 **Rule 31.07. Proof of Service**

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

- 617 (a) whether the document was served;
618 (b) the method of service ~~how the document was served;~~
619 (c) the name of the person on whom the document was served; and

620 (d) the date and place of service.

621 **Subd. 2. Exceptions.**

622 (a) **Social Worker and Guardian Ad Litem Court Reports.** Social workers
623 and guardians ad litem are not required to file proof of service when serving the court
624 reports required under Rule 38 and, instead, shall include with their report a non-
625 notarized certificate of distribution stating:

626 (1) the name of the person served,

627 (2) the method of service,

628 (3) the date and place of service, and

629 (4) the name of the person submitting the certificate of distribution.

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

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RULE 32. SUMMONS AND NOTICE

635 * * *

636 **Rule 32.02. Summons**

637 * * *

638 **Subd. 2. Upon Whom; Cost.**

639 (a) **Generally.** The court shall serve a summons and petition upon each party
640 identified in Rule 21, except as provided in subdivision 3(b), and upon any other person
641 whose presence the court deems necessary to a determination concerning the best
642 interests of the child. The cost of service of a summons and petition filed by someone
643 other than a non-profit or public agency shall be paid by the petitioner.

644 (b) **Termination of Parental Rights Matters.** In addition to the requirements
645 of subdivision 2(a), in any termination of parental rights matter the court administrator
646 shall serve the summons and petition upon the county attorney, any guardian ad litem for
647 the child's legal custodian, and any attorney representing a party in an ongoing child in
648 need of protection or services proceeding involving the subject child.

649 **Subd. 3. Service.**

650 (a) **Generally.** Unless the court orders service by publication pursuant to
651 Rule 31.02, subd. 3, the summons and petition shall be personally served upon the child's
652 parent or legal custodian, and the summons shall be served personally or by U.S. mail
653 upon all other parties and attorneys.

654 (b) **Habitual Truant, Runaway, and Prostitution Matters.**

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

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

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

662 (2) **Failure to Appear.** If the child or the child's parent or legal
663 custodian or the person with custody or control of the child fails to appear in response to
664 the initial service, the court shall order such person to be personally served with a
665 summons.

666 (c) **Voluntary Placement – Service by Mail.** In all cases involving a
667 voluntary placement of a child pursuant to Rule 44, the summons shall be served by U.S.
668 mail upon the parent or legal custodian.

669 * * *

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

671 (a) **Generally.** The summons and petition shall be served either at or before
672 the emergency protective care hearing held pursuant to Rule 30, or at least three (3) days
673 prior to the admit/deny hearing, whichever is earlier. At the request of a party, the
674 hearing shall not be held at the scheduled time if the summons and petition have been
675 served less than three (3) days before the hearing. If service is made outside the state or
676 by publication, the summons shall be personally served, mailed, or last published at least
677 ten (10) days before the hearing. In cases where publication of a child in need of

678 protection or services petition is ordered, published notice shall be made one time with
679 the last publication at least ten (10) days before the date of the hearing. Service by
680 publication shall be made pursuant to Rule 31.02, subd. 3.

681 (b) **Termination of Parental Rights Matters and Permanent Placement**
682 **Matters.** In any termination of parental rights matter or permanent placement matter the
683 summons and petition shall be served upon all parties in a manner that will allow for
684 completion of service at least ten (10) days prior to the date set for the admit/deny hearing.
685 In cases where publication of a termination of parental rights or other permanency summons
686 ~~petition~~ is ordered, published notice shall be made once per week for three (3) weeks with
687 the last publication at least ten (10) days before the date of the hearing. Pursuant to
688 Minnesota Statutes § 260C.307, subd. 3, notice sent by certified mail to the last known
689 address shall be mailed at least twenty (20) days before the date of the hearing. Service by
690 publication shall be made pursuant to Rule 31.02, subd. 3.

691 * * *

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

693 * * *

694 **Subd. 2. Upon Whom.**

695 (a) **Emergency Protective Care Hearing.** If the initial hearing is an
696 emergency protective care hearing, written notice is not required to be served. Instead,
697 the court administrator, or designee, shall use whatever method is available to inform all
698 parties and participants identified by the petitioner in the petition, and their attorneys, of
699 the date, time, and location of the hearing.

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

705 * * *

706 **Rule 32.04. Notice of Subsequent Hearings**

707 For each hearing following the emergency protective care or admit/deny hearing,
708 the court administrator shall serve upon each party, participant, and attorney a written
709 notice of the date, time, and location of the next hearing. Such notice shall be delivered
710 at the close of each hearing or mailed at least five (5) days before the date of the hearing
711 or ten (10) ~~fifteen (15)~~ days before the date of the hearing if mailed to an address outside
712 the state. If written notice is delivered at the end of the hearing, later written notice is not
713 required.

714 * * *

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

716 Pursuant to 25 U.S.C. § 1912(a), in ~~in~~ any juvenile protection proceeding where
717 the court knows or has reason to know that an Indian child is involved, the party seeking
718 the foster care placement of, or termination of parental rights to, an Indian child shall
719 notify the parent or Indian custodian and the Indian child's tribe of the pending
720 proceedings and of the right of intervention pursuant to Rule 23. Such notice shall be by
721 registered mail with return receipt requested, unless personal service has been
722 accomplished. If the identity or location of the parent or Indian custodian and the tribe
723 cannot be determined, such notice shall be given to the Secretary of the Interior in like
724 manner, who shall have fifteen (15) days after receipt to provide the requisite notice to
725 the parent or Indian custodian and the tribe. No foster care placement or termination of
726 parental rights proceeding shall be held until at least ten (10) days after receipt of notice
727 by the parent or Indian custodian and the tribe or the Secretary of the Interior, provided
728 that the parent or Indian custodian or the tribe shall, upon request, be granted up to
729 twenty (20) additional days to prepare for such proceeding.

730

731

RULE 33. PETITION

732 **Rule 33.01. Drafting; Filing; Service**

733 **Subd. 1. Generally.** A petition may be drafted and filed by the county attorney
734 or any responsible person. A petition shall be served pursuant to Rule 32.02. If the

735 petition contains any information under Rule 8.04 that is inaccessible to the public, the
736 petitioner shall file with the court the original petition and a copy of the petition from
737 which the inaccessible information has been redacted.

738 * * *

739 **Subd. 3. Termination of Parental Rights Matters.**

740 (a) **Drafting.** A termination of parental rights petition may be drafted and filed
741 by the county attorney or any responsible ~~reputable~~ person.

742 (b) **Filing and Service.** Any termination of parental rights petition shall be
743 filed in the child in need of protection or services file, if one exists. A petition shall be
744 served pursuant to Rule 32.02.

745 (c) **Egregious Harm, ~~or~~ Abandonment of an Infant, Previous Involuntary**
746 **Termination of Parental Rights, or Previous Involuntary Transfer of Permanent**
747 **Legal and Physical Custody Matters.** The county attorney shall file a termination of
748 parental rights petition within thirty (30) days of the responsible social services agency
749 determining that a child:

750 (1) has been subjected to egregious harm as defined in Minnesota
751 Statutes § 260C.007, subd. 14;

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

754 (3) is an abandoned infant as defined in Minnesota Statutes § 260C.301,
755 subd. 2;

756 (4) is a child of a parent whose parental rights to another child have
757 been involuntarily terminated; or

758 (5) is the child of a parent whose custodial rights to another child have
759 been involuntarily transferred to a relative under Minnesota Statutes § 260C.201, subd. 11,
760 or similar law of another jurisdiction.

761 **(d) Joinder of Social Services Agency.** If the termination of parental rights
762 petition has been filed by a party other than the responsible social services agency, that
763 party shall join the responsible social services agency as a party pursuant to Rule 24.

764 (e) Termination of Parental Rights or Other Permanency Petition. The
765 county attorney need not file a termination of parental rights petition if the county
766 attorney ~~determines and files with the court an affidavit that a:~~

767 (1) a petition for transfer of permanent legal and physical custody to a
768 relative, including a determination that such transfer is in the best interests of the child; or

769 (2) a petition alleging the child and, where appropriate, the child's
770 siblings to be in need of protection or services and such petition is accompanied by a case
771 plan or out-of-home placement plan prepared by the responsible social services agency
772 documenting there is a compelling reason documented by the responsible social services
773 agency that why filing a termination of parental rights petition is not in the best interests
774 of the child.

775 **Subd. 4. Permanent Placement Matters.**

776 (a) **Generally.** Any permanent placement petition required under Rule 42
777 shall be filed in the child in need of protection or services file, if one exists.

778 (b) **Filing by Whom; Service.** The county attorney shall file a permanent
779 placement petition in juvenile court to determine the permanent placement of a child.
780 The county attorney may seek any alternative permanent placement relief, and any other
781 party may seek only termination of parental rights or transfer of permanent legal and
782 physical custody to a relative. Any party may also file a petition to establish the basis for
783 a permanent placement order. A party, including a guardian ad litem for the child, shall
784 file a permanent placement petition if the party disagrees with the permanent placement
785 determination set forth in the petitions filed by other parties. A petition shall be served
786 pursuant to Rule 32.02.

787 **Rule 33.02. Content**

788 * * *

789 **Subd. 3. Termination of Parental Rights Matters.**

790 (a) **Generally.** A termination of parental rights matter shall be entitled "Petition
791 to Terminate Parental Rights" and shall conform to the requirements of Minnesota
792 Statutes § 260C.141.

793 (b) **Petitions Drafted and Filed By Others.**

794 (1) **Petition Form.** A termination of parental rights petition filed by an
795 individual who is not a county attorney or responsible social services agency ~~an agent of~~
796 ~~the Commissioner of Human Services~~ shall be filed on a form developed by the state
797 court administrator. Copies of the form shall be available from the court administrator in
798 each county.

799 (2) **Additional Content Requirements for Petitions Not Filed by**
800 **County Attorney.** In addition to the content requirements set forth in subdivision 1, a
801 petition filed by an individual who is not a county attorney or an agent of the
802 Commissioner of Human Services shall contain:

803 (i) a statement, including court file numbers where possible, of
804 pending juvenile or family court proceedings and prior or present juvenile or family court
805 orders relating to the child;

806 (ii) a statement regarding the relationship of the petitioner to the
807 child and to any other parties; and

808 (iii) a statement identifying any past or pending cases involving
809 the child or family that is the subject of the petition.

810 (3) **Review by Court Administrator.** Any petition filed by an
811 individual who is not a county attorney or an agent of the Commissioner of Human
812 Services shall be reviewed by the court administrator before it is filed to determine
813 whether it is complete. The court administrator may reject the petition if incomplete.

814 (c) **Petitions Seeking Alternative Permanent Placement Relief.** In addition to
815 the content requirements set forth in subdivision 1, any termination of parental rights
816 petition filed by the county attorney or agent of the Commissioner of Human Services may
817 seek alternative permanent placement relief, and any other party may seek only transfer of
818 permanent legal and physical custody to a relative as the alternative to termination of
819 parental rights including transfer of permanent legal and physical custody to a relative or
820 placement of the child in long term foster care. A petition seeking alternative permanent
821 placement relief shall identify which proposed permanent placement option the petitioner

822 believes is in the best interests of the child. A petition may seek separate permanent
823 placement relief for each child named as a subject of the petition as long as the petition
824 identifies which option(s) is sought for each child and why that option(s) is in the best
825 interests of the child. At the admit/deny hearing on a petition that seeks alternative relief,
826 each party shall identify on the record the permanent placement option that is in the best
827 interests of the child.

828 **Subd. 4. Permanent Placement Matters.**

829 (a) **Captions and Title.** Each petition in a permanent placement matter, or a
830 sworn affidavit accompanying each petition, shall contain a title denoting the permanent
831 relief sought:

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

836 (2) A request for long-term foster care shall be entitled “Juvenile
837 Protection Petition for Long-Term Foster Care.”

838 (3) A request for foster care for a specified period of time for a child
839 adjudicated to be in need of protection or services solely on the basis of the child’s behavior
840 shall be entitled “Juvenile Protection Petition for Foster Care for a Specific Period of Time.”

841 (b) **Petitions Seeking Alternative Placement Relief.** Any permanent placement
842 petition filed by the county attorney or agent of the Commissioner of Human Services may
843 seek alternative permanent placement relief, including termination of parental rights,
844 transfer of permanent legal and physical custody to a relative, or placement of the child in
845 long-term foster care. Any permanent placement petition filed by a party who is not the
846 county attorney or agent of the Commissioner of Human Services may seek only transfer of
847 permanent legal and physical custody to a relative as the alternative to termination of
848 parental rights. A petition seeking alternative permanent placement relief shall identify
849 which permanent placement option the petitioner believes is in the best interests of the child.
850 A petition may seek separate permanent placement relief for each child named as a subject

851 of the petition as long as the petition identifies which option(s) is sought for each child and
852 why that option is in the best interests of the child. At the admit/deny hearing on a petition
853 that seeks alternative relief, each party shall identify on the record the permanent placement
854 option that is in the best interests of the child. If another party files a permanent placement
855 petition in response to the county's petition, it must be filed and served at least fifteen (15)
856 days prior to the date of trial.

857 * * *

858 **Rule 33.04. Amendment**

859 **Subd. 1. Prior to Trial.** The petition may be amended at any time prior to the
860 commencement of the trial, including, in a child in need of protection or services matter,
861 adding a child as the subject matter of the petition. The petitioner shall provide written or
862 on-the-record notice of the amendment to all parties and participants. When the petition
863 is amended, the court shall grant all other parties sufficient time to respond to the
864 amendment.

865 **Subd. 2. After Trial Begins.** The petition may be amended after the trial has
866 commenced if the court finds that the amendment does not prejudice a party and all
867 parties are given sufficient time to respond to the proposed amendment. Upon receipt of
868 approval from the court, the petitioner shall provide written or on-the-record notice of the
869 proposed amendment to all parties and participants.

870 * * *

871 **RULE 34. ADMIT/DENY HEARING**

872 * * *

873 **Rule 34.02. Timing**

874 **Subd. 1. Child in Placement.**

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

880 (b) **Termination of Parental Rights Matters.** In a termination of parental
881 rights matter the admit/deny hearing shall be held not less than ten (10) days after service
882 of the summons and petition is complete upon the party.

883 (c) **Permanent Placement Matters.** In a permanent placement matter the
884 admit/deny hearing shall be held ~~at least twenty (20) days prior to the date set for the~~
885 ~~permanent placement hearing held pursuant to Rule 42~~ not less than ten (10) days after
886 service of the summons and petition is complete upon the party.

887 * * *

888 * * *

889 **Rule 34.03. Hearing Procedure**

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

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

895 (b) inquire whether the child is an Indian child and, if so, determine whether
896 the Indian child’s tribe, parent, and Indian custodian ~~have~~ has been notified;

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

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

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

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

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

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

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

912 (a) In each child in need of protection or services matter, after completing the
913 initial inquiries set forth in subdivision 1, the court shall determine whether the petition
914 establishes a prima facie showing that a juvenile protection matter exists and that the
915 child is the subject of the matter, unless the prima facie determination was made at the
916 emergency protective care hearing pursuant to Rule 30.08. The court shall dismiss the
917 petition if it finds that the petition fails to establish a prima facie showing that a juvenile
918 protection matter exists and that the child is the subject of that matter.

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

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

926 (2) a permanent placement determination hearing shall be held within
927 twelve (12) months of the date of the child’s placement in foster care or in the home of a
928 noncustodial parent.

929 ~~In addition to the initial procedures set forth in subdivision 1, in each child in need~~
930 ~~of protection or services matter the court shall also advise all persons present that if the~~
931 ~~petition is proven and the child is not returned home, a hearing to determine the~~
932 ~~permanent placement of the child will be held:~~

933 ~~(a) — within six (6) months of the date of the child’s out of home placement if~~
934 ~~the child was under eight (8) years of age at the time of the filing of the petition; or~~

935 ~~(b) — within twelve (12) months of the date of the child’s out of home placement~~
936 ~~if the child was eight (8) years of age or older at the time of the filing of the petition.~~

937 **Subd. 3. Termination of Parental Rights Matters.**

938 (a) In each termination of parental rights matter, after completing the initial
939 inquiries set forth in subdivision 1, the court shall determine whether the petition states a
940 prima facie case in support of one or more statutory grounds set forth in the petition to
941 terminate parental rights~~termination of parental rights under the statutory grounds stated~~
942 ~~in the petition.~~ The court shall dismiss the petition if it finds that the petition fails to
943 establish a prima facie showing that a juvenile protection matter exists and that the child
944 is the subject of that matter.

945 (b) When the petition alleges that reasonable efforts, or active efforts in the
946 case of an Indian child, have been made to reunify the child with the parent or legal
947 custodian, the court shall enter a separate finding regarding whether the factual
948 allegations contained in the petition state a prima facie case that the agency has provided
949 reasonable efforts, or active efforts in the case of an Indian child, to reunify the child and
950 the parent or legal custodian. In the alternative, the court may enter a finding that
951 reasonable efforts, ~~or active efforts in the case of an Indian child,~~ to reunify the child and
952 the parent or legal custodian were not required under Minnesota Statutes § 260.012.

953 (c) If the court determines that the petition states a prima facie case in support
954 of termination of parental rights, the court shall proceed pursuant to Rule 35. If the court

955 determines that the petition fails to state a prima facie case in support of termination of
956 parental rights, the court shall:

- 957 (i) return the child to the care of the parent or legal custodian;
- 958 (ii) give the petitioner ten (10) days to file an amended petition or
959 supplementary information if the petitioner represents there are additional facts which, if
960 presented to the court, would establish a prima facie case in support of termination of
961 parental rights;
- 962 (iii) give the petitioner ten (10) days to file a child in need of protection
963 or services petition; or
- 964 (iv) dismiss the petition.

965 **Subd. 4. Permanent Placement Matters.**

966 (a) In each permanent placement matter, after completing the initial inquiries
967 set forth in subdivision 1, the court shall review the facts set forth in the petition, consider
968 such argument as the parties may make, and determine whether the petition states a prima
969 facie case in support of one or more of the permanent placement options.

970 (b) When the petition seeking permanent placement of the child away from the
971 parent or legal custodian requires a determination by the court that reasonable efforts, or
972 active efforts in the case of an Indian child, have been made to reunify the child with the
973 parent or legal custodian, the court shall enter a separate finding regarding whether the
974 factual allegations in the petition state a prima face case that the agency has provided
975 reasonable efforts, or active efforts in the case of an Indian child, to reunify the child and
976 the parent or legal custodian. In the alternative, the court may enter a finding that
977 reasonable efforts, ~~or active efforts in the case of an Indian child,~~ were not required under
978 Minnesota Statutes § 260.012.

979 (c) If the court determines that the petition states a prima facie case, the court
980 shall proceed pursuant to Rule 35. If the court determines that the petition fails to state a
981 prima facie case, the court may:

- 982 (i) return the child to the care of the parent;

983 (ii) give the petitioner ten (10) days to file an amended petition or
984 supplementary information if the petitioner represents there are additional facts which, if
985 presented to the court, would establish a prima facie case; or

986 (iii) dismiss the petition.

987 * * *

988 **RULE 35. ADMISSION OR DENIAL**

989 **Rule 35.01. Generally**

990 **Subd. 1. Parent or Legal Custodian.**

991 (a) **Generally.** Unless the child's parent or legal custodian is the petitioner, a
992 parent who is a party or a legal custodian shall admit or deny the statutory grounds set
993 forth in the petition or remain silent. If the parent or legal custodian denies the statutory
994 grounds set forth in the petition or remains silent, or if the court refuses to accept an
995 admission, the court shall enter a denial of the petition on the record.

996 (b) **Termination of Parental Rights Matters.** In a termination of parental
997 rights matter, only the parents of the child are required to admit or deny the petition. A
998 party who is not required to admit or deny the petition may object to the admission if that
999 party has filed a petition pursuant to Rule 33.

1000 (c) **Permanent Placement Matters.** In a permanent placement matter:

1001 (1) Only the legal custodian of the child who is not the petitioner is
1002 required to admit or deny the petition. A party who is not required to admit or deny the
1003 petition may object to the entry of the proposed permanent placement order if that party
1004 has filed a petition pursuant to Rule 33.

1005 (2) When there is a ~~the county attorney~~ petitions for transfer of
1006 permanent legal and physical custody to on behalf of a relative who is not represented by
1007 counsel, the court may not enter an order granting the transfer of custody unless there is
1008 testimony from the proposed custodian establishing that the proposed custodian
1009 understands:

1010 (i) the legal consequences of a transfer of permanent legal and
1011 physical custody;

- 1012 (ii) the nature and amount of financial support and services that
1013 will be available to help care for the child;
1014 (iii) how the custody order can be modified; and
1015 (iv) any other permanent placement options available for the
1016 subject child.

1017 **Subd. 2. Child.**

1018 (a) **Generally.** Except as otherwise provided in this rule, the child shall not
1019 admit or deny the petition.

1020 (b) **Child's Behavior.** In matters where the sole allegation is that the child's
1021 behavior is the basis for the petition, only the child shall admit or deny the statutory
1022 grounds set forth in the petition or remain silent.

1023 **Subd. 3. Contested Petition.** Any party has the right to contest the basis of a
1024 petition. The county attorney has the right to contest the basis of a petition filed by an
1025 individual who is not a county attorney or an agent of the Commissioner of Human
1026 Services.

1027 **Rule 35.03. Admission**

1028 * * *

1029 **Subd. 3. Questioning of Person Making Admission.**

1030 (a) **Generally.** Before accepting an admission the court shall determine on the
1031 record or by written document signed by the person admitting and the person's counsel, if
1032 represented, whether:

- 1033 (1) the person admitting acknowledges an understanding of:
- 1034 (i) the nature of the statutory grounds set forth in the petition;
 - 1035 (ii) if unrepresented, the right to representation pursuant to
1036 Rule 25;
 - 1037 (iii) the right to a trial;
 - 1038 (iv) the right to testify; and
 - 1039 (v) the right to subpoena witnesses; and

1040 (2) the person admitting acknowledges an understanding that the facts
1041 being admitted establish the statutory grounds set forth in the petition.

1042 (b) **Child in Need of Protection or Services Matters, and Habitual Truant,**
1043 **Runaway, and Prostitution Matters.** In addition to the questions set forth in
1044 subdivision 3(a), before accepting an admission in a child in need of protection or
1045 services matter or a matter alleging a child to be a habitual truant, a runaway, or engaged
1046 in prostitution, the court shall also determine on the record or by written document signed
1047 by the person admitting and the person's counsel, if represented, whether the person
1048 admitting acknowledged an understanding that:

1049 (1) ~~whether the person admitting acknowledges an understanding that a~~
1050 ~~possible effect of a finding that the statutory grounds are proved may be the transfer of~~
1051 ~~legal custody of the child to another or other permanent placement option including or~~
1052 ~~termination of parental rights to the child; and~~

1053 (2) if the child is in out-of-home placement, a permanency progress
1054 review hearing will be held within six (6) months of the date the child is ordered placed
1055 in foster care or in the home of a noncustodial parent if the child was under eight (8)
1056 years of age at the time of the filing of the petition, and a permanent placement
1057 determination hearing will be held within twelve (12) months of the date the child is
1058 ordered placed in foster care or in the home of a noncustodial parent ~~whether the person~~
1059 ~~admitting acknowledges an understanding that, if the child is not returned home, a~~
1060 ~~hearing to determine the permanent placement of the child will be held within six (6)~~
1061 ~~months of the date of the child's out-of-home placement if the child was under eight (8)~~
1062 ~~years of age at the time of the filing of the petition, or within twelve (12) months of the~~
1063 ~~date of the child's out of home placement if the child was eight (8) years or older at the~~
1064 ~~time of the filing of the petition.~~

1065 * * *

1066

1067 **RULE 36. PRETRIAL HEARING ~~CONFERENCE~~**

1068 **Rule 36.01. Timing**

1069 The court may convene a pretrial hearing ~~conference~~ on its own motion or upon
1070 the motion of any party. Any pretrial hearing ~~conference~~ shall take place at least ten (10)
1071 days prior to trial.

1072 **Rule 36.02. Purpose**

1073 The purposes of a pretrial hearing ~~conference~~ shall be to:

1074 (a) determine whether a settlement of any or all of the issues has occurred or is
1075 possible;

1076 (b) determine whether all parties have been served and, if not, review the
1077 efforts that have taken place to date to serve all parties;

1078 (c) advise any child or the child's parent or legal custodian who appears in
1079 court and is unrepresented of the right to representation pursuant to Rule 25. If counsel is
1080 appointed at the pretrial ~~conference~~ hearing, the ~~conference~~ hearing shall be reconvened
1081 at a later date;

1082 (d) determine whether the child shall be present and testify at trial and, if so,
1083 under what circumstances;

1084 (e) identify any unresolved discovery matters;

1085 (f) resolve any pending pretrial motions;

1086 (g) identify and narrow issues of law and fact for trial, including identification
1087 of:

1088 (1) the factual allegations admitted or denied;

1089 (2) the statutory grounds admitted or denied;

1090 (3) any stipulations to foundation and relevance of documents; and

1091 (4) any other stipulations, admissions, or denials;

1092 (h) exchange witness lists and a brief summary of each witness' testimony;

1093 (i) exchange exhibit lists;

1094 (j) confirm the trial date and estimate the length of trial; and

1095 (k) determine any other relevant issues.

1096 **Rule 36.03. Pretrial Order**

1097 The pretrial order shall include the information specified in Rule 36.02 and shall
1098 specify all factual allegations and statutory grounds admitted and denied.

1099 **Rule 36.04. Continuing Obligation to Update Information**

1100 From the date of the pretrial hearing ~~conference~~ through the date of trial, the
1101 parties shall have a continuing obligation to update information provided during the
1102 pretrial hearing ~~conference~~.

1103

1104 **RULE 37. CASE AND OUT-OF-HOME PLACEMENT PLANS**

1105 **Rule 37.01. Case and Out-of-Home Placement Plans and Reports Generally**

1106 When the responsible social services agency is the petitioner, the agency shall file
1107 with the court and provide to the parties and foster parent a case plan or out-of-home
1108 placement plan for the child and the parents or legal custodians, as appropriate. A case
1109 plan shall be prepared according to the requirements of Minnesota Statutes § 245.4871,
1110 subds. 19 or 21; § 245.492, subd. 16; § 256B.092; ~~§ 256E.08~~; § 260C.212, subd. 1; or
1111 § 626.556, subd. 10, whichever is applicable.

1112 **Rule 37.02. Child in Court-Ordered Foster Care ~~Out-of-Home Placement: Out-of-~~**
1113 **Home Placement Plan**

1114 **Subd. 1. Plan Required.** When a child is placed in foster care ~~out of the care of~~
1115 ~~a parent or legal custodian~~ by court order, the responsible social services agency shall file
1116 with the court and provide to the parties and foster parents the out-of-home placement
1117 plan required under Minnesota Statutes § 260C.212, subd. 1.

1118 **Subd. 2. Timing.** The out-of-home placement plan shall be filed with the court and
1119 provided to the parties and foster parents by the responsible social services agency within
1120 thirty (30) days of the ~~filing of the petition alleging the child to be in need of protection or~~
1121 ~~services~~ court order placing the child in foster care, an order for protective care, or order
1122 transferring legal custody to the responsible social services agency, whichever is earliest.

1123 **Subd. 3. Content.** The out-of-home placement plan shall include a statement about
1124 whether the parent, legal custodian, and child participated in the preparation of the plan. If a

1125 parent or legal custodian refuses to participate in the preparation of the plan or disagrees
1126 with the services recommended in the plan by the responsible social services agency, ~~the~~
1127 ~~information submitted with the plan shall describe the agency's efforts to solicit the parents'~~
1128 ~~participation and describe the parents' response~~ the agency shall state in the plan the
1129 attempts made to engage the parent, legal custodian, and child in case planning and note
1130 such refusal or disagreement. The plan shall also include a statement about whether the
1131 child's guardian ad litem; the child's tribe, if the child is an Indian child; and the child's
1132 foster parent or representative of the residential facility have been consulted in the plan's
1133 preparation. The agency shall document whether the parent or legal custodian; the child, if
1134 appropriate; the child's tribe, if the child is an Indian child; and foster parents have received
1135 a copy of the plan. When a child is in foster care due solely or in part to the child's
1136 emotional disturbance, the child's mental health treatment provider shall also be consulted
1137 in preparation of the plan and the agency shall document such consultation in the plan filed
1138 with the court.

1139 **Subd. 4. Procedure for Approving or Ordering Out-of-Home Placement Plan**
1140 **Prior to Disposition.**

1141 (a) **Court's Approval of Plan.** Upon ~~receipt~~ the filing of the out-of-home
1142 placement plan, together with the information about whether the parent or legal
1143 custodian; the child, if appropriate; the child's tribe, if the child is an Indian child; and the
1144 foster parents have received a copy of the plan, the court may, based upon the allegations
1145 in the petition, approve the responsible social services agency's implementation of the
1146 plan if it was developed jointly with the parent and in consultation with others required
1147 under this Rule and Minnesota Statutes § 260C.212, subd. 1 ~~based upon the allegations~~
1148 ~~contained in the petition.~~ The court shall send written notice of the approval of the plan
1149 to all parties and the county attorney, or may state such approval on the record at a
1150 hearing after the plan has been filed with the court and provided to the parties, foster
1151 parents, and the child, as appropriate.

1152 (b) **Refusal to Participate in Development of Plan or Disagreement With**
1153 **Services.** ~~Upon notice and motion by a parent or child who agrees to comply with the~~

1154 ~~terms of an out-of-home placement plan, the court may modify the plan and order the~~
1155 ~~responsible social services agency to provide other or additional services for~~
1156 ~~reunification, if reunification services are required, and the court determines the agency's~~
1157 ~~plan inadequate under Minnesota Statutes § 260.012. When a parent or legal custodian~~
1158 ~~refuses to participate in the preparation of the out-of-home placement plan or disagrees~~
1159 ~~with the services recommended by the responsible social services agency, the agency~~
1160 ~~shall notify the court of the services it will provide or efforts it will attempt under the~~
1161 ~~plan notwithstanding the parent's refusal to cooperate or disagreement with the services.~~
1162 Any party may ask the court to modify the plan to require different or additional services.
1163 The court may approve the plan as presented by the agency or may modify the plan to
1164 require services requested. The court's approval of the plan shall be based upon the
1165 content of the petition or amended petition.

1166 (c) **Voluntary or Court-Ordered Compliance with Plan.** A parent may
1167 voluntarily agree to comply with the terms of an out-of-home placement plan filed with
1168 the court. Unless the parent voluntarily agrees to the plan, the court may not order a
1169 parent to comply with the plan until there is a disposition ordered under Minnesota
1170 Statutes § 260C.201, subd. 1, and Rule 41. However, the court may find that the
1171 responsible social services agency has made reasonable efforts ~~for reunification to~~
1172 finalize a permanent placement plan for the child if the agency makes efforts to
1173 implement the terms of an out-of-home placement plan approved under this rule and
1174 Minnesota Statutes § 260C.178, subd. 7.

1175 (d) **Copy of Plan.** When the out-of-home placement plan is either ordered or
1176 approved, a copy of the plan shall be incorporated into the order by reference. The plan
1177 need not be served with the order, unless the plan has been modified.

1178 * * *

1179 **Rule 37.03. Child in Voluntary Foster Care ~~Out-of-Home Placement:~~ **Out-of-Home****
1180 **Placement Plan**

1181 **Subd. 1. Child in Voluntary Foster Care ~~Placement~~ **Not Due Solely to Child's****
1182 **Disability.**

1183 (a) **Timing.** The out-of-home placement plan required under Minnesota
1184 Statutes § 260C.212, subd. 1, shall be filed and served with the petition asking the court to
1185 review a voluntary placement of a child in placement when the placement is not due solely
1186 to the child's disability under Minnesota Statutes § 260C.141, subd. 2, and Rule 44.

1187 (b) **Content.** The plan shall include a statement about whether the parent, legal
1188 custodian, and child participated in the preparation of the plan. The plan shall also include a
1189 statement about whether the child's guardian ad litem; the child's tribe, if the child is an
1190 Indian child; and the child's foster parent or representative of the residential facility have
1191 been consulted in the plan's preparation. The agency shall document whether the parent or
1192 legal custodian; the child, if appropriate; the child's tribe, if the child is an Indian child; and
1193 foster parents have received a copy of the plan. When a child is in foster care due solely or
1194 in part to the child's emotional disturbance, the child's mental health treatment provider
1195 shall also be consulted in preparation of the plan and the agency shall document such
1196 consultation in the plan filed with the court.

1197 **Subd. 2. Child in Voluntary Foster Care ~~Placement~~ **Due Solely to Child's****
1198 **Disability.**

1199 (a) **Timing.** The out-of-home placement plan required under Minnesota
1200 Statutes § 260C.212, subd. 1, shall be filed with the report or petition asking the court to
1201 review a voluntary placement of a child in placement when the placement is due solely to
1202 the child's disability, as defined in Minnesota Statutes § 260C.007, subd. 12 or 16, under
1203 Minnesota Statutes § 260C.141, subd. 2, and Rule 44.

1204 (b) **Content.** The plan shall include a statement about whether the parent, legal
1205 custodian, and child participated in the preparation of the plan. The plan shall also include a
1206 statement about whether the child's guardian ad litem; the child's tribe, if the child is an
1207 Indian child; and the child's foster parent or representative of the residential facility have

1208 been consulted in the plan’s preparation. The agency shall document whether the parent or
1209 legal custodian; the child, if appropriate; the child’s tribe, if the child is an Indian child; and
1210 foster parents have received a copy of the plan. When a child is in foster care due solely to
1211 the child’s emotional disturbance, the child’s mental health treatment provider shall also be
1212 consulted in preparation of the plan and the agency shall document such consultation in the
1213 plan filed with the court.

1214 **Subd. 3. Procedure for Approving Out-of-Home Placement Plan for Child in**
1215 **Voluntary Foster Care Placement.** The court shall consider the appropriateness of the
1216 out-of-home placement plan in determining whether the voluntary placement is in the
1217 best interests of the child as required under Rule 44.

1218 **Rule 37.04. Child Not in Foster Care ~~Out-of-Home Placement~~: Child Protective**
1219 **Services Case Plan**

1220 A responsible social services agency may file a petition alleging that the child is in
1221 need of protection or services seeking to ensure the provision of adequate child protective
1222 services as required under Minnesota Statutes § 626.556, subd. 10, and Minnesota
1223 Rule 9560.0228.

1224 (a) **Timing.** When the child is not in foster care ~~out-of-home placement~~, the
1225 ~~Child Protective Services Plan~~ child protective services plan required under Minnesota
1226 Statutes § 626.556, subd. 10, and Minnesota Rule 9560.0228 shall be filed with the
1227 petition alleging the child to be in need of protection or services unless the responsible
1228 social services agency includes a statement in the petition explaining why it has not been
1229 possible to develop the plan, which may include exigent circumstances or the non-
1230 cooperation of the child’s parents or guardian. The child protective services plan shall be
1231 provided to the parties by the responsible social services agency at the time it is filed with
1232 the court.

1233 (b) **Procedure for Ordering Child Protective Services Plan.** When the child
1234 is not in foster care ~~out-of-home placement~~ or is not recommended to continue in foster
1235 care ~~out-of-home placement~~, but the court finds endangerment under Rule 30, the court
1236 may order the parties to comply with the provisions of the child protective services ease

1237 plan as a condition of the child remaining in the care of the parent, guardian, or
1238 custodian. The court may also order the parties to comply with the provisions of the plan
1239 as part of a disposition under Rule 41. When the court orders a child protection services
1240 plan, a copy of the plan shall be attached to the court's order and incorporated into it by
1241 reference.

1242 **Rule 37.05. Child with Disability: Case Plan**

1243 **Subd. 1. Procedure.** If a child found to be in need of protection or services has a
1244 physical or mental disability and a case plan is required under Minnesota
1245 Statutes § 245.4871, subd. 19 or 21; § 245.492, subd. 16; or § 256B.092;~~or § 256E.08,~~
1246 the plan shall be filed with the court. Services may be ordered provided to the child
1247 according to the provisions of Minnesota Statutes § 260C.201, subd. 1(a)(3). When an
1248 out-of-home placement plan is required under Rule 37.02 or a child protective services
1249 plan is required under Rule 37.04, the requirements of a plan under this paragraph may be
1250 included in such plans and need not be a separate document.

1251 **Subd. 2. Timing.** The case~~child protective services~~ plan shall be provided to the
1252 parties by the responsible social services agency at the time it is filed with the court.

1253 * * *

1254 **RULE 38. REPORTS TO THE COURT**

1255 **Rule 38.01. Social Services Court Reports -- Generally**

1256 **Subd. 1. Periodic Reports Required.** After an out-of-home placement plan or
1257 case plan is approved or ordered by the court pursuant to Rule 37 or Rule 41, the
1258 responsible social services agency shall make periodic certified reports to the court
1259 regarding progress made on the plan. When the report relates to plans for siblings who
1260 are in foster care~~out-of-home placement~~, the agency may combine information related to
1261 each child's plan into one report as long as the report addresses each child's individual
1262 needs and circumstances. The agency may also submit written information from
1263 collateral sources regarding assessments or the delivery of services or any other relevant
1264 information regarding the child's safety, health, or welfare in support of the report or as a

1265 supplement to the report. Such reports may be supplemented at or before the hearing
1266 either orally or in writing.

1267 **Subd. 2. Content.** Although pursuant to Rule 16 a report is not required to be
1268 signed, each ~~Each~~ report shall include the name of the person submitting the report; a
1269 statement certifying the content as true based upon personal observation, first-hand
1270 knowledge, or information and belief; and shall include the case caption, the date of the
1271 report, and the date of the hearing at which the report is to be considered. Each report
1272 shall contain or have attached the certificate of distribution required under Rule 31.07,
1273 subd. 2.

1274 **Subd. 3. Timing of Reports.** Periodic reports required under this Rule shall be
1275 filed with the court and served upon the parties by the responsible social services agency
1276 not later than five (5) business days prior to each review hearing required under
1277 Rule 41.06, permanent placement determination hearing required under Rule 42.04, and
1278 as otherwise directed by the court.

1279 **Rule 38.02. Social Services Court Reports – Child Ordered into Foster Care** ~~Out-of-~~
1280 ~~Home Placement~~

1281 **Subd. 1. Content.** In addition to the requirements of Rule 38.01, subd. 2, each
1282 certified report regarding an out-of-home placement plan shall include the name of the
1283 person submitting the report and the following:

1284 (a) **Identifying Information.** Identifying and baseline placement information
1285 regarding the child shall be included as follows:

1286 (1) the child's name and date of birth and, in the case of an Indian child,
1287 the Tribe in which the child is enrolled or eligible for membership;

1288 (2) the names of the child's parents or legal custodians;

1289 (3) the dates of birth of the child's parents who are minors;

1290 (4) the date the child was first placed in foster care ~~out of the care of the~~
1291 ~~parent or legal custodian;~~

1292 (5) the date the child was ordered placed in foster care ~~out of the home~~
1293 ~~of the parent or legal custodian ;~~

1294 (6) the total length of time the child has been in foster care~~out-of-home~~
1295 ~~care~~, including all cumulative time the child may have experienced within the previous
1296 five (5) years;

1297 (7) the number of moves the child has experienced while in foster care
1298 ~~out-of-home~~ care, including all moves during the previous five (5) years;

1299 (8) if the child's placement has changed since the out-of-home
1300 placement plan ~~Out-of-Home Placement Plan~~ was approved or ordered, a description of
1301 how the child's placement meets the child's best interests as set out in the modified ~~Out-~~
1302 ~~of-Home Placement Plan~~ out-of-home placement plan, or in the case of an Indian child,
1303 whether the placement complies with placement preferences established in 25
1304 U.S.C. § 1915; and

1305 (9) when the child has siblings, the names and ages of the child's
1306 siblings, the residence or placement status of each sibling and, where appropriate, the
1307 efforts the agency has made to place the children together; and

1308 (b) **Review of Out-of-Home Placement Plan.** As applicable, a description of:

1309 (1) the agency's efforts to implement the out-of-home placement plan
1310 requirements;

1311 (2) the parent's or legal custodian's compliance with the plan
1312 requirements;

1313 (3) services provided to the child;

1314 (4) the child's adjustment in placement;

1315 (5) visitation between the parents or legal custodian and the child and
1316 between the child and ~~the~~ any siblings; and

1317 (6) the agency's efforts to finalize adoption; and

1318 (c) **Placement with Relatives.** At least once during the first six (6) months the
1319 child is in placement or until placement is made with a relative or the court finds the
1320 agency's efforts adequate under Minnesota Statutes § 260C.212, subd. 5, the report shall
1321 describe the efforts the agency has made to identify and notify relatives, or in the case of

1322 an Indian child the report shall describe how the placement complies with requirements
1323 of 25 U.S.C. § 1915; and

1324 (d) **Independent Living Plan.** When the child is age sixteen (16) or older, the
1325 report shall include a description of the elements of the child’s independent living plan
1326 and how the child is progressing on that plan; and

1327 (e) **Child with Emotional Disturbance.** For a child in placement due solely
1328 or in part to the child’s emotional disturbance, the report shall include diagnostic and
1329 assessment information, specific services relating to meeting the mental health care needs
1330 of the child, and treatment outcomes; and

1331 (f-e) **Recommendations.** The report shall include recommendations to the court
1332 for modification of the plan or for actions the parents or legal custodian must take to
1333 provide protection or services for the child.

1334 * * *

1335 **Rule 38.03. Social Services Court Reports – Child Not in Foster Care ~~Out-of-Home~~**
1336 **Placement**

1337 In addition to the requirements of Rule 38.01, subd. 2, each certified report regarding
1338 the case plan shall include the name of the person submitting the report and the following:

1339 (a) **Identifying Information.** Identifying information regarding the child shall
1340 be included as follows:

1341 (1) the child’s name and date of birth and, in the case of an Indian child,
1342 the Tribe in which the child is enrolled or eligible for membership;

1343 (2) a statement about whether the child is an Indian child, whether or not
1344 the Indian Child Welfare Act applies, and in the case of an Indian child the Tribe in
1345 which the child is enrolled or is eligible for membership;

1346 (3-2) the names of the child’s parents or legal custodians;

1347 (4-3) the dates of birth of the child’s parents who are minors;

1348 (5-4) the child’s residence and, if the child’s residence has changed since
1349 the case plan was ordered, the date of the change;

1350 (6-5) the date the case was most recently opened for services in the
1351 responsible social services agency;

1352 (7-6) the date of all other case openings for this child and ~~or~~ the child's
1353 siblings with the responsible social services agency and, if known, case openings for this
1354 child or the child's siblings with any other social services agency responsible for providing
1355 child welfare or child protection services to this child; in addition to the date of other case
1356 openings, the report should contain a brief description of the nature of the contact with the
1357 responsible or other social services agency; and

1358 (b) **Review of Plan.** As applicable, a description of:

1359 (1) the agency's efforts to implement the case plan;

1360 (2) the parents' or legal custodian's and child's compliance with plan
1361 requirements; and

1362 (3) the services provided to the child; and

1363 (c) **Recommendations.** The report shall include recommendations to the court
1364 for modification of the plan or for actions the parent or legal custodian must take to provide
1365 adequate protection or services for the child.

1366 * * *

1367 **Rule 38.05. Reports to the Court by Child's Guardian ad Litem**

1368 * * *

1369 **Subd. 2. Content.** Although pursuant to Rule 16 a report is not required to be
1370 signed, each ~~Each~~ report shall include the name of the person submitting the report, a
1371 statement certifying the content as true based upon personal observation, first-hand
1372 knowledge, or information and belief, and shall include the following:

1373 (a) the child's name, date of birth, and age at the time the report is filed;

1374 (b) the names of the child's parents or legal custodians;

1375 (c-a) the case caption;

1376 (d-b) the date of the report;

1377 (e-e) the date of the hearing at which the report is to be considered;

1378 (f-d) the date the guardian ad litem was appointed by the court;

1379 (g-e) a brief summary of the issues that brought the child and family into the
1380 court system;

1381 (h-f) a list of the resources or persons contacted who provided information to the
1382 guardian ad litem since the date of the last court hearing;

1383 (i-g) a list of the dates and types of contacts the guardian ad litem had with the
1384 child(ren) since the date of the last court hearing;

1385 (j-h) a list of all documents relied upon when generating the court report;

1386 (k-i) a summary of information gathered regarding the child and family since the
1387 date of the last hearing relevant to the pending hearing;

1388 (l-j) a list of any issues of concern to the guardian ad litem about the child's or
1389 family's situation; and

1390 (m-k) a list of recommendations designed to address the concerns and advocate
1391 for the best interests of the child.

1392 Each report shall contain or have attached the certificate of distribution required
1393 under Rule 31.07, subd. 2.

1394 **Subd. 3. Timing of Reports.** Except for an emergency protective care hearing
1395 for which no written report is required, reports required under this rule shall be filed with
1396 the court and served upon the parties by the guardian ad litem not later than five (5)
1397 business days prior to each review hearing required under Rule 41.06, permanent
1398 placement determination hearing required under Rule 42, and as otherwise directed by
1399 the court.

1400 * * *

1401 **RULE 39. TRIAL**

1402 * * *

1403 **Rule 39.02. Timing**

1404 **Subd. 1. Commencement of Trial.**

1405 (a) **Child in Need of Protection or Services Matters.** A trial regarding a
1406 child in need of protection or services matter shall commence within sixty (60) days from

1407 the date of the emergency protective care hearing or the date of the admit/deny hearing,
1408 whichever is earlier.

1409 (b) **Permanent Placement Matters.** A trial regarding a permanent placement
1410 matter not involving a termination of parental rights matter shall commence on or before
1411 sixty (60) days after the admit/deny hearing or ninety (90) days after the filing of the
1412 petition, whichever is earlier ~~the three hundred and sixty fifth (365th) day after the child~~
1413 ~~is ordered out of the care of the parent.~~ In the case of a child under eight (8) years of age
1414 at the time the child in need of protection or services petition is filed, ~~a permanent~~
1415 ~~placement determination hearing shall commence on or before the one hundred and~~
1416 ~~eightieth (180th) day after the child is ordered out of the care of the parent.~~ ~~If if~~ the
1417 responsible social services agency demonstrates at ~~this hearing~~ the permanency progress
1418 review hearing required under Rule 42 that the parent is not complying with the case plan
1419 or out-of-home placement plan or visiting the child and that the permanency plan for the
1420 child is transfer of permanent legal and physical custody to a relative or termination of
1421 parental rights, a petition supporting the permanency plan shall be filed in juvenile court
1422 within thirty (30) days of the hearing under this paragraph, ~~and a~~ A trial on the petition
1423 shall be held within thirty (30) days of the filing of a petition in the case of a transfer of
1424 legal custody or within ninety (90) days in the case of a petition for termination of
1425 parental rights.

1426 (c) **Termination of Parental Rights Matters.** Unless otherwise provided by
1427 these rules, a ~~A~~ trial regarding a termination of parental rights matter shall commence
1428 within ninety (90) days from the date of the filing of the petition.

1429 (d) **Simultaneous Criminal Proceedings.** If criminal charges have been filed
1430 against a parent arising out of conduct alleged to constitute egregious harm, the county
1431 attorney shall determine whether the criminal matter or the juvenile court matter should
1432 proceed to trial first, consistent with the best interests of the child and subject to the
1433 defendant's right to a speedy trial.

1434 (e) **Sufficient Time.** The court shall set aside sufficient time to avoid
1435 interruption of the trial.

1436 * * *

1437 **Rule 39.05. Decision**

1438 * * *

1439 **Subd. 3. Termination of Parental Rights Matters.**

1440 (a) **Generally.** Within fifteen (15) days of the conclusion of the trial, the court
1441 shall make a finding that the statutory grounds set forth in the petition have or have not
1442 been proved. If the court finds that the statutory grounds set forth in the petition are not
1443 proved, the court shall dismiss the petition or determine that the child is in need of
1444 protection or services and schedule further proceedings pursuant to Rule 40. If the court
1445 finds that the statutory grounds set forth in the petition are proved, the court may
1446 terminate parental rights. The findings and order shall be filed with the court
1447 administrator who shall proceed pursuant to Rule 10.

1448 (b) **Particularized Findings.** The court may not enter an order terminating
1449 parental rights unless it finds that the statutory grounds have been proved by the
1450 applicable standard of proof and one of the following:

1451 (1) **Reasonable Efforts and Remedial Services.** In any termination of
1452 parental rights matter, the court shall make specific findings regarding the nature and
1453 extent of efforts made by the responsible social services agency to rehabilitate the parent
1454 and reunite the family, including, where applicable, a statement that:

1455 ~~(i) reasonable efforts are not required because the facts~~
1456 ~~demonstrate that the parent has subjected the child to egregious harm;~~

1457 ~~(ii) the provision of services or further services for the purpose of~~
1458 ~~rehabilitation and reunification is futile and therefore unreasonable under the~~
1459 ~~circumstances; or~~

1460 ~~(iii) reasonable efforts at reunification to prevent placement and~~
1461 ~~for rehabilitation and reunification are not required as provided under Minnesota~~
1462 ~~Statutes § 260.012(a).~~

1463 (2) **Active Efforts – Indian Child.** In any termination of parental rights
1464 proceeding involving an Indian child, the court shall make specific findings that the

1465 petitioner has proven beyond a reasonable doubt that active efforts have been made to
1466 provide remedial services and rehabilitative programs designed to prevent the breakup of
1467 the Indian family and that these efforts have proved unsuccessful.

1468 * * *

1469 **RULE 41. DISPOSITION**

1470 **Rule 41.01. Disposition**

1471 After an adjudication that a child is in need of protection or services pursuant to
1472 Rule 40.01, the court shall conduct a hearing to determine disposition. Dispositions in
1473 regard to review of voluntary foster care ~~out-of-home placement~~ matters shall be pursuant
1474 to Minnesota Statutes § 260C.205 and § 127A.47.

1475 * * *

1476 **Rule 41.03. Pre-Disposition Reports**

1477 **Subd. 1. Investigations and Evaluations.** At any time after the court accepts or
1478 conditionally accepts an admission pursuant to Rule 35 or finds that the statutory grounds
1479 set forth in the petition have been proved, the court may, upon its own motion or the
1480 motion of a party or the county attorney, order a pre-disposition report which may
1481 include:

1482 (a) an investigation of the personal and family history and environment of the
1483 child;

1484 (b) medical, psychological, ~~or psychiatric,~~ or chemical dependency evaluations
1485 of the child and any parent who is a party; and

1486 (c) information regarding the factors set forth in Rule 41.05.

1487 * * *

1488 **Subd. 3. ~~Filing and Inspection of~~ Pre-Disposition Reports.**

1489 (a) Filing and Service. The person who intends to offer the pre-disposition
1490 report shall file the report with the court and serve the report on all parties at least forty-
1491 eight (48) hours prior to the time scheduled for the hearing. When the child or the child's
1492 parent or legal custodian is not represented by counsel, the court may limit the inspection
1493 of reports by the child or the child's parent and legal custodian if the court determines it

1494 is in the best interests of the child. Any party or the person making the pre-disposition
1495 report may by motion request a protective order limiting the release of confidential or
1496 sensitive information contained in the report.

1497 (b) **Consideration of Reports.** Before making a disposition in a case,
1498 terminating parental rights, or appointing a legal guardian for a child, the court may
1499 consider any report or recommendation made by the responsible social services agency,
1500 probation officer, licensed child-placing agency, foster parent, guardian ad litem, tribal
1501 representative, the child's health or mental health care provider, or other authorized
1502 advocate for the child or child's family, a school district concerning the effect on student
1503 transportation of placing a child in a school district in which the child is not a resident, or
1504 any other information deemed material by the court.

1505 * * *

1506 **Rule 41.05. Disposition Order**

1507 **Subd. 1. Findings.** The disposition order shall contain written findings of fact to
1508 support the disposition ordered and shall also set forth in writing the following
1509 information:

1510 (a) a statement explaining how the disposition serves the best interests and
1511 safety of the child;

1512 (b) a statement of all alternative dispositions or services under the case plan or
1513 out-of-home placement plan considered by the court and why such dispositions or
1514 services are not appropriate in the instant case;

1515 (c) if the disposition is ~~out-of-home placement through~~ transfer of legal
1516 custody to a responsible social services agency, a statement about whether the proposed
1517 placement meets the child's needs and is in the child's best interests and reviewing the
1518 agency's use of the factors set out below in making the child's foster care placement.
1519 ~~Among the factors to be considered in determining the needs of the child are:~~

- 1520 (1) the child's current functioning and behaviors;
- 1521 (2) the medical, educational, and developmental needs of the child;
- 1522 (3) the child's history and past experience;

- 1523 (4) the child’s religious and cultural needs;
1524 (5) the child’s connection with a community, school, and faith
1525 community;
1526 (6) the child’s interests and talents;
1527 (7) the child’s relationship to current caretakers, parents, siblings, and
1528 relatives; and
1529 (8) reasonable preference of the child, if the court deems the child to be
1530 of sufficient age to express a preference; and

1531 (d) a brief description of the efforts made to prevent or eliminate the need for
1532 removal of the child from home and to reunify the family after removal, and why further
1533 efforts could not have prevented or eliminated the necessity of removal or that reasonable
1534 efforts were not required under Minnesota Statutes §§ 260.012 or § 260C.178, subd. 1.

1535 The court may authorize or continue an award of legal custody to the responsible
1536 social services agency despite a finding that the agency’s preventive or reunification
1537 efforts have not been reasonable if the court finds that further preventive or reunification
1538 efforts could not permit the child to safely remain at home.

1539 If the child has been identified by the responsible social services agency as the
1540 subject of concurrent permanency planning, the court shall review and make findings
1541 regarding the reasonable efforts of the agency to recruit, identify, and make a placement
1542 with a foster parent or relative who has committed to providing the legally permanent
1543 home for the child in the event reunification efforts are not successful.

1544 **Subd. 2. Content.**

1545 (a) **Mandatory Provisions.** The court shall enter an order making one ~~or more~~
1546 of the following dispositions for the child:

1547 (1) **Protective Supervision.** Place the child under the protective
1548 supervision of the responsible services agency or child-placing agency in the home of a
1549 parent or legal custodian under conditions directed to correction of the child’s need for
1550 protection or services;

1551 (i) order the child into the home of a parent who does not
1552 otherwise have legal custody of the child, however, an order under this section does not
1553 confer legal custody on that parent;

1554 (ii) if the court orders the child into the home of a father who is
1555 has not been adjudicated as such, the order shall require the alleged or presumed father to
1556 cooperate with paternity establishment proceedings regarding the child in the appropriate
1557 jurisdiction as one of the conditions prescribed by the court for the child to continue in
1558 his home;

1559 (iii) the court may order the child into the home of a noncustodial
1560 parent with conditions and may also order both the noncustodial and the custodial parent
1561 to comply with the requirements of a case plan under subdivision 2;

1562 (2) **Transfer Legal and Physical Custody to Agency.** Transfer legal
1563 custody to a child-placing agency or the responsible social services agency, which shall
1564 have legal responsibility for the child's placement in foster care, including making an
1565 individualized determination of how the particular placement is in the child's best
1566 interests using the consideration for relatives and the best interest factors in Minnesota
1567 Statutes § 260C.212, subdivision 2(b);

1568 (3) **Trial Home Visit.** Order a trial home visit, as defined in
1569 Rule 2.01(x), without modifying the transfer of legal custody to the responsible social
1570 services agency under subdivision 2(a)(2) of this Rule;

1571 (34) **Special Services.** If the child has been adjudicated as a child in
1572 need of protection or services because the child is in need of special services or care to
1573 treat or ameliorate a physical or mental disability or emotional disturbance as defined in
1574 Minnesota Statutes § 245.4871, subd. 15, the court may order the child's parent, guardian
1575 or custodian to provide it. The court may order the child's health plan company to
1576 provide mental health services to the child. Minnesota Statutes § 62Q.535 applies to an
1577 order for mental health services directed to the child's health plan company. ~~in the case~~
1578 of a child who needs special treatment and care for reasons of physical or mental health
1579 when ~~If the health plan,~~ the child's parent or legal custodian fails or is unable to provide

1580 the treatment or care, the court may order it that the treatment and care be provided.
1581 Absent specific written findings by the court that the child’s disability is the result of
1582 abuse or neglect by the child’s parent or guardian, the court shall not transfer legal
1583 custody of the child for the purpose of obtaining special treatment or care solely because
1584 the parent is unable to provide the treatment or care. If the court’s order for mental health
1585 treatment is based on a diagnosis made by a treatment professional, the court may order
1586 that the diagnosing professional not provide the treatment to the child if it finds that such
1587 an order is in the child’s best interests; or

1588 (5) **Independent Living.** Allow a child sixteen (16) years old or older
1589 to live independently under appropriate supervision, if the court determines that the child
1590 has sufficient maturity and judgment, and the responsible social services agency after
1591 consultation with the court has specifically authorized this alternative.

1592 (6) **Monitoring.** When a parent has complied with a case plan and the
1593 child is in the care of the parent, the court may order the responsible social services
1594 agency to monitor the parent’s continued ability to maintain the child safely in the home
1595 under such terms and conditions as the court determines appropriate under the
1596 circumstances.

1597
1598 **2006 Advisory Committee Comment**
1599 Minnesota Statutes § 260C.331, subd. 1(a)(3), provides that
1600 “whenever a child is given physical or mental examinations or treatment
1601 under order of the court, and no provision is otherwise made by law for
1602 payment for the care, examination, or treatment of the child, those costs are
1603 a charge upon the welfare funds of the county in which proceedings are
1604 held upon certification of the judge of juvenile court.”
1605

1606 **Rule 41.06. Hearings to Review Disposition**

1607 * * *

1608 **Subd. 2. Procedure in Reviewing Disposition.**

1609 (a) **Legal Custody to Agency With Foster Care.** When the disposition is
1610 transfer of legal custody to the responsible social services agency, the court shall conduct
1611 a hearing at least every ninety (90) days to review whether ~~out-of-home placement~~ foster

1612 care is necessary and continues to be appropriate or whether the child should be returned
1613 to the home of the parent or legal custodian from whom the child was removed. The
1614 review shall include the following:

1615 (1) whether the out-of-home placement plan is relevant to the safety and
1616 best interests of the child;

1617 (2) whether the agency is making reasonable or, in the case of an Indian
1618 child, active efforts to implement the requirements of the out-of-home placement plan;

1619 (3) the extent of progress which has been made toward alleviating or
1620 mitigating the causes necessitating placement;

1621 (4) whether the parents or legal custodian of the child are visiting the
1622 child and, if not, what barriers exist to visitation;

1623 (5) whether the agency has made diligent efforts to identify both parents
1624 of the child as required under Minnesota Statutes § 260C.212, subd. 4, and whether the
1625 case plan or out-of-home placement plan addresses the need for services of both parents;

1626 (6-5) whether the child is receiving appropriate services under the out-of-
1627 home placement plan;

1628 (7-6) when a child has siblings in ~~out-of-home placement~~ foster care:

1629 (i) whether the child resides with the siblings;

1630 (ii) when the child and siblings are not placed together, whether
1631 further efforts are appropriate to place the siblings together; and

1632 (iii) when the child and siblings are not placed together, whether
1633 there is visitation amongst siblings;

1634 (8-7) when a child is not placed with a relative, whether the agency's
1635 efforts under Minnesota Statutes § 260C.212, subd. 5, are adequate; in the case of an
1636 Indian child, whether the placement preferences of 25 U.S.C. § 1915 are met;

1637 (9-8) when the agency is utilizing concurrent permanency planning, the
1638 agency's efforts to place the child with a relative or a foster parent who has committed to
1639 providing the child's legally permanent home in the event reunification efforts are not
1640 successful; and

1641 (10-9) whether the parent or legal custodian understands the requirements
1642 of Minnesota Statutes § 260C.201, subd. 11, related to the required permanency
1643 placement determination hearing, including the projected date by which the child will be
1644 returned home or the hearing will be held.

1645 (b) **Legal Custody to Agency With Trial Home Visit.** When the disposition
1646 is a trial home visit:

1647 (1) the responsible social services agency shall advise the court and
1648 parties within three (3) days of the date a trial home visit is terminated by the responsible
1649 social services agency without a court order;

1650 (2) the responsible social services agency shall prepare a report for the
1651 court when the trial home visit is terminated, whether by the agency or court order, which
1652 describes the child's circumstances during the trial home visit and recommends
1653 appropriate orders, if any, for the court to enter to provide for the child's safety and
1654 stability. In the event a trial home visit is terminated by the agency by removing the child
1655 to foster care without prior court order or authorization, the court shall conduct a hearing
1656 within ten (10) days of receiving notice of the termination of the trial home visit by the
1657 agency and shall order disposition under this subdivision or conduct a permanency
1658 hearing under Rule 42. The time period for the hearing may be extended by the court for
1659 good cause shown and if it is in the best interests of the child as long as the total time the
1660 child spends in foster care without a permanent placement determination hearing does not
1661 exceed twelve (12) months; and

1662 (3) the court shall conduct a hearing to determine whether the trial home
1663 visit continues to be necessary.

1664 (c-b) **Protective Supervision in Home of Parent.** When the disposition is
1665 protective supervision of the child in the home of a custodial parent, the court shall
1666 conduct a review hearing at least every six (6) months. When the disposition is
1667 protective supervision of the child in the home of a noncustodial parent, the court shall
1668 conduct a review hearing at least every ninety (90) days. At the hearing, the court shall
1669 review the court shall conduct a hearing at least every six (6) months to review:

1670 (1) whether the agency has submitted a case plan for the parents or legal
1671 custodian and child as required under Rule 37;

1672 (2) after the agency has submitted a plan to the court as required under
1673 Rule 37, whether the plan continues to be relevant to the safety and best interests of the
1674 child;

1675 (3) whether the agency is making appropriate efforts to implement the
1676 plan;

1677 (4) whether the agency, child's attorney and the guardian ad litem have
1678 reasonable access to the child to determine the child's safety, health, and well-being;

1679 (5) whether the parents or legal custodian are able to utilize the services
1680 set out in the plan to correct the conditions which led to the court's determination that the
1681 child is in need of protection or services, and if not, what other services might be
1682 appropriate; and

1683 (6) whether the child is receiving necessary services identified in the
1684 plan and whether those services are meeting the best interests of the child.

1685 **Subd. 3. Procedure.** Any party or the county attorney may seek modification of
1686 a disposition order by motion made pursuant to Rule 15. The motion may be heard at the
1687 scheduled review hearing or at an earlier date or may be considered by the court without
1688 hearing if no party objects.

1689 **Subd. 4. Modification of Disposition; Modification of ~~or~~ Case or Out-of-
1690 Home Placement Plan.**

1691 (a) **Agreement.** The court, on its own motion or that of any party, may modify
1692 the disposition or order the case plan or out-of-home placement plan modified when all
1693 parties agree the modification is in the best interests of the child and:

1694 (1) a change of circumstances requires a change in the disposition or
1695 modification of the case plan or out-of-home placement plan; or

1696 (2) the original disposition or case plan or out-of-home placement plan
1697 is inappropriate.

1698 (b) **Objection.** If a party objects to a proposed modification, or if the child
1699 does not have a guardian ad litem at the time the motion is made, the court shall schedule
1700 a hearing for the next available date. A party has a right to request a court review of the
1701 reasonableness of the case plan or out-of-home placement plan upon a showing of a
1702 substantial change in circumstances. The court may also:

1703 (1) order the agency to make further efforts to identify and place a child
1704 with a relative if the court finds the agency has failed to perform duties required under
1705 Minnesota Statutes § 260C.212, subds. 2 and 5; or

1706 (2) find that the agency has performed required duties under Minnesota
1707 Statutes § 260C.212, subd. 5, and no further efforts to locate relatives are required; or

1708 (3) in the case of an Indian child, unless good cause is found
1709 under 25 U.S.C. § 1915, order the agency to make additional efforts to comply with the
1710 placement preferences of 25 U.S.C. § 1915.

1711 **Subd. 5. Notice.** Notice of the review hearing shall be given to all parties and
1712 participants.

1713 **Subd. 6. Procedure.** Review hearings shall be conducted pursuant to Rule 41.04.

1714 **Subd. 7. Findings and Order.** In the event the disposition is modified, the court
1715 shall issue a disposition order in accordance with Rule 41.05.

1716

1717

RULE 42. PERMANENT PLACEMENT MATTERS

Rule 42.01. Timing and Purpose

1719 **Subd. 1. Timing.** In the case of a child who has been alleged to be in need of
1720 protection or services, the court in its ~~disposition~~ first order shall set the date or deadline
1721 for the permanent placement determination hearing, and the permanency progress review
1722 hearing required for a child who is under age eight (8), at the time the petition alleging
1723 the child to be in need of protection or services is filed. Not later than when the court sets
1724 the date or deadline for the permanent placement determination hearing and the
1725 permanency progress review hearing, the court shall notify the parties and participants of
1726 the following requirements of Minnesota Statutes § 260C.201, subd. 11 and subd. 11a:

1727 (a) **Requirement of Six (6) Month Hearing for Child Under Eight (8)**
1728 **Years of Age.** For a child who is under eight (8) years of age at the time a petition is
1729 filed alleging the child to be in need of protection or services, ~~unless a termination of~~
1730 ~~parental rights petition has been filed,~~ the court shall conduct a hearing to review the
1731 progress of the case, the parent’s progress on the case plan or out-of-home placement
1732 plan, and the provision of services not later than six (6) months after the child is placed
1733 ~~out of the home of the parent in foster care or in the home of a noncustodial parent.~~

1734 (b) **Requirement of Twelve (12) Month Hearing.** ~~for Child Eight (8) Years of~~
1735 ~~Age or Older. Unless a termination of parental rights petition has been filed, the~~ The
1736 court shall conduct a permanent placement determination hearing to determine the
1737 permanent status of the a child not later than twelve (12) months after the child is placed
1738 ~~out of the home of the parent in foster care or in the home of a noncustodial parent.~~

1739 **Subd. 2. Purpose.**

1740 (a) ~~Child Eight (8) Years of Age and Older~~ **Any Child in Foster Care or in**
1741 **Home of a Noncustodial Parent.** The purpose of the permanent placement
1742 determination hearing is to determine the permanent status of a child, including a review
1743 of the progress of the case and the parent’s progress on the case plan or out-of-home
1744 placement plan, ~~including~~ the services provided by the responsible social services
1745 agency, and whether or not the conditions that led to the child’s placement in foster care
1746 or in the home of a noncustodial parent have been corrected so that the child can return to
1747 the care of the parent or custodian from whom the child was removed. The court shall
1748 determine whether the child shall be returned home or, if not, order permanent placement
1749 consistent with the child’s best interests.

1750 (b) **Permanency Progress Review: Child Under Eight (8) Years of Age.**
1751 The purpose of the permanency progress review hearing is to review the progress of the
1752 case, the parent’s progress on the case plan or out-of-home placement plan, and the
1753 provision of services by the responsible social services agency. The court shall determine
1754 whether ~~the child shall be returned home or, if not,~~ determine whether

1755 (1)—the parents or legal custodian have maintained regular contact with
1756 the child, the parents are complying with the court-ordered case plan or out-of-home
1757 placement plan, and the child would benefit from continuing this relationship;.

1758 (2)—~~grounds for termination of parental rights do not exist; or~~

1759 (3)—~~the permanent plan for the child is transfer of permanent legal and~~
1760 ~~physical custody to a relative.~~

1761

1762 **~~1999 Advisory Committee Comment~~**

1763 ~~Rule 42.01 is consistent with Minnesota Statutes § 260C.201, subd.~~
1764 ~~11, which became effective July 1, 1999. The statute provides that a~~
1765 ~~permanent placement determination hearing must be held within six months~~
1766 ~~of a child's removal from the home if the child is under eight (8) years of~~
1767 ~~age at the time the petition is filed or within twelve (12) months of the~~
1768 ~~child's removal if the child is eight (8) years of age or older at the time the~~
1769 ~~petition is filed.~~

1770

1771 **Rule 42.02. Calculating Time Period**

1772 The child shall be considered placed out of the care of the parent at the earlier of:

1773 (a) the date the child's placement ~~out of the~~ in foster care of the or in the care
1774 of a noncustodial parent was ordered by the court; or

1775 (b) sixty (60) days after the date on which the child has been voluntarily placed
1776 ~~out of the home~~ in foster care as a result of a voluntary placement agreement between the
1777 parents and the responsible social services agency.

1778 **Rule 42.03. Accumulation ~~Cumulation~~ of Out-of-Home Placement Time**

1779 The time period requiring court review of the permanent status of the child shall
1780 be calculated as follows:

1781 (a) during the pendency of a petition alleging a child to be in need of protection
1782 or services, all time periods ~~when~~ during which a child is placed ~~out of the home of the~~ in
1783 foster care or in the home of a noncustodial parent are accumulated; and

1784 (b) if a child has been placed ~~out of the home of the parent~~ in foster care within
1785 the previous five years under one or more previous petitions, the lengths of all prior time
1786 periods ~~when~~ during which the child was placed ~~out of the home~~ in foster care within the

1787 previous five years are accumulated. If a child under this clause has been ~~out of the home~~
1788 in foster care for twelve (12) months or more, the court, if it is in the best interests of the
1789 child and for compelling reasons, may extend the total time the child may continue out of
1790 the home under the current petition up to an additional six (6) months before making a
1791 permanency determination.

1792 **Rule 42.04. Procedures for Permanent Permanency Progress Review Hearing and**
1793 **Permanent Placement Determination Hearing**

1794 **Subd. 1. Permanency Progress Review Hearing: Child Under Eight (8) Years**
1795 **of Age.** The following procedures govern a ~~permanent placement determination~~
1796 permanency progress review hearing for a child under the age of eight (8) at the time the
1797 petition was filed alleging the child to be in need of protection or services:

1798 (a) **Written Report.** Not later than ten (10) days prior to the hearing, the
1799 county attorney must file with the court and serve upon the parties a written report
1800 prepared by the responsible social services agency describing the progress of the case and
1801 the case plan or out-of-home placement plan including the services provided to the
1802 parents. ~~This requirement may be fulfilled by filing either a petition to transfer permanent~~
1803 ~~legal and physical custody of the child to a relative or a petition to terminate parental~~
1804 ~~rights.~~

1805 (b) ~~**Termination of Parental Rights.**~~

1806 ~~——(1) **Order to Show Cause.** The court may order the responsible social~~
1807 ~~services agency to show cause why it should not file a termination of parental rights~~
1808 ~~petition. If the court determines that the responsible social services agency has not~~
1809 ~~shown cause why it should not file a termination of parental rights petition, the court may~~
1810 ~~order the agency to file such a petition within thirty (30) days of the date of the hearing~~
1811 ~~pursuant to Rule 33.01.~~

1812 ~~——(2) **Agency Determination.** If the permanent placement plan is to~~
1813 ~~terminate parental rights, unless the social services agency has already filed a petition to~~
1814 ~~terminate parental rights, a petition supporting such a plan shall be filed within thirty (30)~~
1815 ~~days of the hearing and the case will proceed according to Rule 33.01.~~

1816 ~~(c) — **Transfer of Permanent Legal and Physical Custody to a Relative.** If the~~
1817 ~~court determines that the appropriate permanent placement plan for the child is transfer of~~
1818 ~~permanent legal and physical custody to a relative, the court shall order such a petition be~~
1819 ~~filed within thirty (30) days of the date of the hearing and a trial on the matter held within~~
1820 ~~30 days of the filing of the petition.~~

1821 ~~(d) — **Extension of Time.** If the court determines that the parent is making~~
1822 ~~sufficient progress on the case plan and is visiting the child, or if the court determines the~~
1823 ~~responsible social services agency has not provided appropriate services to the parent, the~~
1824 ~~court may extend the time for a permanency determination for up to a total of six (6)~~
1825 ~~additional months.~~

1826 **(b) Court Determination.**

1827 **(1) Regular Contact Maintained or Parent Not Complying.** If the
1828 court determines that the parent or legal custodian has maintained regular contact with
1829 the child, the parent is complying with the court-ordered case plan or out-of-home
1830 placement plan, and the child would benefit from continuing this relationship, the court
1831 may either:

1832 (i) return the child home, if the conditions which led to the out-
1833 of-home placement have been sufficiently mitigated and it is safe and in the child’s best
1834 interests to return home; or

1835 (ii) continue the matter up to a total of six (6) additional months.

1836 **(2) Regular Contact Not Maintained or Parent Not Complying.** If
1837 the court determines that the parent or legal custodian has not maintained regular contact
1838 with the child as outlined in the visitation plan required under the case plan or out-of-
1839 home placement plan or the parent is not complying with the case plan or out-of-home
1840 placement plan, the court may order the responsible social services agency to develop a
1841 plan for permanent placement of the child away from the parent and to file a petition to
1842 support an order for the permanent placement plan. A trial on the petition shall be held as
1843 provided in subdivision 1(c).

1844 (c) **Responsible Agency's or County Attorney's Duties.** Following the
1845 review under this subdivision:

1846 (1) if the court has either returned the child home or continued the
1847 matter up to a total of six (6) additional months, the agency shall continue to provide
1848 services to support the child's return home or to continue to make reasonable efforts to
1849 achieve reunification of the child and the parent as ordered by the court under an
1850 approved case plan;

1851 (2) if the court orders the agency to develop a plan for the transfer of
1852 permanent legal and physical custody of the child to a relative, a petition supporting the
1853 plan shall be filed with the court within thirty (30) days of the hearing required under this
1854 subdivision and a trial on the petition shall be held within thirty (30) days of the filing of
1855 the petition; or

1856 (3) if the court orders the agency to file a petition for termination of
1857 parental rights, unless the county attorney can show cause why a termination of parental
1858 rights petition should not be filed, a petition for termination of parental rights shall be
1859 filed with the court within thirty (30) days of the hearing required under this subdivision
1860 and a trial on the petition shall be held within ninety (90) days of the filing of the petition.

1861 **Subd. 2. Child Eight (8) Years of Age or Older or a Child Under Age Eight**
1862 **(8) for Whom Permanency Has Not Been Ordered; Admit/Deny Hearing Required**
1863 **at Month 12.**

1864 (a) **Admit-Deny Hearing on Permanency Petition.** The court shall
1865 commence and complete an admit/deny hearing on the permanency petition pursuant to
1866 Rule 34 not later than twelve (12) months after the child is placed in foster care or in the
1867 care of a noncustodial parent.

1868 (b) **Petition or Motion.** Unless the responsible social services agency
1869 recommends return of the child to the custodial parent ~~or parents~~ or files a motion
1870 pursuant to Rule 42.06, not later than thirty (30) days prior to ~~this~~ the admit/deny hearing
1871 required in subd. 2(a) commencement of the permanent placement determination
1872 proceeding hearing required for all children in foster care or ordered into the care of a

1873 ~~noneustodial parent for a cumulative time period of twelve months,~~ the responsible social
1874 services agency shall file with the court the petition required under Rule 33.01 to
1875 establish the basis ~~of~~for the juvenile court to order permanent placement of the child
1876 according to Rule 42.05.

1877 (c) **Trial.** The court shall commence and complete any trial on the
1878 permanency petition within the time specified in Rule 39.

1879 **Rule 42.05. Permanent Placement Order**

1880 **Subd. 1. Timing.** Within fifteen (15) days of the close of the permanent
1881 placement determination hearing the court shall issue a permanent placement order. The
1882 court may extend this period for an additional fifteen (15) days if the court finds that an
1883 extension of time is required in the interests of justice and the best interests of the child.
1884 The order shall be filed with the court administrator who shall proceed pursuant to
1885 Rule 10.

1886 **Subd. 2. Order.**

1887 (a) **Return Child Home.** If the court orders the child to be returned to the care
1888 of a parent, the court may enter or continue a prior finding that the child is in need of
1889 protection or services and may order conditions directed to correction of the child's need
1890 for protection or services. The court may order:

1891 (i) the child returned on a trial home visit pursuant to Rule 41.05,
1892 subd. 2(a)(3);

1893 (ii) the child placed under the protective supervision of the responsible
1894 social services agency under Rule 41.05, subd. 2(a)(1); or

1895 (iii) monitoring of the parent's continued ability to maintain the child
1896 safely in the home under Rule 41.05(a)(6).

1897 (b) **Transfer of Permanent Legal and Physical Custody.** If the court
1898 transfers permanent legal and physical custody to a relative, juvenile court jurisdiction is
1899 terminated unless specifically retained by the court in its order. The court may maintain
1900 jurisdiction over the responsible social services agency, the parents or legal custodian of
1901 the child, the child, and the permanent legal and physical custodian for purposes of

1902 ensuring that appropriate services are delivered to the child and permanent legal
1903 custodian or for the purpose of ensuring that conditions ordered by the court related to the
1904 care and custody of the child are met. The court may order further in-court hearings at
1905 such intervals as it determines to be in the best interests of the child. When juvenile court
1906 jurisdiction is terminated, the court shall include an order directing the juvenile court
1907 administrator to file the order with the family court. Any further proceedings shall be
1908 brought in the family court pursuant to Minnesota Statutes § 518.18. Notice of any
1909 family court proceedings shall be provided to the responsible social services agency
1910 which shall be a party to the family court proceeding pursuant to Minnesota
1911 Statutes § 260C.201, subd. 11(j). A parent or legal custodian may voluntarily agree to
1912 transfer permanent legal and physical custody of the child to a fit and willing relative by
1913 either filing a petition to transfer permanent legal and physical custody pursuant to
1914 Rule 33.01 and establishing that such transfer is in the child’s best interests under
1915 Minnesota Statutes § 260C.201, subd. 11, or by entering an admission to such a petition
1916 filed by another party and stating, under oath, that the parent or legal custodian believes
1917 such a transfer is in the child’s best interests and establishes good cause for the transfer
1918 on the record before the court. The order transferring permanent legal and physical
1919 custody shall address parental and sibling visitation and ongoing services to be delivered
1920 to the child while the juvenile court has jurisdiction, and shall state whether the transfer
1921 was voluntary or involuntary. The order shall state whether a child support order exists
1922 or if the issue is reserved for future determination.

1923 (c) **Termination of Parental Rights.**

1924 (1) Unless the responsible social services agency has already filed a
1925 termination of parental rights petition, the court may order such a petition be filed
1926 pursuant to Rule 33.01.

1927 (2) When a child has been in placement fifteen (15) of the last twenty-
1928 two (22) months, if the court finds following a trial on a termination of parental rights
1929 petition that the petition is not proven or that termination of parental rights is not in the
1930 child’s best interests, the court must order the child returned to the care of the parent

1931 unless the court approves the responsible social services agency's determination of
1932 compelling reasons why the child should remain out of the care of the parent. If the court
1933 orders the child returned to the care of the parent, the court may order a trial home visit,
1934 protective supervision, or monitoring under Rule 41.05, subd. 2.

1935 (d) **Guardianship and Legal Custody to the Commissioner of Human**
1936 **Services.** The court may award guardianship and legal custody to the Commissioner of
1937 Human Services under the following procedures and conditions:

1938 (1) there is an identified prospective adoptive home agreed to by the
1939 responsible social services agency that has agreed to adopt the child and the court accepts
1940 the parent's voluntary consent to adopt under Minnesota Statutes § 259.24 except that
1941 such consent executed by a parent under Minnesota Statutes § 260C.201, subd. 11(d)(5),
1942 is irrevocable upon acceptance by the court unless fraud is established and an order issues
1943 permitting revocation. In a matter governed by the Indian Child Welfare Act, 25
1944 U.S.C. § 1913, a consent to adopt given by the parent of an Indian child is revocable at
1945 any time prior to finalization of the adoption;

1946 (2) the matter is reviewed in court at least every ninety (90) days under
1947 the requirements of Rule 43.03 as if a termination of parental rights had occurred; and

1948 (3) the court forwards to the Commissioner of Human Services a copy
1949 of the consent to adopt, together with a certified copy of the order transferring
1950 guardianship and legal custody to the commissioner.

1951 (e) **Long-term Foster Care.**

1952 (1) The court may ~~only~~ order long term foster care only if it ~~finds~~
1953 approves the responsible social service agency's compelling reasons that neither an
1954 award of permanent legal and physical custody to a relative, nor termination of parental
1955 rights, is in the child's best interests and all of the requirements of Minnesota
1956 Statutes § 260C.201, subd. 11, are met.

1957 (2) If the court orders long-term foster care, the court shall order such
1958 further in-court review as it determines appropriate or in the best interests of the child but
1959 in any event at least every twelve (12) months from the date of the permanency hearing.

1960 (3) If the long-term foster care placement disrupts, the responsible social
1961 services agency shall return the matter to court within ten (10) days of the disruption for
1962 ~~further~~ review of the permanent status of the child.

1963 (4) ~~A parent may only seek modification of an order for long term foster~~
1964 ~~care upon motion and a showing by the parent of a substantial change in the parent's~~
1965 ~~circumstances such that the parent could provide appropriate care of the child and that~~
1966 ~~removal of the child from the child's permanent placement and return to the parent's care~~
1967 ~~would be in the best interests of the child.~~

1968 (f) **Foster Care for a Specified Period of Time.**

1969 (1) The court may ~~only~~ order foster care for a specified period of time
1970 only if it finds approves the responsible social services agency's compelling reasons that
1971 neither an award of permanent legal and physical custody to a relative, nor termination of
1972 parental rights, is in the child's best interests and all of the requirements of Minnesota
1973 Statutes § 260C.201, subd. 11, are met.

1974 (2) If the court orders foster care for a specified period of time, the court
1975 shall order in-court review hearings ~~at least every twelve (12) months or at such shorter~~
1976 ~~intervals as will serve the child's best interests~~ not to exceed a total of twelve (12) months
1977 after the date the order is entered for foster care for a specified period of time.

1978 (g) **Continued Reviews for Long-term Foster Care and for Foster Care for**
1979 **a Specified Period of Time.**

1980 (1) Court reviews of an order for long-term foster care ~~or foster care for~~
1981 ~~a specified period of time~~ must be conducted at least every twelve (12) months and must
1982 review the child's case plan or out-of-home placement plan and make findings as to the
1983 reasonable efforts of the agency to finalize the permanent plan for the child, including the
1984 agency's efforts to:

1985 (a) ensure that long-term foster care continues to be the most
1986 appropriate legal arrangement for meeting the child's need for permanency and stability
1987 or, if not, to identify and attempt to finalize another permanent placement option

1988 available under Minnesota Statutes chapter 260C that would better serve the child's needs
1989 and best interests;

1990 (1)(b) identify a specific long-term foster home for the child while
1991 out of the care of the parent, if one has not already been identified;

1992 (2)(c) support continued placement of the child in the identified
1993 home, if one has been identified;

1994 (3)(d) ensure appropriate services are provided to address the
1995 physical health, mental health, and education needs of the child during the period of long-
1996 term foster care or foster care for a specified period of time and also ensure appropriate
1997 services or assistance to maintain relationships with appropriate family members and the
1998 child's community and;

1999 (4)(e) plan for the child's independence upon the child's leaving
2000 long-term foster care as required under Minnesota Statutes § 260C.212, subd. 1; ~~and,~~

2001 (5) ~~where placement is for a specified period of time, plan for the safe~~
2002 ~~return of the child to the care of the parent. If it is necessary for a child who has been~~
2003 ~~ordered into foster care for a specified period of time to be in foster care longer than one~~
2004 ~~year, then not later than twelve (12) months after the time the child was ordered into~~
2005 ~~foster care for a specified period of time the matter must be returned to court for a review~~
2006 ~~of the appropriateness of continuing the child in foster care and of the responsible social~~
2007 ~~services agency's reasonable efforts to finalize a permanent plan for the child. If it is in~~
2008 ~~the child's best interests to continue the order for foster care for a specified period of time~~
2009 ~~past a total of twelve (12) months, the court shall set objectives for the child's~~
2010 ~~continuation in foster care, specify any further amount of time the child may be in foster~~
2011 ~~care, and review the plan for the safe return of the child to the parent.~~

2012 **(h) Modifying an Order for Long-term Foster Care.**

2013 (1) **Modification by Parent.** A parent may seek modification of an
2014 order for long-term foster care only upon motion and a showing by the parent of a
2015 substantial change in the parent's circumstances such that the parent could provide

2016 appropriate care for the child and that removal of the child from the child's permanent
2017 placement and the return to the parent's care would be in the best interest of the child.

2018 (2) **Modification by Agency.** The responsible social services agency
2019 may ask the court to vacate an order for long-term foster care upon a prima facie showing
2020 that there is a factual basis for the court to order another permanent placement under this
2021 Rule and that such other permanent placement is in the child's best interests.

2022 (a) If the agency's request is to terminate parental rights, the
2023 county attorney shall file a petition under Rule 33 and the court shall proceed under
2024 Rule 34.

2025 (b) If the agency's request is transfer of permanent legal and
2026 physical custody to a relative, the county attorney may file a motion under Rule 15 to
2027 modify the permanency order establishing long-term foster care for the child. If a party
2028 entitled to notice of the motion opposes the transfer of permanent legal and physical
2029 custody to a fit and willing relative, the responsible social services agency and county
2030 attorney shall establish:

2031 (i) that the relative is fit and willing; and

2032 (ii) that the transfer is in the best interests of the child.

2033 (3) **Order.** Upon a hearing or trial where the court determines that there
2034 is a factual basis for vacating the order for long-term foster care and that another
2035 permanent order regarding the placement of the child is in the child's best interests, the
2036 court may vacate the order for long-term foster care and enter a different order for
2037 permanent placement that is in the child's best interests.

2038 (4) **Further Reasonable Efforts Not Required.** The court shall not
2039 require further reasonable efforts to reunify the child with the parent or guardian as a
2040 basis for vacating the order for long-term foster care and ordering a different permanent
2041 placement in the child's best interests.

2042 (5) **Jurisdiction.** The court shall retain jurisdiction through the child's
2043 minority in a case where long-term foster care is the permanent disposition, unless the
2044 court extends jurisdiction to age nineteen (19).

2045 **Rule 42.06. Motion by Responsible Social Services Agency to Modify Adjudication**
2046 **and Transfer of Custody Order for a Child Who Continues in Placement Due Solely**
2047 **to the Child’s Emotional Disturbance or Developmental Disability.**

2048 **Subd. 1. Motion to Continue Foster Care on Voluntary Basis When**
2049 **Conditions Leading to Foster Care Placement Have Been Corrected.**

2050 **(a) Motion by Responsible Social Services Agency; Need for Continued**
2051 **Foster Care to Access Treatment.** If a child diagnosed with developmental disability or
2052 emotional disturbance has been ordered into foster care under Minnesota
2053 Statutes §§ 260C.178 or 260C.201 and the conditions that led to the court’s order have
2054 been corrected so that the child could safely return to the care of the parent or guardian
2055 except for the child’s need for continued placement to access necessary treatment or
2056 services, the responsible social services agency may file a motion pursuant to Rule 15 to
2057 vacate the finding that the child is in need of protection or services, to vacate the award of
2058 custody to the responsible agency, and to proceed under Rule 44.02, subd. 1(b).

2059 **(1) Affidavit.** The motion shall be supported by an affidavit setting
2060 forth:

2061 **(i) the agency’s reasonable efforts to finalize a permanent plan for**
2062 **the child including returning the child home;**

2063 **(ii) the agency’s compelling reasons why a permanent placement**
2064 **need not be ordered under Minnesota Statutes § 260C.201, subd. 11; and**

2065 **(iii) why the voluntary placement is in the child’s best interests.**

2066 **(2) Timing of Motion.** The motion must be filed no later than the time
2067 a permanency placement determination hearing is required under this Rule.

2068 **Subd. 2. Contemporaneous Execution of Voluntary Placement Agreement.**

2069 At the time scheduled for the court to hear the agency’s motion under subdivision 1, the
2070 parent or legal custodian and agency may execute a voluntary placement agreement when
2071 the court approves the child’s continued foster care placement as a voluntary
2072 arrangement.

2073 **Subd. 3. Required Findings to Proceed under Rule 44.02, subd. 1.** When the
2074 parent or legal custodian executes a voluntary placement agreement, the court may
2075 proceed under Rule 44.02, subd. 1, if it grants the responsible social services agency’s
2076 motion and finds that:

2077 (a) the conditions which led to the foster care placement of the child have been
2078 corrected such that the child could safely return home;

2079 (b) the child needs to continue in foster care due solely to the child’s emotional
2080 disturbance or developmental delay;

2081 (c) there are compelling reasons to approve the continued voluntary
2082 arrangement; and

2083 (d) the agency has made reasonable efforts to finalize a permanent plan for the
2084 child.

2085 **Subd. 4. Vacate Adjudication and Order for Legal Custody to Responsible**
2086 **Social Services Agency.** When the court makes the findings required under
2087 subdivision 3, the court may vacate the finding that the child is in need of protection or
2088 services and the order transferring legal custody to the responsible social services agency
2089 and proceed under Rule 44.02, subd. 1. A finding that the court approves the continued
2090 voluntary placement means that the responsible social services agency has continued
2091 legal responsibility for the child’s placement due to the voluntary placement agreement
2092 and that the parent may terminate the voluntary agreement as provided in Minnesota
2093 Statutes § 260C.212, subd. 4(c)(2), or, in the case of an Indian child, as provided in
2094 Minnesota Statutes § 260.765, subd. 4.

2095

2096 **RULE 43. TERMINATION OF PARENTAL RIGHTS MATTERS**

2097 * * *

2098 **Rule 43.03. Further Proceedings**

2099 * * *

2100 **Subd. 2. Long Term Foster Care For State Wards.**

2101 **(a) Limits on Circumstances When Long-term Foster Care Ordered.** ~~The~~

2102 ~~court may order long term foster care for a state ward based upon the child's special~~

2103 ~~needs and for compelling reasons pursuant to Minnesota Statutes § 260C.317, subd. 3(e).~~

2104 The responsible social services agency may make a determination of compelling reasons

2105 for a child to be in long-term foster care when the agency has made exhaustive efforts to

2106 recruit, identify, and place the child in an adoptive home, and the child continues in foster

2107 care for at least twenty-four (24) months after the court has issued the order terminating

2108 parental rights. If the court approves the agency's determination of compelling reasons,

2109 the court may order the child placed in long-term foster care.

2110 **(b) Required Annual Review.** As long as the child continues in foster care, at

2111 least every twelve (12) months the court shall conduct a permanency review hearing to

2112 determine the future status of the child using the review requirements of Minnesota

2113 Statutes § 260C.201, subd. 11(g).

2114 **(c) Jurisdiction Through Child's Minority.** In a case where long-term foster

2115 care is the permanent disposition, the court shall retain jurisdiction through the child's

2116 minority, unless the court extends jurisdiction to age nineteen (19).

2117 * * *

2118

2119 **RULE 44. REVIEW OF VOLUNTARY PLACEMENT MATTERS**

2120 **Rule 44.01. Generally**

2121 * * *

2122 **Subd. 2. Jurisdiction.** The court assumes jurisdiction to review a voluntary

2123 foster care placement of a child pursuant to Minnesota Statutes § 260C.212, subd. 8

2124 (child in voluntary placement) upon the filing of a petition pursuant to Minnesota

2125 Statutes § 260C.141, subd. 2(a). The court assumes jurisdiction to review voluntary
2126 foster care placement of a child pursuant to Minnesota Statutes § 260C.212, subd. 9
2127 (child in voluntary placement due solely to developmental disability or emotional
2128 disturbance), upon the filing of a report or petition pursuant to the requirements of
2129 Minnesota Statutes § 260C.141, subd. 2(b)a.

2130 * * *

2131 **Rule 44.02. Petition and Hearing**

2132 **Subd. 1. Child in Placement Due to Developmental Disability or Emotional**
2133 **Disturbance.**

2134 (a) **Court Report, Hearing, ~~Petition~~, and Judicial Determinations.**

2135 (1) **Court Report.** In the case of a child in voluntary foster care
2136 placement pursuant to Minnesota Statutes § 260C.212, subd. 9, and due solely to the
2137 child's disability as defined in Minnesota Statutes § 260C.007, subd. 12 or 16, a written
2138 report shall be filed with the court within 165 days of the date of the voluntary placement
2139 agreement. ~~No petition under Minnesota Statutes § 260C.141, subd. 1, is necessary.~~ A
2140 written report under this rule is in lieu of a report under Rule 38 and shall contain:

2141 (i) a statement of facts that necessitate the child's foster care
2142 placement;

2143 (ii) the child's name, date of birth, race, gender, and current
2144 address;

2145 (iii) the names, race, date of birth, residence, and post office
2146 addresses of the child's parents or legal custodian;

2147 (iv) a statement regarding the child's eligibility for membership or
2148 enrollment in an Indian tribe and the agency's compliance with applicable provisions of
2149 Minnesota Statutes §§ 260.751 to 260.835;

2150 (v) the names and addresses of the foster parents or chief
2151 administrator of the facility in which the child is placed, if the child is not in a family
2152 foster home or group home;

2153 (vi) a copy of the out-of-home placement plan required under
2154 Minnesota Statutes § 260C.212, subd. 1;

2155 (vii) a written summary of the proceedings of any administrative
2156 review required under Minnesota Statutes § 260C.212, subd. 7; and

2157 (viii) any other information the responsible social services agency,
2158 parent or legal custodian, the child or the foster parent or other residential facility wants
2159 the court to consider.

2160 In the case of a child in placement due solely to an emotional disturbance, the
2161 written report shall include as an attachment the child's individual treatment plan
2162 developed by the child's treatment professional, as provided in Minnesota
2163 Statutes § 245.4871, subd. 21, or the child's individual interagency intervention plan, as
2164 provided in Minnesota Statutes § 125A.023, subd. 3(c).

2165 In the case of a child in placement due solely to a developmental disability, the
2166 written report shall include as an attachment the child's individual service plan, as
2167 provided in Minnesota Statutes § 256B.092, subd. 1b, the child's individual program
2168 plan, as provided in Minnesota Rule 9525.0004, subp. 11, the child's waiver care plan, or
2169 the child's individual interagency intervention plan, as provided in Minnesota
2170 Statutes § 125A.023, subd. 3(c).

2171 **(2) Additional Requirements for Court Report.** In addition to filing
2172 the report with the court, the responsible social services agency must provide to the child,
2173 parent or legal custodian, and foster parent or representative of the residential facility a
2174 statement regarding the agency's advice or notice of the following:

2175 (i) that they have been advised of the requirements of this rule
2176 and that they have a right to submit information to the court;

2177 (ii) that they have a right to submit information to the court or to
2178 be heard in person by the court;

2179 (iii) that they have received the date the court report will be filed
2180 with the court and the identifying information necessary for the court administrator to
2181 accept information from the child, parent or legal custodian, the foster parent, or

2182 representative of the residential facility in the event they wish to submit any information
2183 to the court; and

2184 (iv) that no hearing will be held unless the child, parent or legal
2185 custodian, or foster parent or representative of the residential facility requests a hearing.

2186 (3) **Required Hearing if Requested by Parent or Child.** If the parent
2187 or legal custodian, foster parent or representative of the residential facility, or the child
2188 states that they wish to be heard in person by the court, the county attorney must notify
2189 the court administrator of the request. The court administrator shall set a hearing before
2190 the court and send notice to the parent or legal custodian, the child, the responsible social
2191 services agency, and the foster parent or representative of the residential facility.

2192 (4) **Judicial Determinations after Report or Hearing without**
2193 **Petition.**

2194 (i) After receiving the required report or after conducting a
2195 hearing under paragraph (a)(3) of this Rule, the court has jurisdiction to make the
2196 following determinations and must do so within ten days of receiving the forwarded
2197 report:

2198 (A) whether the placement of the child in foster care is in
2199 the child's best interests; and

2200 (B) whether the parent and agency are appropriately
2201 planning for the child. Unless requested by a parent or legal custodian, foster parent or
2202 representative of the residential facility, or child, an in-court hearing need not be held in
2203 order for the court to make findings and issue an order under this paragraph.

2204 (ii) If the court finds the placement of the child in foster care is in
2205 the child's best interests and that the agency and parent are appropriately planning for the
2206 child, the court shall issue an order containing explicit, individualized findings to support
2207 its determination. The court shall send a copy of the order to the county attorney, the
2208 responsible social services agency, the parent or legal custodian, the child, and the foster
2209 parents. The court shall also send the parent or legal custodian, the child, and the foster
2210 parent notice of the hearing required ~~review under clause (2) subdivision 1(b).~~

2211 (iii) If the court finds continuing the placement of the child in
2212 foster care not to be in the child's best interests or that the agency or the parent or legal
2213 custodian is not appropriately planning for the child, the court shall notify the county
2214 attorney, the responsible social services agency, the parent or legal custodian, the foster
2215 parent, the child, and the county attorney of the court's determinations and the basis for
2216 the court's determinations.

2217 (b) ~~—~~ **Petition in Lieu of Court Report.**

2218 ~~— (1) —~~ **Petition alleging child to be in need of protection or services, for**
2219 **termination of parental rights, or other permanent placement of the child.** In lieu of
2220 a report under subdivision (a)(1), a petition alleging the child to be in need of protection
2221 or services, for termination of parental rights, or other permanent placement of the child
2222 may be filed in time for the matter to be heard by the court within 180 days of the date of
2223 the voluntary placement agreement. The petition shall state the date of the voluntary
2224 placement agreement, the nature of the child's disability, the plan for the ongoing care of
2225 the child and the parent's participation in that plan, and the statutory basis for the
2226 petition. The matter shall proceed according to the requirements of Rule 30 or 34
2227 whichever is applicable. If the court proceeds under Rule 34, based on the content of the
2228 petition and the Out of Home Placement Plan filed with the court, the court must
2229 determine whether placement is in the child's best interests. If the court proceeds under
2230 Rule 30, the court must make the findings required under that rule in order for the child to
2231 continue in out of home placement.

2232 (2) ~~—~~ **By-pass Report; Petition for Permanency Review.** The
2233 responsible social services agency may by pass the report required under paragraph (a)(1)
2234 and proceed to petition for permanency review under paragraph (c)(1) of this rule. The
2235 petition must be filed in time to permit the matter to be heard prior to the child being in
2236 placement 180 days.

2237 ~~— (3) —~~ In the case of a voluntary placement agreement pursuant to
2238 Minnesota Statutes § 260C.212, subd. 9 where the child is placement due solely to the
2239 child's disability as defined in Minnesota Statutes § 260C.007, subd. 12 and 16, the

2240 provisions of Minnesota Statutes § 260C.212, subd. 11, do not apply unless custody of
2241 the child is transferred to the responsible social services agency pursuant to Minnesota
2242 Statutes § 260C.201, subd. 1.

2243 (be) **Permanency Hearing Review by petition.**

2244 (1) **Required Permanency Hearing When Child in Placement 13**
2245 **Months.** In the case of a voluntary foster care placement agreement pursuant to
2246 Minnesota Statutes § 260C.212, subd. 9, where the child is in foster care due solely to the
2247 child's disability as defined in Minnesota Statutes § 260C.007, subd. 12 or 16, the
2248 provisions of Minnesota Statutes § 260C.201, subd. 11, and Rule 42 do not apply. If
2249 When a child with a is in foster care due solely to the child's developmental disability or
2250 an emotional disturbance and the child continues in out-of-home placement foster care
2251 for thirteen (13) consecutive months from the date of a the voluntary placement, a
2252 petition alleging the child to be in need of protection or services, for termination of
2253 parental rights, or for permanent placement of the child away from the parent under
2254 Minnesota Statutes § 260C.201 shall be filed. The court shall conduct a permanency
2255 hearing on the petition no later than fourteen (14) months after the date of the voluntary
2256 placement in foster care.

2257 (2) **Conduct of Permanency Hearing.** At the permanency hearing, the
2258 court, upon review of the petition and after inquiring of the parties, shall determine:

2259 (i) the need for an order permanently placing the child away
2260 from the parent; ~~or~~ and

2261 (ii) whether there are compelling reasons that continued
2262 voluntary placement is in the child's best interests; and

2263 (iii) whether the responsible social services agency has made
2264 reasonable efforts to finalize a permanent plan for the child.

2265 (cd) **Petition Alleging Child is in Need of Protection or Service; Hearing;**
2266 **Adjudication ~~not Required~~ Prohibited.**

2267 (1) **Petition or Motion.** A petition alleging the child to be in need of
2268 protection or services ~~may be filed~~ under (b)(1) shall state ~~stating~~ the date of the

2269 voluntary placement agreement, the nature of the child’s developmental disability or
2270 emotional disturbance, the plan for the ongoing care of the child, the parents’
2271 participation in the plan, and the statutory basis for the petition. A motion by the
2272 responsible social services agency under Rule 42.06 may also be filed in the juvenile
2273 protection file when the matter was commenced by a petition alleging the child to be in
2274 need of protection or services due to conditions in the home of the parent or legal
2275 custodian which led to the foster care placement of the child and those conditions have
2276 been corrected such that the child could safely return home except for the continued need
2277 for foster care placement due solely to the child’s emotional disturbance or
2278 developmental disability.

2279 (2) **Hearing.** If a petition alleging the child to be in need of protection
2280 or services is filed under this paragraph, based on the contents of the sworn petition, and
2281 the agreement of all parties, including the child, where appropriate, and without
2282 requiring any party to admit or deny the petition or respond to the motion by the
2283 responsible social services agency, the court may:

2284 (i) find that there are compelling reasons that the voluntary foster
2285 care arrangement is in the best interests of the child;

2286 (ii) approve ~~the~~ continued voluntary placement in foster care;

2287 (iii) find that the responsible social services agency has made
2288 reasonable efforts to finalize a permanent plan for the child; and

2289 (iv) continue the matter under the court’s jurisdiction for the
2290 purpose of reviewing the child’s placement in foster care as a continued voluntary
2291 arrangement every 12 months as long as the child remains in ~~out of home placement~~
2292 foster care;

2293 (3) **Disagreements with Voluntary Placement.** If any party, including
2294 the child, disagrees with the voluntary arrangement, the court shall proceed under
2295 Rule 30 or 34, whichever is applicable, and Minnesota Statutes § 260C.163.

2296 (4) ~~3) No Adjudication or and Transfer of Custody Required~~
2297 **Prohibited.** No adjudication that the child is in need of protection or services ~~need~~ shall

2298 be made or be entered and no transfer of legal custody under Minnesota
2299 Statutes § 260C.201, subd. 1, is necessary shall be ordered as a result of permanency
2300 hearings conducted under this rule. If a motion by the responsible social services agency
2301 under Rule 42.06 is granted for compelling reasons and the court finds that continued
2302 foster care is necessary due solely to the child’s emotional disturbance or developmental
2303 disability, the court shall vacate the adjudication and the order transferring legal custody
2304 to the responsible social services agency.

2305 (de) **Continued Review Required.** The matter must be returned to the court for
2306 further review every twelve (12) months from the date of the permanency hearing as long
2307 as the child remains in ~~placement~~ foster care. The court shall give notice to the parent or
2308 legal custodian of this continued review requirement by registered mail or on the record
2309 at the time of the permanency hearing. At the time of the continued reviews, the court
2310 shall determine whether the continued voluntary arrangement is in the best interests of
2311 the child and the reasonable efforts of the agency to:

2312 (1) identify a specific long-term foster home or residential facility for
2313 the child, if one has not already been identified;

2314 (2) support continued placement of the child in the identified home or
2315 residential facility, if one has been identified;

2316 (3) ensure appropriate services are being provided to the child;

2317 (4) upon the child becoming age sixteen (16), plan for the child’s
2318 transition to an appropriate living arrangement and for appropriate services once the
2319 child reaches age eighteen (18).

2320 ~~(f) **Proceedings if Termination of Parental Rights or Other Permanency**~~
2321 ~~**Petition Filed.** If a petition for termination of parental rights, for transfer of permanent~~
2322 ~~legal and physical custody to a relative, for long term foster care, or for foster care for a~~
2323 ~~specified period of time is filed, the court must proceed under Rule 30 or 34, whichever is~~
2324 ~~applicable, and Minnesota Statutes § 260C.201, subd. 11.~~

2325 (1) ~~If any party, including the child, disagrees with the voluntary~~
2326 ~~arrangement, the court shall proceed under Rule 30 or 34, whichever is applicable, and~~
2327 ~~Minnesota Statutes § 260C.163.~~

2328 (e) **Permanent Placement Away from the Parent by Court Order**
2329 **Prohibited When Court Approves Voluntary Arrangement.** ~~Nothing in this rule shall~~
2330 ~~be construed to mean the~~ When the court finds compelling reasons and approves the
2331 continued voluntary arrangement for placement of a child in foster care due solely to the
2332 child’s developmental disability or emotional disturbance, the court must not order
2333 permanent placement for the child under Minnesota Statutes § 260C.201, subd. 11, or
2334 Rule 42, as long as the court finds compelling reasons at the first review required under
2335 this rule.

2336 **Subd. 2. Other Voluntary Placements.**

2337 (a) **Petition.** In the case of a child in voluntary foster care placement pursuant
2338 to Minnesota Statutes § 260C.212, subd. 8, ~~the~~ a petition shall be filed within ninety (90)
2339 days of the date of the voluntary placement agreement and shall state the reasons why the
2340 child is in placement, the progress on the case plan required pursuant to Minnesota
2341 Statutes § 260C.212, subd. 1, and the statutory basis for the petition pursuant to
2342 Minnesota Statutes § 260C.007, subd. 6; § 260C.201 subd. 11; or § 260C.301.

2343 (b) **Hearing.** The matter shall be set for hearing within twenty (20) days of
2344 service.

2345 (c) **Findings.** If all parties agree and the court finds that it is in the best
2346 interests of the child, the court may find the petition states a prima facie case that:

- 2347 (1) the child’s needs are being met;
- 2348 (2) the placement of the child in foster care is in the best interests of the
2349 child;
- 2350 (3) reasonable efforts to reunify the child and the parent or legal
2351 custodian are being made; and
- 2352 (4) the child will be returned home in the next ninety (90) days.

2353 (d) **Approval of Placement.** If the court makes the findings required pursuant
2354 to subdivision 2(c), the court shall approve the voluntary placement arrangement without
2355 requiring any party to admit or deny the petition and continue the matter for ninety (90)
2356 days to assure the child returns to the parent’s home.

2357 (e) **Further Proceedings.**

2358 (1) The responsible social services agency shall report to the court when
2359 the child returns home and the progress made by the parent on the case plan required
2360 pursuant to Minnesota Statutes § 260C.212, subd. 1. If the child does not return home
2361 within the ninety (90) days approved by the court, the matter shall be returned to court for
2362 further proceedings pursuant to Rule 34.

2363 (2) If the court or any party, including the child, disagrees with the
2364 voluntary placement or the sufficiency of the services offered by the responsible social
2365 services agency, or if the court finds that the placement or case plan is not in the best
2366 interests of the child, the court shall direct the parties to admit or deny the petition and set
2367 the matter for further proceedings pursuant to Rule 36 or 39. If the court makes required
2368 findings pursuant to Rule 30, the court may order the child in protective care.

2369 (f) **Calculating Time Period.** When a child is placed in foster care pursuant
2370 to a voluntary placement agreement pursuant to Minnesota Statutes § 260C.212, subd. 8,
2371 the time period the child is considered to be in ~~placement~~ foster care for purposes of
2372 determining whether to proceed pursuant to Minnesota Statutes § 260C.201, subd. 11, is
2373 sixty (60) days after the voluntary placement agreement is signed, ~~the date the court~~
2374 ~~approves the placement of the child,~~ or the date the court orders the child in protective
2375 care, whichever is earlier.

2376 **Subd. 3. Child Determined to be in Need of Protection or Services.**

2377 (a) **Further Proceedings After Adjudication.** Pursuant to subdivision 1(c)(2)
2378 or 2(e), after the parties admit the petition or the petition is proven at trial, the court may
2379 determine that the child is in need of protection or services or withhold adjudication
2380 pursuant to Rule 40.

2381 (b) ~~If the court determines that the child is in need of protection or services or~~
2382 ~~withholds adjudication, and the court orders services provided without transferring legal~~
2383 ~~custody to the responsible social services agency pursuant to Minnesota Statutes §~~
2384 ~~260C.201, subd. 1(a)(3), the provisions of Minnesota Statutes § 260C.201, subd. 11, shall~~
2385 ~~not apply.~~

2386 (b)e) When the court determines the child is in need of protection or services, the
2387 court may make orders pursuant to Minnesota Statutes § 260C.201 or § 260C.205.

2388 (c-d) When the court determines the child is in need of protection or services or
2389 withholds such a determination, further proceedings shall be pursuant to Rule 41.

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2391

RULE 45. POST-TRIAL MOTIONS

Rule 45.01. Procedure and Timing

2392 Subd. 1. ~~Scope. This rule applies only to non-dispositional post-trial matters. It~~
2393 ~~does not apply to matters concerning disposition.~~

2394 **Subd. 1-2. Timing.** All ~~non-dispositional~~ post-trial motions shall be filed within
2395 fifteen (15) days of the service of notice by the court administrator ~~filing~~ of the filing of
2396 the court's order finding that the statutory grounds set forth in the petition are or are not
2397 proved.

2398 **Subd. 2-3. Basis of Motion.** A post-trial motion shall be made and decided on
2399 the files, exhibits, and minutes of the court. Pertinent facts that would not be a part of the
2400 minutes may be shown by affidavit except as otherwise provided by these rules. A full or
2401 partial transcript of the court reporter's notes of the testimony taken at the trial or other
2402 verbatim recording thereof may be used in deciding the motion.

2403 **Subd. 3-4. Time for Serving Affidavits.** When a post-trial motion is based upon
2404 affidavits, such affidavits shall be served with the notice of motion. The parties and the
2405 county attorney shall have ten (10) days after such service in which to serve opposing
2406 affidavits pursuant to Rule 15. The period may be extended by the court upon an order
2407 extending the time for hearing under this rule. The court may permit reply affidavits.

2408 * * *

2409

2410 **Rule 45.03. Amendment of Findings**

2411 Upon motion, the court may amend its findings or make additional findings, and
2412 may amend the order accordingly. The motion may be made with a motion for a new
2413 trial and may be made on the files, exhibits, and minutes of the court. The question of
2414 sufficiency of the evidence to support the findings may be raised whether or not the party
2415 raising the question has made in the district court an objection to such findings or has
2416 made a motion to amend the order.

2417 **Rule 45.04 ~~45.03~~. Grounds for New Trial**

2418 A new trial may be granted on all or some of the issues for any of the following
2419 reasons:

2420 (a) irregularity in the proceedings of the court, referee, or prevailing party, or
2421 any order or abuse of discretion whereby the moving party was deprived of a fair trial;

2422 (b) misconduct of counsel;

2423 (c) fraud, misrepresentation, or other misconduct of the county attorney, any
2424 party, their counsel, or their guardian ad litem;

2425 (d) accident or surprise that could not have been prevented by ordinary
2426 prudence;

2427 (e) material evidence, newly discovered, which with reasonable diligence
2428 could not have been found and produced at the trial;

2429 (f) errors of law occurring at the trial and objected to at the time, or if no
2430 objection need have been made, then plainly assigned in the motion;

2431 (g) a finding that the statutory grounds set forth in the petition are proved is not
2432 justified by the evidence or is contrary to law; or

2433 (h) if required in the interests of justice.

2434 **Rule 45.05 ~~45.04~~. Decision**

2435 The court shall rule on all post-trial motions within fifteen (15) days of
2436 submission. For good cause shown, the court may extend this period for not more than
2437 an additional fifteen (15) days. All findings shall be stated orally on the record or in
2438 writing.

2439 **Rule ~~45.06~~45.05. Relief**

2440 In response to any post-trial motion, including a motion for a new trial, the court
2441 may:

- 2442 (a) conduct a new trial;
- 2443 (b) reopen the proceedings and take additional testimony;
- 2444 (c) amend the findings of fact and conclusions of law; or
- 2445 (d) make new findings and conclusions as required.

2446

2447 **RULE 46. RELIEF FROM ORDER**

2448 * * *

2449 **Rule 46.02. Mistakes; Inadvertence; Excusable Neglect; Newly Discovered**
2450 **Evidence; Fraud**

2451 Upon motion and upon such terms as are just, the court may relieve a party or the
2452 party's legal representatives from a final order or proceeding, including a default order,
2453 and may order a new trial or grant such other relief as may be just for any of the
2454 following reasons:

- 2455 (a) mistake, inadvertence, surprise, or excusable neglect;
- 2456 (b) newly discovered evidence which by due diligence could not have been
2457 discovered in time to move for a new trial;
- 2458 (c) fraud (whether denominated intrinsic or extrinsic), misrepresentation, or
2459 other misconduct of an adverse party;
- 2460 (d) the judgment is void; or
- 2461 (e) any other reason justifying relief from the operation of the order.

2462 The motion shall be made within a reasonable time, but in no event shall it be
2463 more than ninety (90) days following the service of notice by the court administrator of
2464 the filing of the court's order.

2465

2466 **RULE 47. APPEAL**

2467 * * *

2468 **Rule 47.02. Procedure**

2469 * * *

2470 **Subd. 2. Timing.** Any appeal shall be taken within thirty (30) days of the service
2471 of notice by the court administrator of the filing of the ~~appealable~~ court’s order. In the
2472 event of the filing and service of a timely and proper post-trial motion under Rule 45, or
2473 for relief under Rule 46 if the motion is filed within the time specified in Rule 45.01,
2474 subd. 1, the provisions of Minnesota Rules of Civil Appellate Procedure Rule 104.01,
2475 subdivisions 2 and 3, apply, except that the time for appeal runs for all parties from the
2476 time of service of notice by the court administrator of the filing of the ~~appealable~~ order
2477 disposing of the last post-trial motion.

2478 * * *

2479 **2004 Advisory Committee Comment – 2006 Amendment**

2480 Minnesota Statutes § 260C.415 provides that an appeal shall be
2481 taken within 30 days of the filing of the appealable order and “as in other
2482 civil cases” under the Rules of Civil Appellate Procedure. The Committee
2483 recognizes that the timing provision of Rule 47.02, subd. 2, which provides
2484 that the appeal time begins to run from the court administrator’s service of
2485 notice of the filing of the order, is a departure from the statute and the
2486 Minnesota Rules of Civil Appellate Procedure. This departure is intended
2487 to expedite the appellate process, which the Committee deems to be in the
2488 best interests of the child. The appeal time and procedures are governed by
2489 these rules, specifically established for juvenile protection proceedings, and
2490 not by the more general provisions of the appellate rules. See *In Re*
2491 *Welfare of J.R., Jr.*, 655 N.W.2d 1 (Minn. 2003).

2493 **Subd. 3. Service and Filing of Notice of Appeal.** Within the time allowed for an
2494 appeal from an ~~appealable~~ order, as provided in subdivision 2, the person party appealing
2495 shall:

- 2496 (a) serve a notice of appeal upon the county attorney and all parties or their
2497 counsel if represented, including notice of the correct case caption pursuant to Rule 8.08;
2498 and

2499 (b) file with the clerk of appellate courts a notice of appeal, together with proof
2500 of service upon all parties, including notice of the correct case caption pursuant to
2501 Rule 8.08.

2502 * * *

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**AMENDMENTS TO THE RULES OF ADOPTION PROCEDURE
EFFECTIVE JANUARY 1, 2007**

Note to publishers: Deletions are indicated by a line drawn through the words; additions are underlined.

RULE 2. DEFINITIONS

Rule 2.01. Definitions

* * *

(e) **“Birth relative,”** for purposes of entering into a communication or contact agreement pursuant to Rule ~~34~~³², 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).

* * *

(j) **“Direct ~~adoptive~~-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.

* * *

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

* * *

(aa) **“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.

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RULE 4. TIME; TIMELINES

Rule 4.01. Computation of Time

Unless otherwise provided by statute or these rules, the day of the act or event from which the designated period of time begins shall not be included in the computation of time. The last day of the period shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday. When a period prescribed or allowed is three (3) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in these rules, “legal holiday” includes New Year’s Day, Martin Luther King’s Birthday, Washington’s Birthday (Presidents’ Day), Memorial Day, Independence Day, Labor Day, Veteran’s Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Day, and any other day designated as a holiday by the President, Congress of the United States, or by the State. For purposes of calculating time for the revocation of consent under Rule ~~33-34~~, the definition of “working day” under Rule 2.01(z) applies.

* * *

RULE 5. CONTINUANCES

Rule 5.01. Findings

Upon its own motion or motion of a party, the court may continue a scheduled hearing or trial to a later date. To grant a continuance, the court shall make written findings or oral findings on the record that the continuance is necessary for the accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown. A final hearing pursuant to Rule ~~41-39~~ and a trial pursuant to Rule ~~44-42~~ shall be commenced and completed not sooner than ninety (90) days after the child is placed, unless there is a waiver of the residency requirement pursuant to Rule ~~35-33~~, but not later than ninety (90) days after the petition is filed.

* * *

60 **RULE 6. REFEREES AND JUDGES**

61 * * *

62 **Rule 6.04. Transmittal of Referee’s Findings and Recommended Order**

63 **Subd. 1. Transmittal.** Upon the conclusion of a hearing, the referee shall
64 provide to a judge the written findings and recommended order, including the findings of
65 fact, conclusions of law, order for judgment, and adoption decree required pursuant to
66 Rule ~~45-43~~. Notice of the findings and recommended order, along with notice of the right
67 to review by a judge, shall be given either orally on the record or in writing to all parties,
68 and to any other person as directed by the court.

69 * * *

70 **Rule 6.07. Removal of Judge**

71 * * *

72 **Subd. 3. Notice Motion to Remove.**

73 (a) **Procedure.** A party or the county attorney may file with the court and
74 serve upon all other parties a notice motion to remove. The notice motion shall be served
75 and filed within ten (10) days of the date the party receives notice of the name of the
76 judge who is to preside over the proceeding, but not later than the commencement of the
77 proceeding.

78 (b) **Presiding Judge.** A notice motion to remove shall not be filed against a
79 judge who has presided at a motion or any other proceeding in the matter of which the
80 party or the county attorney had notice. A judge who has presided at a motion or other
81 proceeding may not be removed except upon an affirmative showing of prejudice on the
82 part of the judge.

83 (c) **Showing of Prejudice.** After a party or the county attorney has once
84 disqualified a presiding judge as a matter of right, that party may disqualify the substitute
85 judge, but only by making an affirmative showing of prejudice. A showing that the judge
86 might be excluded for bias from acting as a juror in the matter constitutes an affirmative
87 showing of prejudice. ~~Upon the filing of a motion to remove, or if a litigant makes an~~
88 ~~affirmative showing of prejudice against a substitute judge, the chief judge of the judicial~~

89 ~~district shall assign any other judge of any court within the district to hear the matter. If~~
90 ~~there is no other judge of the district who is qualified, the chief judge shall immediately~~
91 ~~notify the Chief Justice of the Minnesota Supreme Court.~~

92 (d) **Assignment of Another Judge.** Upon the filing of a notice to remove, or
93 if a party or the county attorney makes an affirmative showing of prejudice against a
94 substitute judge, the chief judge of the judicial district shall assign any other judge of any
95 court within the district to hear the matter. If there is no other judge of the district who is
96 qualified, the chief judge shall immediately notify the Chief Justice of the Minnesota
97 Supreme Court.

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RULE 8. PRESENCE AT HEARINGS

Rule 8.01. Attendance at Hearings

101 Only the parties, their legal counsel, their witnesses, persons entitled to notice
102 pursuant to Rule 31–29, and any other persons authorized by the court may attend
103 hearings relating to adoption matters.

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105

RULE 10. ORDERS

106 * * *

Rule 10.03. Delivery; Mailing

108 * * *

109 **Subd. 2. Adoption Decree.** The findings of fact, conclusions of law, order for
110 judgment, and adoption decree issued pursuant to Rule 45–43 shall be delivered at the
111 hearing or mailed by the court administrator to:

- 112 (a) each party;
- 113 (b) the Commissioner of Human Services;
- 114 (c) the Secretary of the Interior and the child’s tribal social services agency, if
115 the child is an Indian child; and
- 116 (b) such other persons as the court may direct.

117 If a party is represented by counsel, delivery or service shall be upon such counsel.
118 Filing and mailing of the adoption decree by the court administrator shall be
119 accomplished within five 5) ten (10) days of the date the judicial officer delivers the
120 adoption decree to the court administrator. Upon request and payment of the applicable
121 fee, the court administrator shall provide a certified copy of the adoption decree to
122 persons entitled to receive a copy as permitted by statute or these rules.

123 **Subd. 3. Replacement Birth Record.** Upon the court administrator's receipt of
124 the fee for the replacement birth record made payable to the Department of Health or
125 equivalent agency in another state, the court administrator shall complete the certificate
126 of adoption and send it to the Commissioner of Health in Minnesota or to the equivalent
127 agency in any other state so that a replacement birth record may be generated. Any fee
128 required by the Department of Health or equivalent agency in another state for a
129 replacement birth record shall be paid by the petitioner. Any such fee shall be submitted
130 by the petitioner to the court administrator at the time the request for a replacement birth
131 record is made and shall be forwarded by the court administrator to the Department of
132 Health.

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RULE 13. SUBPOENAS

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Rule 13.02. Form; Purpose; Notice

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139 **Subd. 2. Purpose.** A subpoena shall command each person to whom it is
140 directed to, at a specified time and place:

141 (a) attend and give testimony at a final hearing pursuant to Rule 41-39, a
142 deposition pursuant to Rule 17, or trial pursuant to Rule 44-42;

143 (b) bring the child to court; or

144 (c) produce books, papers, documents, or other tangible things designated in
145 the subpoena.

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RULE 15. MOTIONS

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150 **Rule 15.02. Service and Notice of Motion**

151 * * *

152 **Subd. 3. Time.**

153 (a) **Motion.** Except for motions pursuant to Rules ~~29-27~~ and ~~28~~, no motion
154 shall be heard until the moving party serves a copy of the following documents on the
155 other parties and files the original with the court administrator at least fourteen (14) days
156 prior to the hearing:

157 (1) notice of motion and motion;

158 (2) proposed order;

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

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

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

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

166 (2) any relevant affidavits and exhibits.

167 (c) **Reply Memorandum.** The moving party may submit a reply
168 memorandum, limited to new legal or factual matters raised by an opposing party's
169 response to a motion, by serving a copy of such memorandum upon the party or parties
170 and filing the original with the court administrator at least three (3) days before the
171 hearing.

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RULE 18. DEFAULT

Rule 18.01. Procedure

If a party fails to appear, as that term is defined in Rule 5.01 of the Minnesota Rules of Civil Procedure, after being properly served with a notice pursuant to Rule 31-29, the court may take testimony in support of the petition. If the court determines that the petition is proven in accordance with the applicable standard of proof and the adoption is in the best interests of the child, the court shall enter an order granting the relief sought. The court shall not grant a default if a party was not served with notice within the time period set forth in Rule 31-29. The court shall not grant a default regarding the issue of consent to adopt.

RULE 19. SETTLEMENT

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Rule 19.02. Partial Settlement

The parties may enter into a settlement of one or more issues and shall proceed to final hearing pursuant to Rule 41-39. Any remaining contested issues shall proceed to trial pursuant to Rule 44-42.

RULE 20. PARTIES

Rule 20.01. Party Status

Parties to an adoption matter shall include:

- (a) the child’s guardian ad litem;
- (b) the adoptee, if age ten (10) or older;
- (c) the child’s legal custodian;
- (d) the child’s legal guardian;
- (e) the petitioner;
- (f) the child’s biological parent, if the consent of the biological parent is required and has not been executed pursuant to Rule 33-34;

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

205 (h) the responsible social services agency, if the child is under the guardianship
206 of the Commissioner of Human Services;

207 (i) the child placing agency, if the child has been placed;

208 (j) any person who intervenes as a party pursuant to Rule 21; and

209 (k) any person who is joined as a party pursuant to Rule 22.

210 **Rule 20.02. Rights of Parties**

211 A party shall have the right to:

212 (a) notice pursuant to Rule ~~31-29~~;

213 (b) legal representation pursuant to Rule 23;

214 (c) be present at all hearings unless excluded pursuant to Rule 8;

215 (d) conduct discovery pursuant to Rule 17;

216 (e) bring motions before the court pursuant to Rule 15;

217 (f) participate in settlement agreements pursuant to Rule 19;

218 (g) subpoena witnesses pursuant to Rule 13;

219 (h) make argument in support of or against the petition;

220 (i) present evidence;

221 (j) cross-examine witnesses;

222 (k) ask the court to order that witnesses be sequestered;

223 (l) request review of the referee's findings and recommended order pursuant to
224 Rule 6, if a referee presides over the matter;

225 (m) bring post-trial motions pursuant to Rules ~~46-44~~ and ~~47-45~~;

226 (n) appeal from orders of the court pursuant to Rule ~~48-46~~; and

227 (o) any other rights as set forth in statute or these rules.

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230 **RULE 23. RIGHT TO REPRESENTATION; APPOINTMENT OF COUNSEL**

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232 **Rule 23.04. Biological Parent Counsel in Direct Placement Adoption**

233 **Subd. 1. Right to Counsel.** Pursuant to Minnesota Statutes § 259.47, subd. 5, in
234 a direct placement adoption, upon the request of a biological parent, separate legal
235 counsel shall be made available to the biological parent at the expense of the prospective
236 adoptive parents for legal services provided in a direct ~~adoptive~~-placement adoption. The
237 prospective adoptive parent shall be required to provide legal counsel for only one parent
238 unless the biological parents elect joint legal representation.

239 * * *

240 **Rule 23.07. Appointment of Counsel in Adoption Involving an Indian Child**

241 **Subd. 1. Parent or Indian Custodian.** In any case in which the court determines
242 indigency, the parent or Indian custodian shall have the right to court appointed counsel
243 in any removal, placement, or termination proceeding.

244 **Subd. 2. Indian Child.** The court may, in its discretion, appoint counsel for an
245 Indian child upon a finding that such appointment is in the best interests of the child.

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RULE 24. GUARDIAN AD LITEM

248 **Rule 24.01. Appointment**

249 **Subd. 1. Generally.** A guardian ad litem appointed to serve in a juvenile
250 protection matter, as defined in Rule 2.01(k) of the Minnesota Rules of Juvenile
251 Protection Procedure, shall continue to serve in the adoption matter following a
252 termination of parental rights or transfer of guardianship to the Commissioner of
253 Human Services. In any other adoption matter, the court may appoint a guardian
254 ad litem. The guardian ad litem shall advocate for the best interests of the child
255 and shall continue to serve until the adoption decree is entered pursuant to Rule 45
256 43.

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RULE 25. METHOD OF FILING AND SERVICE

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Rule 25.02. Types of Service

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Subd. 3. Publication. Service by publication means the publication in full of the summons, notice of hearing, or other papers in the regular issue of a qualified newspaper, once each week for the number of weeks specified pursuant to Rule ~~31.04~~29.04, 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 unsuccessful efforts to locate the party to be served. Service by publication shall be completed by the petitioner in a location approved by the court. 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.

* * *

RULE 26. COMMENCEMENT OF ADOPTION MATTER

Rule 26.01. Commencement of an Adoption Matter

An adoption matter is commenced by filing:

- (a) a motion for a direct placement preadoptive custody order pursuant to Rule ~~29~~27;
- (b) an adoption petition; or
- (c) a motion for waiver of agency placement pursuant to Minnesota Statutes § 259.22, subd. 2(d).

284 **Rule 26.02. Post-Permanency Review Hearings Continue**

285 The filing of an adoption petition does not terminate the in-court review hearings
286 required at least every ninety (90) days under Rule 41.06 of the Minnesota Rules of
287 Juvenile Protection Procedure.

288
289 **RULE 27. STEPPARENT ADOPTION**

290 A stepparent adoption shall be commenced by the filing of a petition pursuant to
291 Rule 35. All other Rules apply to stepparent adoptions, except for Rule 28 dealing with
292 agency adoptions, Rule 29 dealing with direct placement adoptions, and Rule 30 dealing
293 with intercountry adoptions.

294
295 **RULE 28. AGENCY ADOPTION**

296 An agency adoption shall be commenced by the filing of a petition pursuant to
297 Rule 35. All other Rules apply to agency adoptions, except for Rule 27 dealing with
298 stepparent adoptions, Rule 29 dealing with direct placement adoptions, and Rule 30
299 dealing with intercountry adoptions.

300
301 **RULE ~~29~~ 27. DIRECT PLACEMENT ADOPTION—NON-EMERGENCY**

302 **Rule ~~29.01~~ 27.01. Notice of Motion and Motion for Preadoptive Custody Order**

303 In a direct adoptive-placement adoption, whether involving an emergency or non-
304 emergency situation, the petitioner shall file with the court and serve a notice of motion
305 and motion for a preadoptive custody order upon:

- 306 (a) the biological mother;
- 307 (b) the biological father if his consent is required;
- 308 (c) any parent whose consent is required; and
- 309 (d) the Indian tribe, if the child is an Indian child.

310 **Rule ~~29.02~~-27.02. Timing**

311 A notice of motion and motion for a preadoptive custody order may be filed up to
312 sixty (60) days before the adoptive placement is to be made and may be filed prior to the
313 birth of the baby.

314 **Rule ~~29.03~~-27.03. Content**

315 **Subd. 1. Non-Emergency Direct Placement.** In a non-emergency situation, a A
316 notice of motion and motion for a preadoptive custody order in a direct placement
317 adoption shall be in writing and shall contain or have attached:

318 (a) a statement that the biological parents have:

319 (1) provided the social and medical history to the prospective adoptive
320 parent using the form prescribed by the Commissioner of Human Services;

321 (2) received a written statement of their legal rights and responsibilities
322 prepared by the Department of Human Services; and

323 (3) been notified of their right to receive counseling;

324 (b) the name of the agency chosen by the adoptive parent to supervise the
325 adoptive placement and complete the post-placement assessment;

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

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

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

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

- 339 (d) a statement that the prospective adoptive parent meets the residence
340 requirements;
- 341 (e) an affidavit of intent to remain a resident of the state for at least three (3)
342 months after the child is placed in the prospective adoptive home;
- 343 (f) a notice of intent to file an adoption petition;
- 344 (g) the adoption study report required pursuant to Rule 37-35;
- 345 (h) an itemized statement of expenses that have been paid and an estimate of
346 expenses that will be paid by the prospective adoptive parents to the biological parents,
347 any agency, attorney, or other party in connection with the prospective adoption; and
- 348 (i) the name of counsel for each party, if any.

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

352 (a) affidavits from the prospective adoptive parents and biological parents
353 stating that an emergency order is needed because of the unexpected premature birth of
354 the child or other extraordinary circumstances which prevented the completion of the
355 requirements under subdivision 1;

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

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

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

365 or

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

369 (c) a statement that the biological parents:

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

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

373 (d) either:

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

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

377 **Rule ~~29.04~~27.04. Decision and Order**

378 **Subd. 1. Non-Emergency Direct Placement.** In a non-emergency situation, the
379 The court shall decide a motion for a preadoptive custody order within thirty (30) days of
380 the filing of the motion or by the anticipated placement date stated in the motion,
381 whichever is earlier.

382 **Subd. 2. Emergency Direct Placement.**

383 (a) **Expedited Emergency Order.** An order granting or denying a motion for
384 an emergency preadoptive custody order shall be issued within twenty-four (24) hours of
385 the time it is filed. Any district court judge may decide a motion for emergency
386 preadoptive custody. An order granting the motion shall direct that an adoption study be
387 commenced immediately, if that has not already occurred, and that the agency conducting
388 the study shall supervise the emergency placement.

389 (b) **Expiration of Emergency Order.** A court may issue an emergency order
390 granting preadoptive custody of a child to a prospective adoptive parent for up to
391 fourteen (14) days. An emergency order under this rule expires fourteen (14) days after it
392 is issued. If the requirements for non-emergency direct placement under this Rule are
393 completed and a preadoptive custody motion is filed on or before the expiration of the

394 emergency order, placement may continue until the court decides the motion. The court
395 shall decide the preadoptive custody motion within seven (7) days of filing.

396

397 **~~RULE 28. DIRECT PLACEMENT – EMERGENCY~~**

398 **~~Rule 28.01. Notice of Motion and Motion for an Emergency Preadoptive Custody~~**
399 **~~Order~~**

400 ~~In a direct adoptive placement where an emergency exists, the petitioner shall file~~
401 ~~with the court and serve a notice of motion and motion for a preadoptive custody order~~
402 ~~upon:~~

- 403 ~~(a) — the biological mother;~~
- 404 ~~(b) — the biological father if his consent is required;~~
- 405 ~~(c) — any parent whose consent is required; and~~
- 406 ~~(d) — the Indian tribe, if the child is an Indian child.~~

407 **~~Rule 28.02. Content~~**

408 ~~A notice of motion and motion for a preadoptive custody order in a direct~~
409 ~~placement adoption shall be in writing and shall contain or have attached:~~

410 ~~(a) — affidavits from the prospective adoptive parents and biological parents~~
411 ~~stating that an emergency order is needed because of the unexpected premature birth of~~
412 ~~the child or other extraordinary circumstances which prevented the completion of the~~
413 ~~requirements under Rule 27;~~

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

- 420 ~~—— (1) — the child was conceived as the result of incest or rape;~~

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

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

427 ~~(c)—— a statement that the biological parents:~~

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

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

431 ~~(d)—— either:~~

432 ~~(1)—— a completed adoption study report; or~~

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

435 **~~Rule 28.03. Decision and Order~~**

436 **~~Subd. 1. Generally.~~** ~~An order granting or denying a motion for an emergency~~
437 ~~preadoptive custody order shall be issued within twenty four (24) hours of the time it is~~
438 ~~filed. Any district court judge may decide a motion for emergency preadoptive custody.~~
439 ~~An order granting the motion shall direct that an adoption study be commenced~~
440 ~~immediately, if that has not occurred, and that the agency conducting the study shall~~
441 ~~supervise the emergency placement.~~

442 **~~Subd. 2. Expiration of Emergency Order.~~** ~~A court may issue an emergency~~
443 ~~order granting preadoptive custody of a child to a prospective adoptive parent for up to~~
444 ~~fourteen (14) days. An emergency order under this rule expires fourteen (14) days after it~~
445 ~~is issued. If the requirements for direct placement under Rule 27 are completed and a~~
446 ~~preadoptive custody motion is filed on or before the expiration of the emergency order,~~
447 ~~placement may continue until the court decides on the motion. The court shall decide the~~
448 ~~preadoptive custody motion within seven (7) days of filing.~~

449

450 **RULE ~~30~~47. INTERCOUNTRY ADOPTIONS**

451 **Rule ~~30.01~~47.01. Adoption of a Child by a Resident of Minnesota Under the Laws of**
452 **a Foreign Country ~~Validity of a Foreign Adoption~~**

453 **Subd. 1. Validity of a Foreign Adoption.** The adoption of a child by a resident of
454 Minnesota ~~this state~~ under the laws of a foreign country is valid and binding under the laws
455 of Minnesota ~~this state~~ if the validity of the foreign adoption has been verified by the
456 granting of an IR-3 visa for the child by the United States ~~Bureau~~ of Citizenship and
457 Immigration Services.

458 **Subd. 2. ~~Rule 47.02.~~ New Birth Record.**

459 (a) **Petition.** The adoption of a child under the laws of a foreign country is valid
460 in Minnesota ~~this state~~ pursuant to Rule ~~30.01~~ 48.01 and the petitioner may petition the
461 court in petitioner's county of residence for a decree:

462 (1-a) confirming and recognizing the adoption;

463 (2-b) changing the child's legal name, if requested; and

464 (3-e) authorizing the Commissioner of Health to create ~~issue~~ a new birth
465 record for the child pursuant to Minnesota Statutes § 144.218, subd. 2-4.

466 (b) **Subd. 2. Documents to be Submitted.** ~~The A~~ court shall issue the decree
467 described in subdivision 2(a) 4 upon receipt of the following documents:

468 (1-a) a signed, sworn, and notarized petition by the adoptive parent:

469 (i-1) stating that the adoptive parent completed the adoption of the
470 child under the laws of a foreign county;

471 (ii-2) stating that the adoption is valid in this state under Rule 30.01
472 ~~48.01~~; and

473 (iii-3) requesting that the court issue a decree confirming and
474 recognizing the adoption and authorizing the Commissioner of Health to issue a new birth
475 record for the child;

476 (2-b) a copy of the child's original birth record, if available;

477 (3-e) a copy of the final adoption certificate or equivalent as issued by the
478 foreign jurisdiction;

479 (4-d) a copy of the child's passport, including the United States visa
480 indicating IR-3 immigration status; and

481 (5-e) a certified English translation of any of the documents listed in (b2)
482 through (d4) above.

483 **Subd. 3. Action Upon Issuance of Adoption Decree.** Upon issuing an adoption
484 decree under this Rule, the court shall forward a copy of the adoption decree to the
485 Commissioner of Human Services. The court shall also complete and forward to the
486 Commissioner of Health the certificate of adoption, unless another form has been specified
487 by the Commissioner of Health.

488 **Rule 30.02. Adoption Under the Laws of Minnesota of a Child Born in Another**
489 **Country**

490 **Subd. 1. Agency Adoption.** An adoption of a child placed by an agency shall be
491 commenced by the filing of a petition or other document pursuant to Rule 35 and thereafter
492 shall proceed pursuant to Rule 28 dealing with agency adoptions.

493 **Subd. 2. Direct Placement Adoption.** A direct placement adoption of a child born
494 in another country shall be commenced by the filing of a petition or other document
495 pursuant to Rule 35 and thereafter shall proceed pursuant to Rule 29 dealing with direct
496 placement adoptions.

497 **Rule 30.03-47.03. Post-Adoption Report**

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

504

505 **RULE ~~31-29~~. NOTICE OF FINAL HEARING OR TRIAL**

506 **Rule ~~31.01-29.01~~. Notice**

507 **Subd. 1. Definition.** A notice of hearing is a document providing notice of the
508 specific date, time and place of a hearing or trial upon an adoption petition.

509 **Subd. 2. Upon Whom.** A notice of hearing shall be served by the petitioner upon:

510 (a) all parties under Rule 20;

511 (b) the parent of a child if:

512 (1) the person's name appears on the child's birth record as a parent;

513 (2) the person has substantially supported the child;

514 (3) the person either was married to the person designated on the birth
515 record as the biological mother within the 325 days before the child's birth or married
516 that person within the ten (10) days after the child's birth;

517 (4) the person is openly living with the child or the person designated on
518 the birth record as the biological mother of the child, or both;

519 (5) the person has been adjudicated the child's parent;

520 (6) the person has filed a paternity action within thirty (30) days after
521 the child's birth and the action is still pending; or

522 (7) the person and the mother of the child signed a declaration of
523 parentage before August 1, 1995, which has not been revoked or a recognition of
524 parentage; which has not been revoked or vacated;

525 (c) a person who has timely registered pursuant to Minnesota
526 Statutes § 259.52;

527 (d) the responsible social services agency;

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

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

531 **Rule ~~31.02-29.02~~. Notice Not Required**

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

533 (a) persons whose parental rights have been terminated;

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

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

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

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

544 **Rule ~~31.03~~ 29.03. Content of Notice of Hearing**

545 A notice of hearing shall contain or have attached:

546 (a) an adoption petition;

547 (b) a statement setting forth the time and place of the hearing;

548 (c) a statement describing the purpose of the hearing as either:

549 (1) a final hearing pursuant to Rule ~~41~~ 39 if it is an uncontested adoption
550 matter; or

551 (2) a pretrial conference pursuant to Rule ~~43~~ 41 if it is a contested
552 adoption matter;

553 (d) a statement explaining the right to representation pursuant to Rule 23;

554 (e) a statement explaining intervention pursuant to Rule 21;

555 (f) a statement explaining that if the person fails to appear at the hearing, the
556 court may still conduct the hearing and grant the adoption pursuant to Rule 18; and

557 (g) a statement explaining that it is the responsibility of the individual to notify
558 the court administrator of any change of address.

559 **Rule ~~31.04~~ 29.04. Service of Notice of Hearing**

560 **Subd. 1. Timing.** A notice of hearing shall be served, within or without the state,
561 at least ten (10) days before the date of a final hearing in an uncontested matter and at

562 least thirty (30) days before the date of the hearing commencement of the trial in a
563 contested matter.

564 * * *

565

566 **RULE ~~32-30~~. MINNESOTA FATHERS' ADOPTION REGISTRY**

567 **Rule ~~32.01-30.04~~. Requirement to Search Minnesota Fathers' Adoption Registry**
568 **Before Adoption Petition Granted; Proof of Search**

569 **Subd. 1. Requirement to Search Registry.** Except for intercountry adoptions,
570 an adoption petition for a child born on or after January 1, 1998, shall not be granted
571 unless the Minnesota Fathers' Adoption Registry has been searched to determine whether
572 a putative father is registered in relation to the child who is the subject of the adoption
573 petition. The search shall be conducted no sooner than thirty-one (31) days following the
574 birth of the child.

575 * * *

576 **Rule ~~32.02-30.02~~. Fees for Minnesota Fathers' Adoption Registry**

577 Pursuant to Minnesota Statutes § 259.52, subd. 14, in addition to any other filing
578 fees, the court administrator shall assess an adoption filing fee surcharge on each
579 adoption petition filed in the district court for the purpose of implementing and
580 maintaining the Minnesota Fathers' Adoption Registry. The court administrator shall
581 forward fees collected under this rule to the Commissioner of Finance for deposit into the
582 state government special revenue fund to be appropriated to the Commissioner of Health
583 to administer the Minnesota Fathers' Adoption Registry. The fee shall not be assessed in
584 adoptions or re-adoptions of children adopted in intercountry adoptions.

585

586 **RULE ~~33-34~~. CONSENT TO ADOPTION**

587 **Rule ~~33.01-34.04~~. Persons and Agencies Required to Consent**

588 Written consent to an adoption is required by the following:

- 589 (a) the child to be adopted, if the child is fourteen (14) years of age or older;
590 (b) the adult to be adopted, whose consent shall be the only consent required;

- 591 (c) a registered putative father, if pursuant to Rule 32 he has:
- 592 (1) been notified under the Minnesota Fathers' Adoption Registry;
- 593 (2) timely filed an intent to claim parental rights form; and
- 594 (3) timely filed a paternity action;
- 595 (d) the child's parents or legal guardian, except:
- 596 (1) a parent not entitled to notice of the proceedings;
- 597 (2) a parent who has abandoned the child or a parent who has lost
- 598 custody of the child through a divorce decree or a decree of dissolution and upon whom
- 599 notice has been served as required under Rule 31-29; and
- 600 (3) a parent whose parental rights to the child have been terminated by a
- 601 juvenile court order or through a decree in a prior adoption matter;
- 602 (e) if there is no parent or legal guardian qualified to consent to the adoption,
- 603 the consent shall ~~may~~ be given by the Commissioner of Human Services; ~~and~~
- 604 (f) the agency having authority to place the child for adoption, which shall
- 605 have the exclusive right to consent to the adoption of such child; and
- 606 (g) the Commissioner of Human Services when the Commissioner is the legal
- 607 guardian or legal custodian of the child, or agency having authority to place the child for
- 608 adoption who shall have the exclusive right to consent to the adoption of such child.

609 * * *

610 **Rule 33.02-31.02. Notice of Intent to Consent to Adoption**

611 **Subd. 1. Consent of Biological Parents.** Unless all biological parents from

612 whom consent is required under Rule 33.01-31 are involved in making the adoptive

613 placement and intend to consent to the adoption, a biological parent who intends to

614 execute a consent to an adoption shall give notice to the child's other biological parent of

615 the intent to consent to the adoption prior to or within seventy-two (72) hours following

616 the placement of the child if the other biological parent's consent to the adoption is

617 required under Rule 33.01-31. Notice of intent to consent to adoption shall be provided

618 to the other biological parent according to the Minnesota Rules of Civil Procedure for

619 service of a summons and complaint. The biological parent who receives notice shall

620 have sixty (60) days after the placement of the child to serve upon the other biological
621 parent either a consent pursuant to Rule ~~33.01-34~~ or a written objection to the adoption.
622 If the biological parent who receives notice fails to consent or to respond with a written
623 objection to the adoption within sixty (60) days after the adoptive placement, that parent
624 shall be deemed to have irrevocably consented to the child's adoption.

625 **Subd. 2. Consent of Minors.** If an unmarried parent who consents to the
626 adoption of a child is under eighteen (18) years of age, the consent of the minor parent's
627 parents or legal custodian or legal guardian, if any, also shall be required. If either or
628 both parents are not required to consent pursuant to Rule ~~33.01(d)-31.01(d)~~, the consent
629 of such parent shall be waived and the consent of the legal custodian or legal guardian
630 only shall be sufficient. If there be neither parent nor legal custodian or legal guardian
631 qualified to give such consent, the consent may be given by the Commissioner of Human
632 Services. The responsible social services agency overseeing the adoption matter shall
633 ensure that the minor parent is offered the opportunity to consult with an attorney, a
634 member of the clergy, or a physician before consenting to adoption of the child. The
635 advice or opinion of the attorney, clergy member, or physician shall not be binding on the
636 minor parent. If the minor parent cannot afford the cost of consulting with an attorney, a
637 member of the clergy, or a physician, the county shall bear that cost. A parent or legal
638 custodian or legal guardian of a minor or incapacitated person may not delegate the
639 power to consent to adoption of a minor ward under Minnesota Statutes §§ ~~524.5-101~~
640 to ~~§ 524.505(a)~~524.5-502.

641 **Rule ~~33.03-31.03~~. Execution of Consent to Adoption**

642 **Subd. 1. Requirements of Consent.** Except as provided in subdivision 3, all
643 consents to an adoption shall:

- 644 (a) be in writing;
- 645 (b) be executed before two competent witnesses;
- 646 (c) be acknowledged by the consenting party;
- 647 (d) be executed before a representative of the Commissioner of Human
648 Services, the Commissioner's agent, or a licensed child-placing agency;

649 (e) include a notice to the parent of the substance of Minnesota
650 Statutes § 259.24, subd. 6a, providing for the right to withdraw consent; and

651 (f) include the following written notice in all capital letters at least one-eighth
652 inch high: “This agency will submit your consent to adoption to the court. The consent
653 itself does not terminate your parental rights. Parental rights to a child may be terminated
654 only by an adoption decree or by a court order terminating parental rights. Unless the
655 child is adopted or your parental rights are terminated, you may be asked to support the
656 child.”

657 * * *

658 **Rule ~~33.04~~ 31.04. Timing of Consent**

659 A consent to adoption form shall not be signed sooner than seventy-two (72) hours
660 after the birth of a child. The seventy-two (72) hours is computed excluding the date of
661 the birth and including Saturdays, Sundays, and legal holidays. A consent to adoption
662 shall be executed by any person whose consent is required under Rule ~~33~~–~~31~~ within
663 sixty (60) days after the child’s placement in a prospective adoptive home.

664 **Rule ~~33.05~~ 31.05. Failure to Execute Consent**

665 With the exception of cases where a person receives notice under Minnesota
666 Statutes § 259.24, subd. 2a, if a biological parent whose consent is required under
667 Rule ~~31~~ 33 does not execute a consent by the end of the period specified in Rule 33.04
668 ~~31.04~~, the child placing agency shall notify the court and the court shall issue an order
669 regarding continued placement of the child. The court shall order the local social
670 services agency to determine whether to commence proceedings for termination of
671 parental rights on grounds of abandonment as defined in Minnesota Statutes § 260C.301,
672 subd. 2. The court may disregard the six-month and twelve-month requirements of
673 Minnesota Statutes § 260C.201, subd. 11, in finding abandonment if the biological parent
674 has failed to execute a consent within the time required under Rule ~~33.04~~–~~31.04~~ and has
675 made no effort to obtain custody of the child.

676 **Rule ~~33.06~~31.06. Agreement Conferring Authority to Place for Adoption**

677 **Subd. 1. Parties to Agreement.** The parents and legal custodian or legal
678 guardian, if there be one, of a child may enter into a written agreement with the
679 Commissioner of Human Services or an agency giving the Commissioner or such agency
680 authority to place the child for adoption. If an unmarried parent is under eighteen (18)
681 years of age, the written consent of the parents and legal custodian or legal guardian, if
682 any, of the minor parent also shall be required. If either or both of the parents are
683 disqualified from giving such consent for any of the reasons enumerated in Minnesota
684 Statutes § 259.24, subd. 1, the written consent of the legal custodian or legal guardian
685 shall be required.

686 **Rule ~~33.07~~31.07. Consent to a Direct Placement Adoption Under Minnesota**
687 **Statutes § 259.47**

688 **Subd. 1. Presence of Legal Counsel for Biological Parent.** If a biological parent
689 has chosen to have legal counsel pursuant to Rule 23.04, the attorney shall be present at
690 the execution of any consent. If a biological parent waives counsel, the parent's written
691 waiver shall be filed with the consent to the adoption.

692 * * *

693 **Rule ~~33.08~~31.08. Revocation of Consent to Adoption of a Non-Indian Child Under**
694 **Minnesota Statutes § 259.24**

695 A parent's consent to adoption may be withdrawn for any reason within ten (10)
696 working days after the consent is executed and acknowledged or pursuant to the law of
697 the state where the consent is executed. Written notification of withdrawal of consent
698 shall be received by the agency to which the child was surrendered no later than the tenth
699 working day after the consent is executed and acknowledged. On the day following the
700 tenth working day after execution and acknowledgment, the consent shall become
701 irrevocable, except upon order of a court of competent jurisdiction after written findings
702 that the consent was obtained by fraud. In proceedings to determine the existence of
703 fraud, the adoptive parents and the child shall be made parties. The proceedings shall be
704 conducted to preserve the confidentiality of the adoption process. There shall be no

705 presumption in the proceedings favoring the biological parents over the adoptive parents.
706 Failure to comply with the terms of a communication or contact agreement order entered
707 by the court under Rule ~~34~~³² is not grounds for revocation of a written consent to an
708 adoption after that consent has become irrevocable.

709 **Rule ~~33.09~~^{31.09}. Consent to Adoption of an Indian Child**

710 **Subd. 1. Requirements of Consent.** If the child to be adopted is an Indian child,
711 the consent of the parent or Indian custodian shall not be valid unless:

- 712 (a) executed in writing;
713 (b) recorded before the judge; and
714 (c) accompanied by the presiding judge’s certificate that the terms and
715 consequences of the consent were explained in detail and were fully understood by the
716 parent or Indian custodian. The court shall also certify that the parent or Indian custodian
717 fully understood the explanation in English or that it was ~~interpreted~~ translated into a
718 language that the parent or Indian custodian understood. Any consent given prior to, or
719 within ten (10) days after, the birth of the Indian child shall not be valid.

720 * * *

721
722 **2004 Advisory Committee Comment**

723 Rule ~~33.09~~^{31.09} mirrors the provisions of the Indian Child Welfare
724 Act, 25 U.S.C. § 1913. The Guidelines of the Bureau of Indian Affairs
725 provide additional guidance as follows:

726 “A consent to termination of parental rights or adoption may be
727 withdrawn by the parent at any time prior to entry of a *final decree of*
728 *voluntary termination or adoption* by filing an instrument executed under
729 oath by the parent stipulating his or her intention to withdraw such consent.
730 The clerk of court where the withdrawal of consent is filed shall promptly
731 notify the party or agency by or through whom the adoptive placement has
732 been arranged of such filing and that party or agency shall insure the return
733 of the child to the parent as soon as practicable.” The *Commentary* to the
734 guideline further provides that “This provision recommends that the clerk
735 of court be responsible for notifying the family with whom the child has
736 been placed that consent has been withdrawn. The court’s involvement
737 frequently may be necessary [because] the biological parents are often not
738 told who the adoptive parents are.”

739 Bureau of Indian Affairs Guidelines for State Courts – Indian Child
740 Custody Proceedings, Section E.4 and *Commentary (emphasis included in*
741 *original)*.

742
743 **RULE ~~34~~³². COMMUNICATION OR CONTACT AGREEMENT**

744 **Rule ~~34.01~~^{32.01}. Persons Who May Enter Into a Communication or Contact**
745 **Agreement**

746 **Subd. 1. Parties.** A communication or contact agreement shall be in writing and
747 may be entered into between the following persons:

748 (a) the adopting parent and a biological parent;

749 (b) the adopting parent and any other birth relative, including a sibling, or
750 foster parent with whom the child resided before being adopted; or

751 (c) the adopting parent and any other birth relative, including a sibling, if the
752 child is adopted by a birth relative upon the death of both biological parents.

753 * * *

754 **Rule ~~34.02~~^{32.02}. Filing of Agreement**

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

757 **Rule ~~34.03~~^{32.03}. Written Order Required**

758 A communication or contact agreement is not legally enforceable unless the terms
759 of the agreement are contained in a written court order entered pursuant to these rules,
760 which shall be separate from the findings of fact, conclusions of law, order for judgment,
761 and adoption decree issued pursuant to Rule 45.

762 **Rule ~~34.04~~^{32.04}. Timing**

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

766 **Rule ~~34.05~~^{32.05}. Requirements for Entry of Order**

767 A communication or contact agreement order under this rule need not disclose the
768 identity of the parties. The court shall not enter an order unless the court finds that the

769 communication or contact between the child, the adoptive parent, and a birth relative as
770 agreed upon and contained in the proposed order is in the child's best interests.

771 **Rule 34.06~~32.06~~. Service of Order**

772 The court administrator shall mail a certified copy of the communication or
773 contact agreement order to the parties to the agreement or their legal representatives at
774 the addresses provided by the petitioners.

775 **Rule 34.07~~32.07~~. Enforcement – Family Court**

776 **Subd. 1. Filing Requirement.** A communication or contact agreement order
777 entered under this rule may be enforced by filing with the family court:

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

782 * * *

783 **Rule 34.08~~32.08~~. Failure to Comply with Order**

784 Failure to comply with the terms of a communication or contact agreement order
785 is not grounds for:

- 786 (a) setting aside an adoption decree; or
- 787 (b) revocation of a written consent to an adoption after that consent has become
788 irrevocable.

789 **Rule 34.09~~32.09~~. Modification**

790 The court shall not modify a communication or contact agreement order unless it
791 finds that the modification is necessary to serve the best interests of the child, and:

- 792 (a) the modification is agreed to by the parties to the agreement; or
- 793 (b) exceptional circumstances have arisen since the agreed order was entered
794 that justify modification of the order.

795

796 **RULE ~~35-33~~. PETITION**

797 **Rule 35.01~~-33.01~~. Residency of Petitioner**

798 **Subd. 1. Residency Requirement.** Any person who has resided in the state for
799 one (1) year or more may petition to adopt.

800 * * *

801 **Rule 35.02~~-33.02~~. Residency of Child to be Adopted**

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

808 **Rule 35.03~~-33.03~~. Timing**

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

817 (a) that the time for filing a petition be extended because of the child's special
818 needs as specified under Minnesota Statutes § 259.22, subd. 4,

819 (b) that, based on a written plan for completing filing of the petition, including
820 a specific timeline, to which the prospective adoptive parents have agreed, the time for
821 filing a petition be extended long enough to complete the plan because such an extension
822 is in the best interests of the child and additional time is needed for the child to adjust to
823 the adoptive home; or

824 (c) that the child be removed from the prospective adoptive home.

825 **Subd. 2. Exceptions – Stepparent and Relative Adoptions.** The timing
826 specified in subdivision 1 does not apply to stepparent adoptions or adoptions by an
827 individual related to the child not involving a placement as defined in Rule 2.01(o).

828 **Rule ~~35.04~~–33.04. Conditions for Filing Petition for Adoption of a Child;**
829 **Exceptions**

830 * * *

831 **Subd. 2. Exceptions.** The requirements of subdivision 1 shall not apply if:

832 (a) the child is over fourteen (14) years of age;

833 (b) the petitioner is an individual who is related to the child as defined in
834 Rule 2.01(o);

835 (c) the child has been lawfully placed under the laws of another state while the
836 child and the petitioner resided in that state;

837 (d) the court waives the requirement of subdivision 1 in the best interests of the
838 child and the placement is not made by transfer of physical custody of the child from a
839 biological parent or legal guardian to the prospective adoptive home; or

840 (e) the child has been lawfully placed pursuant to an order for direct placement
841 pursuant to Rule ~~29~~–27.

842 **Rule ~~35.05~~–33.05. Content**

843 **Subd. 1. Allegations.** An adoption petition may be filed regarding one or more
844 children, shall be verified by the petitioner upon information and belief, and shall allege:

845 (a) the full name, age, and place of residence of the petitioner, except as
846 provided in Rule 7;

847 (b) if married, the date and place of marriage, and the name of any parent who
848 will retain legal rights;

849 (c) the date the petitioner acquired physical custody of the child and from what
850 person or agency or, in the case of a stepparent adoption or adoption by an individual
851 related to the child as defined in Rule 2.01(o), the date the petitioner began residing with
852 the child;

- 853 (d) the date of birth of the child, if known, and the county, state, and country
854 where born;
- 855 (e) the name of the child's parents, if known, and the legal custodian or legal
856 guardian if there be one;
- 857 (f) the actual name of the child, if known, and any known aliases;
- 858 (g) the name to be given the child, if a change of name is desired;
- 859 (h) the description and value of any real or personal property owned by the
860 child;
- 861 (i) the relationship of the petitioner to the child, if any;
- 862 (j) whether the Indian Child Welfare Act does or does not apply;
- 863 (k) the name and address of the parties identified in Rule 20;
- 864 (l) whether the child has been placed with petitioner for adoption by an agency
865 and, if so, the date of the adoptive placement; and
- 866 (m) that the petitioner desires that the relationship of parent and child be
867 established between petitioner and the child, and that it is in the best interests of the child
868 to be adopted by the petitioner.

869 * * *

870 **Subd. 3. Attachments.** The following shall be filed with the petition:

- 871 (a) the adoption study report required under Rule ~~37-36~~, ~~except if the petitioner~~
872 ~~is a stepparent or other an individual related to the child as defined in Rule 2.01(o)~~;
- 873 (b) any biological parent history required under Minnesota Statutes § 259.43,
874 except if the petitioner is the child's stepparent; ~~and~~
- 875 (c) the request, if any, under Rule 38.04 to waive the post-placement
876 assessment report and background check; and
- 877 (de) proof of service.

878 **Subd. 4. Other Documents to be Filed.** The following shall be filed with the court
879 prior to finalization of the adoption:

- 880 (a) a certified copy of the child's birth record;

- 881 (b) a certified copy of the findings and order for termination of parental rights,
882 if any;
- 883 (c) a copy of the communication or contact agreement, if any;
- 884 (d) certification that the Minnesota Fathers' Adoption Registry has been searched
885 as required under Rule ~~32-30~~;
- 886 (e) the original of each consent to adoption required under Rule ~~33-34~~; and
- 887 (f) the post-placement assessment report required under Rule ~~38-36~~.

888 * * *

889 **Rule ~~35.06-33.06~~. Verification**

890 The petition shall be signed and dated by the petitioner and verified upon
891 information and belief.

892 **Rule ~~35.07-33.07~~. Amendment**

893 **Subd. 1. Uncontested Petitions.** An adoption petition may be amended at any
894 time prior to the conclusion of the final hearing pursuant to Rule ~~41-39~~.

895 **Subd. 2. Contested Petitions.**

896 (a) **Prior to Trial.** An adoption petition may be amended at any time prior to
897 the commencement of a trial pursuant to Rule ~~44-42~~. The petitioner shall provide notice
898 of the amendment to all parties at least seven (7) days prior to the commencement of the
899 trial. When the petition is amended, the court shall grant all other parties sufficient time
900 to respond to the amendment.

901 (b) **After Trial Begins.** The petition may be amended after the trial has
902 commenced if the court finds that the amendment does not prejudice a party and all
903 parties are given sufficient time to respond to the proposed amendment.

904 **Rule ~~35.08-33.08~~. Statement of Expenses**

905 Upon the filing of an adoption petition, the agency shall file with the court a
906 statement of expenses that have been paid or are to be paid by the prospective adoptive
907 parent in connection with the adoption. In a direct ~~adoptive~~-placement adoption, the
908 statement of expenses shall be filed by the prospective adoptive parent.

909

910 **RULE ~~36~~34. ACTIONS UPON FILING OF PETITION**

911 **~~Rule 34.01. Notice to Commissioner~~**

912 Upon the filing of an adoption petition, the court administrator shall immediately
913 provide a copy of the petition to:

914 (a) the Commissioner of Human Services; and

915 (b) if the petition relates to a child, the agency identified below:

916 (1) in an agency or a direct placement adoption, the court shall provide
917 the petition to the agency supervising the placement; and

918 (2) in all other instances not described in clause (1), the court shall
919 provide the petition to the local social services agency of the county in which the
920 prospective adoptive parent lives if the child is to be adopted by an individual who is
921 related to the child as defined in Rule 2.01(o).

922

923 **RULE ~~37~~35. ADOPTION STUDY**

924 **~~Rule 37.01~~35.01. Adoption Study Required; Exception**

925 A written adoption study report shall be completed by an agency and filed with the
926 court in all adoptions as provided in Minnesota Statutes § 259.41, ~~except in an adoption~~
927 ~~by an individual related to the child as defined in Rule 2.01(o) or the adoption of an adult.~~

928 **~~Rule 37.02~~35.02. Adoption Study Report**

929 An adoption study report shall include the following information about each
930 prospective adoptive parent:

931 (a) a copy of the background check pursuant to Minnesota Statutes § 259.41,
932 subd. 3;

933 (b) an evaluation of the effect of any criminal conviction on the ability to care
934 for a child;

935 (c) an evaluation of the effect of any finding of substantiated maltreatment on
936 the ability to care for a child;

937 (d) an evaluation of medical and social history;

938 (e) an assessment of current health;

939 (f) an assessment of potential parenting skills and an assessment of ability to
940 provide adequate financial support for a child; and

941 (g) an assessment of the level of knowledge and awareness of adoption issues,
942 including, where appropriate, matters relating to interracial, cross-cultural, and special
943 needs adoptions.

944 **Rule ~~37.03-35.03~~. Direct Placement Adoption; Background Check Incomplete**

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

950 (a) state whether the adoptive parent or any other person residing in the
951 household is the subject of an open investigation of, or has been the subject of a
952 substantiated allegation of, child or vulnerable adult maltreatment within the past ten (10)
953 years;

954 (b) include a complete description of the crime, open investigation, or
955 substantiated allegation of child abuse or vulnerable adult maltreatment, and a complete
956 description of any sentence, treatment, or disposition; and

957 (c) include the following statement: “Petitioner acknowledges that if, at any
958 time before the adoption is final, a court receives evidence leading to a conclusion that a
959 prospective adoptive parent knowingly gave false information in the affidavit, it shall be
960 determined that the adoption of the child by the prospective adoptive parent is not in the
961 best interests of the child.”

962 **Rule ~~37.04-35.04~~. Background Check; Timing**

963 **Subd. 1. Timing of Background Check.** The background check required in
964 Rule ~~37.03-35.03~~ shall be completed before an adoption petition is filed.

965 * * *

966 **Rule ~~37.05~~-35.05. Updates to Adoption Study Report; Period of Validity**

967 An adoption study report is valid if the report has been completed or updated
968 within twelve (12) months of the adoptive placement.

969 **Rule ~~37.06~~-35.06. Filing of Adoption Study Report**

970 * * *

971 **Subd. 2. Direct ~~Adoptive-Placement~~ Adoption.** The adoption study report shall
972 be filed with the court pursuant to Rule 29 in support of a motion for a non-emergency
973 preadoptive custody order ~~pursuant to Rule 27~~, or, if the study and report are complete, in
974 support of an emergency ~~preplacement~~ preadoptive custody order ~~pursuant to Rule 28~~.

975 **Rule ~~37.07~~-35.07. Foster Parent Assessment May be Used for Adoption Study**

976 A licensed foster parent seeking to adopt a child in the foster parent's care may
977 submit any portion of the foster care licensing assessment that duplicates requirements of
978 the adoption study report in satisfaction of the adoption study report requirements.

979

980

981 **RULE ~~38~~-36. POST-PLACEMENT ASSESSMENT REPORT**

982 **Rule ~~38.01~~-36.01. Timing**

983 **Subd. 1. Generally.** Unless waived by the court pursuant to Rule 38.04 and
984 Minnesota Statutes § 259.53, the supervising agency, or if there is no such agency the
985 local social services agency, shall conduct a post-placement assessment and file a report
986 with the court within ninety (90) days of receipt of a copy of the adoption petition. A
987 post-placement assessment report is valid for twelve (12) months following its date of
988 completion.

989 * * *

990 **Rule ~~38.02~~-36.02. Content**

991 The post-placement assessment report shall provide an individualized
992 determination of the needs of the child and how the adoptive placement will serve the
993 needs of the child. The report shall include a recommendation to the court as to whether
994 the adoption petition should or should not be granted. In making evaluations and

995 recommendations, the post-placement assessment report shall, at a minimum, address the
996 following:

997 (1) the level of adaptation by the prospective adoptive parents to parenting the
998 child;

999 (2) the health and well-being of the child in the prospective adoptive parent's
1000 home;

1001 (3) the level of incorporation by the child into the prospective adoptive parent's
1002 home, extended family, and community; and

1003 (4) the level of inclusion of the child's previous history into the prospective
1004 adoptive home, such as cultural or ethnic practices, or contact with former foster parents
1005 or biological relatives.

1006 **Rule ~~38.03~~ 36.03. Background Check**

1007 If an adoption study is not required because the petitioner is an individual who is
1008 related to the child as defined in Rule 2.01(o), unless waived by the court the agency, as
1009 part of its post-placement assessment report, shall conduct a background check meeting
1010 the requirements of Minnesota Statutes § 259.41, subd. 3(b).

1011 **Rule ~~38.04~~ 36.04. Waiver by Court**

1012 The post-placement assessment report ~~and the background check~~ may be waived
1013 by the court pursuant to Minnesota Statutes § 259.53. A request to waive a post-
1014 placement assessment report shall be in writing and shall be filed and served with the
1015 petition pursuant to Rule 35.05. A request to waive a post-placement assessment report
1016 shall be decided by the court within ten (10) days of filing, unless a written objection to
1017 the waiver is filed in which case a hearing must be conducted as soon as practicable.

1018

1019 **RULE ~~39~~ 37. ANSWER WHEN CONTESTED ADOPTION MATTER**

1020 **Rule ~~39.01~~ 37.01. Answer When Contested**

1021 Within twenty (20) days after service of the adoption petition, or as soon thereafter
1022 as the party or agency becomes aware that the matter is contested, a Notice of Contested
1023 Adoption and, if appropriate, a competing adoption petition, shall be filed by:

- 1024 (a) any party or agency opposing the adoption;
- 1025 (b) any party or agency with knowledge of two or more adoption petitions
1026 regarding the same child; or
- 1027 (c) the Commissioner of Human Services or responsible social services agency
1028 if consent to adopt is being withheld from the petitioner.

1029 **Rule ~~39.02~~-37.02. Notice of Contested Adoption**

1030 **Subd. 1. Content.** A Notice of Contested Adoption shall:

- 1031 (a) set forth the allegations upon which the adoption is being contested; and
- 1032 (b) be signed by the party or by an agent of the agency opposing the adoption.

1033 * * *

1034 **Rule ~~39.03~~-37.03. Pretrial Conference**

1035 The court shall schedule a pretrial conference within fifteen (15) days of the filing
1036 of a Notice of Contested Adoption and provide notice of hearing to the parties.

1037

1038 **RULE ~~40~~-38. VOLUNTARY WITHDRAWAL; INVOLUNTARY DISMISSAL;
1039 SUMMARY JUDGMENT**

1040 **Rule ~~40.01~~-38.01. Voluntary Withdrawal of Petition**

1041 A petition may be withdrawn or dismissed by a petitioner without order of the
1042 court by filing:

- 1043 (a) at any time a notice of withdrawal along with proof of service upon all
1044 parties; or
- 1045 (b) a stipulation of dismissal signed by all parties who have appeared in the
1046 matter.

1047 **Rule ~~40.02~~-38.02. Involuntary Dismissal of Petition**

1048 Pursuant to the timing, notice, and format requirements of Rule 7 of the Minnesota
1049 Rules of Civil Procedure, the court, upon its own initiative or upon motion of a party,
1050 may dismiss a petition or grant judgment on the pleadings. Grounds for such dismissal or
1051 judgment on the pleadings shall include, but not be limited to:

- 1052 (a) failure to comply with these rules;

- 1053 (b) failure to move forward on the petition;²
- 1054 (c) failure to state a claim upon which relief may be granted;²
- 1055 (d) lack of jurisdiction over the subject matter;²
- 1056 (e) lack of jurisdiction over the person;²
- 1057 (f) insufficiency of service of process;² and
- 1058 (g) failure to join a necessary party.

1059 Furthermore, after a petitioner has completed the presentation of evidence, any other
1060 party to the proceeding, without waiving the right to offer evidence in the event the
1061 motion is not granted, may move for dismissal on the ground that based upon the facts
1062 and the law, the petitioner has shown no right to relief.

1063 **Rule ~~40.03~~^{38.03}. Summary Judgment**

1064 Pursuant to the timing, notice, and format requirements of Rule 7 of the Minnesota
1065 Rules of Civil Procedure, a party may move with or without supporting affidavits for
1066 summary judgment. Judgment shall be rendered forthwith if the pleadings, depositions,
1067 answers to interrogatories, and admissions on file, together with the affidavits, if any,
1068 show that there is no genuine issue as to any material fact, and that a moving party is
1069 entitled to judgment as a matter of law.

1070

1071 **RULE ~~41~~³⁹. FINAL HEARING IN UNCONTESTED MATTERS**

1072 **Rule ~~41.01~~^{39.01}. Generally**

1073 A final hearing is a hearing to determine whether an uncontested adoption petition
1074 should be granted.

1075 **Rule ~~41.02~~^{39.02}. Commencement**

1076 A final hearing relating to an uncontested adoption petition shall be held not
1077 sooner than ninety (90) days after the child is placed, unless there is a waiver of the
1078 residency requirement pursuant to Rule ~~35~~³³, but not later than ninety (90) days after the
1079 adoption petition is filed. If the petitioner has not requested a hearing date within
1080 sixty (60) days of the filing of the petition, the court administrator may schedule a
1081 hearing and serve notice of such hearing pursuant to Rule ~~31.04~~^{29.04}.

1082 **Rule ~~41.03~~^{39.03}. Hearing Procedure**

1083 At the beginning of the final hearing, the court shall on the record:

1084 (a) verify the name, age, and current address of the child who is the subject of
1085 the proceeding, except as provided in Rule 20.03;

1086 (b) determine whether the Indian child's tribe has been notified, if the child has
1087 been determined to be an Indian child;

1088 (c) determine whether all parties are present and identify those present for the
1089 record;

1090 (d) determine whether any necessary biological parent, guardian, or other
1091 person from whom consent to the adoption is required or whose parental rights will need
1092 to be terminated is present;

1093 (e) determine whether notice requirements have been met, and, if not, whether
1094 the affected person waives notice; and

1095 (f) determine whether the Interstate Compact on the Placement of Children,
1096 Minnesota Statutes §§ 260.851 - .91, applies.

1097 **Rule ~~41.04~~^{39.04}. Standard of Proof**

1098 The petitioner shall prove by a preponderance of evidence the facts alleged in the
1099 adoption petition and that the adoption is in the best interests of the child.

1100 **Rule ~~41.05~~^{39.05}. Timing of Decision**

1101 Within fifteen (15) days of the conclusion of the final hearing in an uncontested
1102 adoption, the court shall issue findings of fact, conclusions of law, order for judgment,
1103 and adoption decree pursuant to Rule ~~45~~⁴³. For good cause, the court may extend this
1104 period for an additional fifteen (15) days.

1105

1106 **RULE ~~42~~⁴⁰. CONSOLIDATION; BIFURCATION**

1107 **Rule ~~42.01~~^{40.01}. Consolidation Generally**

1108 When matters involving the adoption of the same child or children are pending
1109 before the court, the court may:

1110 (a) order a joint hearing or trial of any or all the adoption matters;

- 1111 (b) order consolidation of all such adoption matters;
- 1112 (c) order that the matters be heard sequentially; and
- 1113 (d) make any orders appropriate to avoid unnecessary delay or costs.

1114 **Rule ~~42.02~~^{40.02}. Consolidation with Other Proceedings; Competing Petitions**

1115 **Subd. 1. Consolidation with Other Proceedings.** Upon notice of motion and
1116 motion and for good cause shown, the court may order the consolidation of the adoption
1117 matter with any related proceeding, including a custody proceeding, paternity proceeding,
1118 termination of parental rights proceeding, or other proceeding regarding the same child.

1119 * * *

1120 **Rule ~~42.03~~^{40.03}. Bifurcation**

1121 **Subd. 1. Permissive Bifurcation.** The court may order a trial pursuant to
1122 Rule ~~44~~⁴² to be bifurcated as to one or more claims or issues.

1123 * * *

1124

1125 **RULE ~~43~~⁴¹. PRETRIAL CONFERENCE IN CONTESTED MATTERS**

1126 **Rule ~~43.01~~^{41.01}. Timing**

1127 The court may convene a pretrial conference sua sponte or upon the motion of any
1128 party. Any pretrial conference shall take place at least ten (10) days prior to trial.

1129 **Rule ~~43.02~~^{41.02}. Purpose**

1130 The purposes of a pretrial conference shall be to:

1131 (a) determine whether a settlement of any or all of the issues has occurred or is
1132 possible;

1133 (b) determine whether all parties have been served and, if not, review the
1134 efforts that have taken place to date to serve all parties;

1135 (c) determine whether all parties who seek legal representation have obtained
1136 legal representation and determine that attorneys of record have filed certificates of
1137 representation with the court;

1138 ~~(d) advise any child or the child's parent or legal custodian or legal guardian~~
1139 ~~who appears in court and is unrepresented of the right to representation pursuant to Rule~~
1140 ~~23;~~

1141 ~~(e) determine whether the child shall be present and testify at trial and, if so,~~
1142 ~~under what circumstances;~~

1143 ~~(f)~~ identify any unresolved discovery matters;

1144 ~~(g)~~ resolve any pending pretrial motions;

1145 ~~(h)~~ determine the order in which evidence will be presented pursuant to
1146 Rule ~~45-43~~;

1147 ~~(i)~~ identify and narrow issues of law and fact for trial, including identification
1148 of:

1149 (1) the factual allegations admitted or denied;

1150 (2) any stipulations to foundation and relevance of documents; and

1151 (3) any other stipulations, admissions, or denials;

1152 ~~(j)~~ exchange witness lists and a brief summary of each witness' testimony;

1153 ~~(k)~~ set a deadline for the exchange of exhibits prior to trial and determine how
1154 exhibits shall be marked prior to the start of trial;

1155 ~~(l)~~ confirm the trial date and estimate the length of trial; and

1156 ~~(m)~~ determine any other relevant issues.

1157

1158 ~~**2004 Advisory Committee Comment**~~

1159 ~~Rule 41.02(e) addresses the need to determine whether the child will~~
1160 ~~testify. The intent of the rule is to provide that an order protecting the child~~
1161 ~~from testifying or placing conditions on the child's testimony can only be~~
1162 ~~made after notice of motion and a hearing. The Committee intends that any~~
1163 ~~such motion be heard and resolved at the pretrial conference.~~

1164

1165 ~~**Rule 43.03-41.03. Pretrial Order**~~

1166 Following the pretrial conference, the court shall issue a pretrial order which shall
1167 specify all determinations required by this rule. From the date of the pretrial conference

1168 to the commencement of the trial, the parties shall have a continuing obligation to update
1169 information provided during the pretrial conference.

1170

1171

RULE ~~44~~42. TRIAL IN CONTESTED MATTERS

1172 **Rule ~~44.01~~42.01. Generally**

1173 A trial is a hearing to determine whether an adoption petition should be granted.

1174 **Rule ~~44.02~~42.02. Commencement**

1175 A trial on ~~an~~ a contested adoption petition shall commence within ninety (90) days
1176 of the filing of the petition or notice of a contested hearing, whichever is later. The trial
1177 shall be completed within thirty (30) days of commencement. Either or both deadlines
1178 may be extended for up to an additional thirty (30) days upon a showing of good cause
1179 and a finding by the court that the extension is in the best interests of the child.

1180 **Rule ~~44.03~~42.03. Trial Procedure**

1181 **Subd. 1. Initial Procedure.** At the beginning of the trial, the court shall on the
1182 record:

1183 (a) verify the name, age, and current address of the child who is the subject of
1184 the proceeding, except as provided in Rule 20.03;

1185 (b) determine whether the Indian child's tribe has been notified, if the child has
1186 been determined to be an Indian child;

1187 (c) determine whether all parties are present and identify those present for the
1188 record;

1189 (d) determine whether any necessary biological parent, guardian, or other
1190 person from whom consent to the adoption or whose parental rights will need to be
1191 terminated is present; and

1192 (e) determine whether notice requirements have been met, and, if not, whether
1193 the affected person waives notice.

1194 * * *

1195 **Rule ~~44.04~~42.04. Standard of Proof**

1196 The petitioner shall prove by a preponderance of evidence the facts alleged in the
1197 adoption petition and that the adoption is in the best interests of the child.

1198 **Rule ~~44.05~~42.05. Motion for Judgment at Conclusion of Trial**

1199 A motion for a judgment may be made at the close of the evidence offered by an
1200 opponent or at the close of all evidence. A party who moves for a judgment at the close
1201 of the evidence offered by an opponent shall, after denial of the motion, have the right to
1202 offer evidence as if the motion had not been made. A motion for a judgment shall state
1203 the specific grounds therefore.

1204 **Rule ~~44.06~~42.06. Timing of Decision**

1205 Within fifteen (15) days of the conclusion of the trial in a contested matter, the
1206 court shall issue findings of fact, conclusions of law, an order for judgment, and an
1207 adoption decree pursuant to Rule ~~45~~46. For good cause, the court may extend this period
1208 for an additional thirty (30) days.

1209
1210 **RULE ~~45~~43. FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER FOR**
1211 **JUDGMENT, AND ADOPTION DECREE**

1212 **Rule ~~45.01~~43.01. Denial of Adoption Petition**

1213 If the court finds that the consent of the adult person to be adopted is not valid, the
1214 court shall deny the petition. The court may dismiss an adoption petition if appropriate
1215 legal grounds have not been proved. If the court is not satisfied that the proposed
1216 adoption is in the best interests of the child, the court shall deny the petition and:

1217 (a) order that the child be returned to the custody of the person or agency
1218 legally vested with permanent custody; or

1219 (b) order the case transferred for appropriate action and disposition by the court
1220 having jurisdiction to determine the custody and guardianship of the child.

1221 **Rule ~~45.02~~43.02. Granting Adoption Petition**

1222 If the court finds that it is in the best interests of the child that the petition be
1223 granted, the court shall issue findings of fact, conclusions of law, an order for judgment,

1224 and an adoption decree that the person shall be the child of the petitioner. If the person
1225 being adopted is an adult, the court shall grant an adoption decree if the court finds that
1226 the person's consent is valid. Once the court issues an adoption decree, the court shall
1227 also direct the court administrator to complete the appropriate forms so that a new birth
1228 record may be issued and notify the prevailing petitioner and his or her attorney of the
1229 determination, and provide them with an opportunity to obtain a certified copy of the
1230 adoption decree and new birth record prior to the closing of the file.

1231 **Rule ~~45.03~~-43.03. Findings of Fact, Conclusions of Law, Order for Judgment, and**
1232 **Adoption Decree**

1233 **Subd. 1. Separate Orders For Each Child.** Although multiple children may be
1234 listed in an adoption petition, for each such child the court shall issue a separate findings
1235 of fact, conclusions of law, order for judgment, and adoption decree.

1236 **Subd. 2-4. Findings of Fact in a Contested Adoption Matter.** In its decision in
1237 a contested adoption matter, the court shall make findings about:

- 1238 (a) the petitioner's full name and date of birth;
- 1239 (b) the petitioner's marital status;
- 1240 (c) whether petitioner has resided in Minnesota for at least one (1) year prior to
1241 filing the adoption petition or whether the residency requirement has been waived
1242 pursuant to Rule ~~35.01~~-33.01;
- 1243 (d) the date petitioner acquired physical custody of the child and from whom;
- 1244 (e) the type of placement, including whether it is an agency placement, a direct
1245 preadoptive placement, a relative placement, or some other type of placement;
- 1246 (f) whether three (3) months have passed since the date petitioner acquired
1247 physical custody of the child or whether the residency requirement has been waived
1248 pursuant to Rule ~~35.02~~-33.02;
- 1249 (g) the child's date of birth and the child's city, county, state, and country of
1250 birth;
- 1251 (h) whether a certified copy of the birth record of the child or of the adult to be
1252 adopted has been filed with the court;

- 1253 (i) whether the post-placement assessment report required under Rule ~~38-35~~
1254 and the adoption study report required under Rule ~~37-35~~ have been filed with the court;
- 1255 (j) whether the child owns property and, if so, a list of such property;
- 1256 (k) whether all consents required under Rule ~~33-34~~ have been properly
1257 executed and filed with the court or whether orders for termination of parental rights have
1258 been entered;
- 1259 (l) whether all notices required under Rule ~~31-29~~ have been properly served
1260 and proof of service has been filed with the court;
- 1261 (m) whether, if applicable, a communication or contact agreement pursuant to
1262 Rule ~~34-32~~ has been properly executed and filed with the court and whether the court
1263 finds that the communication or contact agreement is in the best interests of the child;
- 1264 (n) whether a statement of expenses paid by the petitioner has been filed with
1265 the court pursuant to Rule ~~35.08-33.08~~ and whether the expenses are approved;
- 1266 (o) whether a search of the Minnesota Fathers' Adoption Registry has been
1267 conducted and the results have been filed with the court pursuant to Rule ~~32-30~~; and
- 1268 (p) whether the social and medical history form has been completed by the
1269 biological mother and biological father and has been filed with the court.

1270 * * *

1271 **Rule ~~45.04-43.04~~. Filing and Service**

1272 The findings of fact, conclusions of law, order for judgment, and adoption decree
1273 shall be filed and served pursuant to Rule 10.03, subd. 2. If the adoptee is an Indian
1274 child, the court administrator shall provide the Secretary of the Interior with a copy of the
1275 adoption decree, along with such other information as may be necessary to show the
1276 following:

- 1277 (a) the child's name and tribal affiliation;
- 1278 (b) the names and addresses of the child's biological parents;
- 1279 (c) the names and addresses of the child's adoptive parents; and
- 1280 (d) the identity of any agency having files or information relating to such
1281 adoptive placement.

1282
1283

RULE 46-44. POST-TRIAL MOTIONS

1284 **Rule 46.01-44.01. Motion for Amended Findings**

1285 Upon motion of a party served and heard not later than the time allowed for a motion
1286 for a new trial pursuant to Rule 46.02-44.02, the court may amend its findings or make
1287 additional findings, and may amend the judgment accordingly if judgment has been entered.
1288 The motion may be made with a motion for a new trial and may be made on the files,
1289 exhibits, and minutes of the court. The question of the sufficiency of the evidence to
1290 support the findings may be raised on appeal regardless of whether the party raising the
1291 question has made in the district court an objection to such findings or has made a motion to
1292 amend them or a motion for judgment.

1293 **Rule 46.02-44.02. Motion for New Trial**

1294 **Subd. 1. Grounds.** A motion for a new trial may be granted to any or all of the
1295 parties on all or part of the issues for any of the following causes:

1296 (a) irregularity in the proceedings of the court, referee, or prevailing party, or
1297 any order or abuse of discretion whereby the moving party was deprived of a fair trial;

1298 (b) misconduct of the prevailing party;

1299 (c) accident or surprise which could not have been prevented by ordinary
1300 prudence;

1301 (d) material evidence newly discovered, which with reasonable diligence could
1302 not have been found and produced at the trial;

1303 (e) errors of law occurring at the trial, and objected to at the time, or, if no
1304 objection need have been made pursuant to these rules, plainly assigned in the notice of
1305 motion;

1306 (f) the decision is not justified by the evidence or is contrary to law; but, unless
1307 it be so expressly stated in the order granting a new trial, it shall not be presumed on
1308 appeal to have been made on the ground that the decision was not justified by the
1309 evidence; or

1310 (g) in the interest of justice.

1311 Upon a motion for a new trial, the court may open the judgment if one has been
1312 entered, take additional testimony, amend findings of fact and conclusions of law, or
1313 make new findings and conclusions, and direct entry of a new judgment.

1314 * * *

1315 **Rule ~~46.03~~44.03. Timing of Decision**

1316 Within fifteen (15) days of the conclusion of the hearing on the motion the court
1317 shall issue its decision and order. For good cause shown, the court may extend this
1318 period for an additional fifteen (15) days.

1319

1320

RULE ~~47~~45. RELIEF FROM ORDER

1321 **Rule ~~47.01~~45.01. Clerical Mistakes**

1322 Clerical mistakes in judgments, orders, or other parts of the record and errors
1323 arising from oversight or omission may be corrected by the court at any time upon its
1324 own initiative or upon motion of any party and after such notice, if any, as the court
1325 orders. During the pendency of an appeal, such mistakes may be so corrected with leave
1326 of the appellate court.

1327 **Rule ~~47.02~~45.02. Mistakes; Inadvertence; Excusable Neglect; Newly Discovered**
1328 **Evidence; Fraud**

1329 Upon motion and upon such terms as are just, the court may relieve a party or the
1330 party's legal representatives from a final order or proceeding and may order a new trial or
1331 grant such other relief as may be just for any of the following reasons:

- 1332 (a) mistake, inadvertence, surprise, or excusable neglect;
- 1333 (b) newly discovered evidence which by due diligence could not have been
1334 discovered in time to move for a new trial;
- 1335 (c) fraud (whether denominated intrinsic or extrinsic), misrepresentation, or
1336 other misconduct of an adverse party;
- 1337 (d) the judgment is void; or
- 1338 (e) any other reason justifying relief from the operation of the order.

1339 The motion shall be made within a reasonable time, but in no event shall it be
1340 more than ninety (90) days following the filing of the court's order.

1341 **Rule ~~47.03~~45.03. Invalidation of District Court Action – Indian Child Cases**

1342 **Subd. 1. Petition.** Any Indian child who is the subject of an adoption proceeding
1343 under State law, parent or Indian custodian from whose custody such child was removed,
1344 and the Indian child's tribe may file with any court of competent jurisdiction a petition to
1345 invalidate such action upon a showing that such action violates any provisions of the
1346 Indian Child Welfare Act, 25 U.S.C. §§ 1911, 1912, or 1913 (~~1978~~).

1347 * * *

1348 **Rule ~~47.04~~45.04. Vacation of Adoption Decree – Indian Child Cases**

1349 **Subd. 1. Petition to Vacate.** After the entry of an adoption decree of an Indian
1350 child in any State court, the parent may withdraw consent upon the grounds that the
1351 consent was obtained through fraud or duress and may petition the court to vacate such
1352 decree. Upon a finding that such consent was obtained through fraud or duress, the court
1353 shall vacate such decree and return the child to the parent. No adoption which has been
1354 effective for at least two (2) years may be invalidated under the provisions of this rule
1355 unless otherwise permitted under State law.

1356 * * *

1357

1358 **RULE ~~48~~46. APPEAL**

1359 **Rule ~~48.01~~46.01. Applicability of Rules of Civil Appellate Procedure**

1360 Except as provided in this rule, appeals of adoption matters shall be in accordance
1361 with the Minnesota Rules of Civil Appellate Procedure.

1362 **Rule ~~48.02~~46.02. Procedure**

1363 * * *

1364 **Subd. 2. Timing.** Any appeal shall be taken within thirty (30) days of the service
1365 of notice by the court administrator of the filing of the appealable court's order. In the
1366 event of the filing and service of a timely and proper post-trial motion under Rule 44 and
1367 45–46, or for relief under Rule 47 if the motion is filed within the time specified in

1368 Rule 46.02, subd. 3, the provisions of Minnesota Rules of Civil Appellate Procedure
1369 Rule 104.01, subds. 2 and 3, apply, except that the time for appeal runs for all parties
1370 from the time of service of notice by the court administrator of the filing of the order
1371 disposing of the last post-trial motion.

1372
1373 **2004 Advisory Committee Comment – 2006 Amendment**

1374 Minnesota Statutes § 259.63 provides that adoption appeals are
1375 taken “as in other civil cases” under the Rules of Civil Appellate Procedure.
1376 The Committee recognizes that the timing provision of Rule 48.02, subd. 2,
1377 –46.02 is a departure from the Minnesota Rules of Civil Appellate
1378 Procedure in that under these Rules the appeal period now starts to run for
1379 all parties from the service of the Notice of Filing of Order by the court
1380 administrator rather than from the service of notice of filing by a party. In
1381 addition, the time for appeal is decreased to 30 days, consistent with the
1382 child’s need for timely permanency. This departure is intended to expedite
1383 the appellate process, which the Committee deems to be in the best interests
1384 of the child. The appeal time and procedures are governed by these rules,
1385 specifically established for adoption proceedings, and not by the more
1386 general provisions of the appellate rules. See *In Re Welfare of J.R., Jr.*, 655
1387 N.W.2d 1 (Minn. 2003).
1388

1389 **Rule 48.03-46.03. Application for Stay of Trial Court Order**

1390 The service and filing of a notice of appeal does not stay the order of the trial
1391 court. The order of the juvenile court shall stand pending the determination of the appeal,
1392 but the reviewing court may in its discretion and upon application stay the order.

1393 **Rule 48.04-46.04. Right to Additional Review**

1394 Upon an appeal, any party or the county attorney may obtain review of an order
1395 entered in the same case which may adversely affect that person by filing a notice of
1396 review with the clerk of appellate courts. The notice of review shall specify the order to
1397 be reviewed, shall be served and filed within fifteen (15) days after service of the notice
1398 of appeal, and shall contain proof of service.

1399 **Rule 48.05-46.05. Transcript of Proceedings**

1400 The requirements regarding preparation of a transcript shall be governed by
1401 Rule 110.02 of the Minnesota Rules of Civil Appellate Procedure, except that the

1402 estimated completion date contained in the certificate of transcript shall not exceed
1403 thirty (30) days.

1404 **Rule 48.06 46.06. Time for Rendering Decisions**

1405 All decisions regarding adoption matters shall be issued by the appellate court
1406 within sixty (60) days of the date the case is deemed submitted pursuant to the Minnesota
1407 Rules of Civil Appellate Procedure.

1408
1409
1410

RULE 49. VENUE

1411 **Rule 49.01. Venue**

1412 **Subd. 1. Generally.** Except as provided in subdivision 2, venue for an adoption
1413 proceeding shall be the county of the petitioner's residence.

1414 **Subd. 2. Child Under Guardianship of Commissioner.** Venue for the adoption
1415 of a child committed to the guardianship of the Commissioner of Human Services shall
1416 be the county with jurisdiction in the matter according to Minnesota Statutes § 260C.317,
1417 subd. 3.

1418 **Rule 49.02. Request to Transfer Venue**

1419 Upon the petitioner's motion served and filed pursuant to Rule 15, the court
1420 having jurisdiction over the matter under Minnesota Statutes § 260C.317, subd. 3, may
1421 transfer venue of an adoption proceeding involving a child under the guardianship of the
1422 Commissioner of Human Services to the county of the petitioner's residence upon
1423 determining that:

1424 (a) the Commissioner of Human Services has given consent to the petitioner's
1425 adoption of the child or that consent is unreasonably withheld;

1426 (b) there is no other adoption petition for the child that has been filed or is
1427 reasonably anticipated by the Commissioner of Human Services or the Commissioner's
1428 delegate to be filed; and

1429 (c) transfer of venue is in the best interests of the child.

1430 **Rule 49.03. Transfer of Venue Procedures**

1431 If the court grants a motion to transfer venue, the court shall do so by ordering a
1432 continuance and by forwarding to the court administrator of the appropriate court a
1433 certified copy of all papers filed, together with an order of transfer. The transferring
1434 court also shall provide copies of the order of transfer to the Commissioner of Human
1435 Services and any agency participating in the proceedings. The judge of the receiving
1436 court shall accept the order of the transfer and any other documents transmitted and hear
1437 the case.

1438

1439

RULE 50. ADOPTIVE PLACEMENTS – INDIAN CHILD

1440 **Rule 50.01. Placement Preferences**

1441 **Subd. 1. Generally.** In any adoptive placement of an Indian child, a preference
1442 shall be given, in the absence of good cause to the contrary, to a placement with:

1443 (a) a member of the Indian child’s extended family;

1444 (b) other members of the Indian child’s tribe; or

1445 (c) other Indian families.

1446 **Subd. 2. Preadoptive Placements.**

1447 An Indian child accepted for preadoptive placement shall be placed in the least
1448 restrictive setting which most approximates a family and in which the child’s special
1449 needs, if any, may be met. The child shall also be placed within reasonable proximity to
1450 his or her home, taking into account any special needs of the child. In any preadoptive
1451 placement, a preference shall be given, in the absence of good cause to the contrary, to a
1452 placement with:

1453 (a) a member of the Indian child’s extended family;

1454 (b) a foster home licensed, approved, or specified by the Indian child’s tribe;

1455 (c) an Indian foster home licensed or approved by an authorized non-Indian
1456 licensing authority; or

1457 (d) an institution for children approved by an Indian tribe or operated by an
1458 Indian organization which has a program suitable to meet the Indian child’s needs.

1459 **Rule 50.02. Tribal Resolution for Different Order of Preference; Personal**
1460 **Preference Considered; Anonymity in Application of Preferences**

1461 In the case of a placement under Rule 50.01, if the Indian child's tribe establishes
1462 a different order of preference by resolution, the agency or court effecting the placement
1463 shall follow such order so long as the placement is the least restrictive setting appropriate
1464 to the particular needs of the child, as provided in Rule 50.01, subd. 2. Where
1465 appropriate, the preference of the Indian child or parent shall be considered, provided that
1466 where a consenting parent evidences a desire for anonymity, the court or agency shall
1467 give weight to such desire in applying the preferences.

1468 **Rule 50.03. Social and Cultural Standards Applicable**

1469 The standards to be applied in meeting the preference requirements of Rule 50
1470 shall be the prevailing social and cultural standards of the Indian community in which the
1471 parent or extended family resides or with which the parent or extended family members
1472 maintain social and cultural ties.

1473 **Rule 50.04. Record of Placement**

1474 A record of each placement, under State law, of an Indian child shall be
1475 maintained by the State in which the placement was made, evidencing the efforts to
1476 comply with the order of preference specified in this section. Such record shall be made
1477 available at any time upon the request of the Secretary of the Interior or the Indian child's
1478 tribe.

1479

1480

AMENDMENTS TO THE RULES OF GUARDIAN AD LITEM PROCEDURE EFFECTIVE JANUARY 1, 2007

Note to publishers: Deletions are indicated by a line drawn through the words; additions are underlined.

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 sections ~~§§ 245.487 - .4888, § 253B, § 256B.77, 257.60(1),~~ §§ 494.01-494.05, § 501B.19, § 501B.50, § 508.18, § 524.1-403, and § 540.08, and when the person appointed as a guardian ad litem for a minor parent in a paternity action pursuant to Minnesota Rules of Civil Procedure 17.02 is the minor parent's parent or adult relative.

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 ~~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 ~~Conference of Chief Judges~~ 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.

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 Litem System Program Standards as established by the Office of the State Court Administrator with the advice and consent of the Judicial Council. The Program Standards shall be published in print and electronic forms and be available to the public. following ~~minimum qualifications:~~

- ~~(a) — have an abiding interest in children and their rights and needs;~~
- ~~(b) — have sufficient listening, speaking, and writing skills in the person's primary language to successfully conduct interviews, prepare written reports, and make oral presentations;~~
- ~~(c) — not have been involved in any conduct or activity that would interfere with the person's ability to discharge the duties assigned by the court;~~
- ~~(d) — have knowledge and an appreciation of the ethnic, cultural, and socio-economic backgrounds of the population to be served;~~
- ~~(e) — be available for at least 18 months and have sufficient time, including evenings and weekends, to gather information, make court appearances, and otherwise discharge the duties assigned by the court;~~
- ~~(f) — have the ability to (1) relate to a child, family members, and professionals in a careful and confidential manner; (2) exercise sound judgment and good common sense; and (3) successfully discharge the duties assigned by the court;~~
- ~~(g) — not have been removed from a panel of approved guardians ad litem following an unsatisfactory performance evaluation; and~~
- ~~(h) — have satisfactorily completed the pre-service training requirements and demonstrated a comprehension of the responsibilities of guardians ad litem as set forth in Rule 905.~~

~~Additional qualifications for a guardian ad litem appointed pursuant to these Rules may be established by the Office of the State Court Administrator, with the advice and~~

~~consent of the Conference of Chief Judges. Any additional qualifications shall be published in a standards manual. The standards manual 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 public website: www.mncourts.gov.

RULE 903. APPOINTMENT OF A GUARDIAN AD LITEM

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 ~~sections~~ §§ 260B.331, subd. 6 (a), and 260C.331, subd. 6(a), and as established by the ~~Conference of Chief Judges~~ Judicial Council, and
- (c) ~~in an adoption proceeding or a juvenile court case in which adoption is the intended permanency plan for the child,~~ authorization for the guardian to review and receive a copy of the home studies 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.

Subd. 2. Guardian Ad Litem Shall Not Also Serve on Same Case as Petitioner. When a guardian ad litem is appointed pursuant to Minnesota Statutes § 260C.163, subd. 5(a), the court shall not appoint as guardian ad litem an

individual who is the party, or an agent of the party, who has already filed the initial a petition in the case pursuant to Minnesota Statutes § 260C.141.

2006 Advisory Committee Comment

If paragraph (c) in Rule 903.02 is not included in the initial order appointing the guardian ad litem in a juvenile protection matter, and the matter proceeds to adoption, the succeeding guardian ad litem appointment order in the adoption matter should include paragraph (c).

Subd. 3. Representation of Child’s Parent or Legal Custodian. The court may sua sponte or upon the written or on-the-record request of a party or participant appoint a guardian ad litem for a parent who is a party or the legal custodian if the court determines that the parent or legal custodian:

(a) is incompetent to assist counsel in the matter or understand the nature of the proceedings; or

(b) it appears at any stage of the proceedings that the parent is under eighteen (18) years of age and is without a parent or legal custodian, or that considered in the context of the matter the minor parent’s parent or legal custodian is unavailable, incompetent, indifferent to, hostile to, or has interests in conflict with the interests of the minor parent.

Appointment of a guardian ad litem for a parent shall not result in discharge of counsel for the parent.

2006 Advisory Committee Comment

If the minor parent or incompetent adult is unable to admit or deny the petition, the court may choose to appoint a substitute decision maker or legal guardian to admit or deny the petition.

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 sections §§ 257.69, subd. 2(a), and 518.165, subd. 3 (a), and as established by the Conference of Chief Judges-Judicial Council.

Rule 903.04. Other Roles Precluded

Subd. 1. Generally. A guardian ad litem under the supervision of the 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 ~~they serve~~ 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~~-e) mediator, as that role is prescribed in Minnesota Statutes § 518.619 and Rule 310 of the Minnesota Rules of Family Court Procedure; or
- (~~g~~-d) arbitrator or individual authorized to decide disputes between parties; or
- (~~h~~-e) parenting time expeditor, as that role is prescribed in Minnesota Statutes §§ 518.619 and 518.1751; or
- (~~i~~-f) substitute decision-maker under Minnesota Statutes § 253B.092; or
- (~~j~~-g) evaluator charged with conducting a home study under Minnesota Statutes § 245A.035 or § 259.41; or
- (~~k~~-h) 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 ~~the above roles~~ on a privately-paid basis. A guardian ad litem under the supervision of the 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 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. 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 ~~Conference of Chief Judges~~ Judicial Council. Unless offered into evidence by the guardian ad litem or authorized by written order following an *in camera* review by the court, the complaints and complaint investigation reports shall not be received as evidence or used in any manner in any proceeding governed by these Rules.

* * *

RULE 905. GENERAL RESPONSIBILITIES OF GUARDIANS AD LITEM

Rule 905.01. Generally

In every family court and juvenile court case as defined in Rule 901.01 in which a guardian ad litem is appointed ~~and in every paternity action in which a guardian ad litem has been appointed for a child who has been made a party pursuant to Minn. Stat. sections 257.60 (2) and (3)~~, the guardian ad litem shall:

(a) conduct an independent investigation to determine the facts relevant to the situation of the child or incompetent adult and the child's parent, legal custodian, or other household or family member ~~family~~, which must include, unless specifically excluded by the court:

(i) reviewing relevant documents, which in the case of an adoption shall include the adoption study report and the post-placement assessment report ~~home studies~~

upon order of the court ~~pursuant to~~ to the extent permitted by Minnesota Statutes § 259.53, subd. 3(b);

(ii) meeting with and observing the child in the home setting and considering the child's or incompetent adult's wishes, as appropriate; and

(iii) interviewing parents, caregivers, and others relevant to the case;

(b) advocate for the best interests of the child or incompetent adult by participating in appropriate aspects of the case and advocating for appropriate community services when necessary;

(c) maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child or incompetent adult;

(d) monitor the best interests of the child or incompetent adult throughout the judicial proceeding; and

(e) present written reports on the best interests of the child or incompetent adult that include conclusions and recommendations, and the facts upon which they are based.

2006 Advisory Committee Comment

The responsibilities of a guardian ad litem are the same for all appointments made under these Rules, regardless of case type.

Rule 905.02. Representation of Child's Parent or Legal Custodian

In every matter where the guardian ad litem is appointed to represent a parent or legal custodian under Rule 903.02, subd. 3, the guardian ad litem shall perform the following responsibilities:

(a) conduct an investigation to determine the facts relevant to the situation of the minor parent or incompetent adult and the family, which must include, unless specifically excluded by the court: reviewing relevant documents; meeting with and observing the minor parent or incompetent adult in the home setting and considering the

minor parent's, or incompetent adult's wishes, as appropriate; and interviewing parents, caregivers, and others relevant to the case;

(b) advocate for the minor parent's or incompetent adult's best interests by participating in appropriate aspects of the case and advocating for appropriate community services when necessary;

(c) maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the minor parent or incompetent adult;

(d) monitor the minor parent's or incompetent adult's best interests throughout the judicial proceeding; and

(e) present written reports on the minor parent's or incompetent adult's best interests that include conclusions and recommendations and the facts upon which they are based.

RULE 907. RIGHTS OF GUARDIAN AD LITEM

Rule 907.01. Rights in Every Case

Subd. 1. Generally. In every case in which a guardian ad litem is appointed pursuant to Rule 903, the guardian ad litem shall have the rights set forth in clauses (a) to (d).

(a) The guardian ad litem shall have access to the child or incompetent adult including meeting with the child alone as deemed appropriate by the guardian ad litem; and shall have access to all information relevant to the child's or incompetent adult's and family's situation which is accessible under applicable state and federal laws.

(b) The guardian ad litem shall be furnished copies of all pleadings, documents, and reports by the party which served or submitted them. A party submitting, providing, or serving pleadings, documents, or reports shall simultaneously provide copies to the guardian ad litem.

(c) The guardian ad litem shall be notified of all court hearings, administrative reviews, staffings, investigations, dispositions, and other proceedings concerning the

case. Timely notice of all court hearings, administrative reviews, staffings, investigations, dispositions, and other proceedings concerning the case shall be provided to the guardian ad litem by the party scheduling the proceeding.

(d) The guardian ad litem shall have the right to participate in all proceedings through submission of written and oral reports, and may initiate and respond to motions.

Subd. 2. Not Unauthorized Practice of Law. The exercise of the rights listed in subdivision 1 by a guardian ad litem shall not constitute the unauthorized practice of law.

**AMENDMENTS TO RELATED GUARDIAN AD LITEM RULES
EFFECTIVE JANUARY 1, 2007**

Note to publishers: Deletions are indicated by a line drawn through the words; additions are underlined.

MINNESOTA RULE OF CIVIL PROCEDURE

Rule 17.02. Infants or Incompetent Persons

Whenever a party to an action is an infant or is incompetent and has a representative duly appointed under the laws of this state or the laws of a foreign state or country, the representative may sue or defend on behalf of such party. A party who is an infant or is incompetent and is not so represented shall be represented by a guardian ad litem appointed by the court in which the action is pending or is to be brought. The guardian ad litem shall be a resident of this state, shall file a consent and oath with the court administrator, and shall give such bond as the court may require. A guardian ad litem appointed under this Rule is not a guardian ad litem within the meaning of the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court and is not governed by those Rules ~~except when appointed in a paternity action.~~

Any person, including an infant party over the age of fourteen (14) years and under no other legal disability, may apply under oath for the appointment of a guardian ad litem. The application of the party or the party's spouse or parents or testamentary or other guardian shall have priority over other applications. If no such appointment is made on behalf of a defendant party before answer or default, the adverse party or a party's attorney may apply for such appointment, and in such case the court shall allow the guardian ad litem a reasonable time to respond to the complaint.

The application for appointment shall show (1) the name, age and address of the party, (2) if the party is a minor, the names and addresses of the parents, and, in the event of their death or the abandonment of the minor, the name and address of the party's custodian or testamentary or other guardian, if any, (3) the name and address of the party's spouse, if any, and (4) the name, age, address, and occupation of the person whose appointment is sought.

If the appointment is applied for by the party or by a spouse, parent, custodian or testamentary or other guardian of the party, the court may hear the application with or without notice. In all other cases written notice of the hearing on the application shall be given at such time as the court shall prescribe, and shall be served upon the party, the party's spouse, parent, custodian and testamentary or other guardian, if any, and if the party is an inmate of a public institution, the chief executive officer thereof. If the party is a nonresident or, after diligent search, cannot be found within the state, notice shall be given to such persons and in such manner as the court may direct.

MINNESOTA RULES OF GENERAL PRACTICE

Note to publishers: Deletions are indicated by a line drawn through the words; additions are underlined.

RULE 108. GUARDIAN AD LITEM

~~Rule 108.02. Other Guardian Ad Litem Roles Distinguished~~

~~A guardian ad litem appointed under this Rule is not a guardian ad litem within the meaning of the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court and is not governed by those Rules except when appointed in a paternity action.~~

Rule 108.02. Guardian Ad Litem Not Lawyer for Any Party

The guardian ad litem shall not be a lawyer for any party to the action.

EXPEDITED CHILD SUPPORT PROCESS

Note to publishers: Deletions are indicated by a line drawn through the words; additions are underlined.

RULE 357. LEGAL REPRESENTATION AND APPOINTMENT OF GUARDIAN AD LITEM

Rule 357.04 Appointment of Guardian Ad Litem

~~**Subdivision 1. Applicability of Rules of Guardian Ad Litem Procedure.**
Child support magistrates shall appoint guardians ad litem to advocate for the best interests of children when required under Minn. Stat. § 518.165 (2000) or any other~~

~~applicable statute. When a child support magistrate determines that the appointment of a guardian ad litem is necessary, that appointment shall be made according to the Minnesota General Rules of Practice 901-913.~~

A child support magistrate may appoint a guardian ad litem for a child or minor parent who is a party in any proceeding commenced in the expedited child support process solely for purposes of having the guardian ad litem serve as a representative of that person as authorized under Rule 17.02 of the Minnesota Rules of Civil Procedure. The appointment shall be made pursuant to Rule 17.02 of the Minnesota Rules of Civil Procedure.

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