

STATE OF MINNESOTA

IN SUPREME COURT

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

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

O R D E R

IT IS HEREBY ORDERED that the attached corrective amendments to the Rules of Adoption Procedure, the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court, and the Rules of Juvenile Protection Procedure are prescribed and promulgated to be effective on January 1, 2007, and shall apply to all actions or proceedings pending on or commenced on or after the effective date.

Dated: December 18, 2006

BY THE COURT:

OFFICE OF
APPELLATE COURTS

DEC 19 2006

FILED



Russell A. Anderson
Chief Justice

RULES OF ADOPTION PROCEDURE

RULE 6. REFEREES AND JUDGES

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Rule 6.07. Removal of Judge

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Subd. 3. Notice to Remove.

(a) **Procedure.** A party or the county attorney may file with the court and serve upon all other parties a notice to remove. The notice 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 to remove shall not be filed against a judge who has presided at a motion or at any other proceeding in the matter of which the party 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.

(d) **Assignment of Another Judge.** Upon the filing of a motion to remove, or if a ~~litigant~~ 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 qualified, the chief judge shall immediately notify the Chief Justice of the Minnesota Supreme Court.

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RULE 25. METHODS OF FILING AND SERVICE

Rule 25.01. Types of Filing.

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

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

- (b) ~~the original signed document~~ any bulky exhibits or attachments; and
- (c) the applicable filing fee or fees, if any.

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

RULE 33. CONSENT TO ADOPTION

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Rule 33.07. Consent to a Direct Placement Adoption Under Minnesota Statutes § 259.47

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Subd. 3. Execution of Consent Before Judicial Officer – When Optional. A biological parent whose consent to a direct placement adoption is required under Minnesota Statutes 259.24 and who has received counseling through a licensed agency or a licensed social services professional trained in adoption issues, or any other parent or legal guardian whose consent to a direct placement adoption is required under Minnesota Statutes 259.24, subd. 2, may choose to execute consent to the adoption under the procedures set forth in Minnesota Statutes 259.24, subd. 5, and Rule ~~31.03~~ 33.03, subd. 1, or at a consent hearing as described in subdivision 4.

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RULES OF GUARDIAN AD LITEM PROCEDURE IN JUVENILE AND FAMILY COURT

RULE 903. APPOINTMENT OF GUARDIAN AD LITEM

Rule 903.02. Juvenile Court Appointment

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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) the court determines that the parent or legal custodian 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.

RULE 905. GENERAL RESPONSIBILITIES OF GUARDIANS AD LITEM

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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:

(i) reviewing relevant documents;

(ii) 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

(iii) 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.

RULES OF JUVENILE PROTECTION PROCEDURE

RULE 33. PETITION

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Rule 33.02. Content.

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

(a) **Petitions Drafted and Filed by County Attorney.** A child in need of protection or services matter is defined in Minnesota Statutes § 260C.007, subd. 6. All child in need of protection or services petitions shall be drafted and filed under the supervision of the county attorney, except as provided in Minnesota Statutes § 260C.141, subd. 1, and subdivision 2(b) of this rule.

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

(1) **Petition Form.** A child in need of protection or services petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services shall be filed on a form developed by the state court administrator. Copies of the form shall be available from the court administrator in each county.

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

~~(i) a statement that the petitioner has reported the circumstances underlying the petition to the responsible social services agency and that protection or services were not provided to the child;~~

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

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

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

(3) **Review by Court Administrator.** Any petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services shall be reviewed by the court administrator before it is filed to determine whether it is complete. The court administrator may reject the petition as incomplete if it does not indicate that the petitioner has contacted the responsible social services agency.

(4) **Court Review.** Within three (3) days of the date a petition is filed by a person who is not a county attorney or an agent of the Commissioner of Human Services, the court shall review the petition. If the court determines that the petition and attachments establish a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter, the court shall set the matter for an admit/deny hearing pursuant to Rule 34 and shall direct notice pursuant to Rule 32. The court shall not allow a petition to proceed if it appears that the sole purpose of the petition is to modify custody between the parents or if it fails to set forth the information required in subdivisions 1 and 2(b) of this rule.

(c) **Petition Based Upon Prima Facie Case.**

(1) **When Required.** In addition to the content requirements of subdivisions 1 and 2(b), a petition establishing a prima facie case that a child in need of

protection or services matter exists and that the child is the subject of that matter shall be filed with the court:

(i) before the court may issue an ex parte order for emergency protective care pursuant to Rule 28; or

(ii) before an emergency protective care hearing is held pursuant to Rule 30 for a child taken into emergency protective care without a court order.

(2) **Manner.** The facts establishing a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter may be set forth in writing in or with the petition, or in supporting affidavits, and may be supplemented by sworn testimony of witnesses taken before the court. If such testimony is taken, a note stating this fact shall be made by the court on the petition. The testimony shall be recorded pursuant to Rule 11.

RULE 43. TERMINATION OF PARENTAL RIGHTS MATTERS

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Rule 43.04. Voluntary Termination of Parental Rights Matters

The court shall conduct a hearing when a parent voluntarily consents to the termination of his or her parental rights. At the hearing, petitioner shall make a prima facie showing that there is good cause for termination of parental rights and that it is in the best interests of the child to terminate parental rights.

If the parent is present in court, the court shall advise the parent of the right to trial, the right to representation by counsel, and shall determine whether the parent fully understands the consequences of termination of parental rights and the alternatives to termination.

If the parent is not present in court but has signed a voluntary consent to termination of parental rights, the court shall determine whether there has been compliance with all statutory requirements regarding a written consent to termination of parental rights and whether the parent was thoroughly advised of and understood the right to trial, the right to representation by counsel, the consequences of termination of parental rights, and the alternatives to termination.

If the child is an Indian child, the consent of the parent or Indian custodian shall not be valid unless:

- (a) executed in writing;
- (b) recorded before the judge; and
- (c) accompanied by the presiding judge's certificate that the terms and consequences of the consent were explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that the parent or Indian custodian fully understood the explanation in English or that it was ~~interpreted~~ translated into a

language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, the birth of the Indian child shall not be valid.

RULE 41. DISPOSITION

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Rule 41.05. Disposition Order

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Subd. 2. Content.

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

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

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

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

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

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

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

(4) **Special Services.** If the child has been adjudicated as a child in need of protection or services because the child is in need of special services or care to treat or ameliorate a physical or mental disability or emotional disturbance as defined in Minnesota Statutes § 245.4871, subd. 15, the court may order the child's parent, guardian or custodian to provide it. The court may order the child's health plan company to provide mental health services to the child. Minnesota Statutes § 62Q.535 applies to an

order for mental health services directed to the child's health plan company. If the health plan, child's parent, or legal custodian fails or is unable to provide the treatment or care, the court may order it provided. Absent specific written findings by the court that the child's disability is the result of abuse or neglect by the child's parent or guardian, the court shall not transfer legal custody of the child for the purpose of obtaining special treatment or care solely because the parent is unable to provide the treatment or care. If the court's order for mental health treatment is based on a diagnosis made by a treatment professional, the court may order that the diagnosing professional not provide the treatment to the child if it finds that such an order is in the child's best interests; or

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

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

(b) **Additional Provisions.** As part of the disposition order the court shall also:

(1) approve or modify the plan for supervised or unsupervised visitation for the child's parent or legal custodian, relatives, and siblings of the child, if siblings are not in out-of-home placement together, as set out in the out-of-home placement plan; the court may set reasonable rules for visitation that contribute to the objectives of the court order and the maintenance of the familial relationship; the court may deny visitation when visitation would act to prevent the achievement of the court's disposition order or would endanger the child's physical or emotional well-being;

(2) review the case plan, make modifications supported by the evidence appropriate, and approve the plan;

(3) order all parties to comply with the approved case plan;

(4) incorporate into the order by reference the approved case plan and attach a copy of the plan only if it has been modified;

(5) give notice to the parent on the record and in writing of the requirements of Minnesota Statutes § 260C.201, subs. 11 and 11a; and

(6) set the date and time for the permanency placement determination hearing pursuant to Rule 42.

(c) **Habitual Truant and Runaway Matters.** If the child is adjudicated in need of protection or services because the child is a habitual truant or a runaway, the court may order any of the following dispositions in addition to or as alternatives to the dispositions ordered under subdivisions (a) and (b):

(1) counseling for the child or the child's parent or legal custodian;

(2) place the child under the supervision of a probation officer or other suitable person in the child's own home under conditions prescribed by the court,

including reasonable rules for the child's conduct and the conduct of the parent or legal custodian designed for the physical, mental, and moral well-being and behavior of the child;

(3) with the consent of the commissioner of corrections, place the child in a group foster care facility that is under the commissioner's management and supervision;

(4) subject to the court's supervision, transfer legal custody of the child to one of the following:

(i) a reputable person of good moral character; or

(ii) a county probation officer for placement in a group foster home established under the direction of the juvenile court and licensed pursuant to Minnesota Statutes § 241.021;

(5) require the child to pay a fine of up to \$100, to be paid in a manner that will not impose undue financial hardship upon the child;

(6) require the child to participate in a community service project;

(7) order the child to undergo a chemical dependency evaluation and, if warranted by the evaluation, order participation by the child in a drug awareness program or an inpatient or outpatient chemical dependency treatment program;

(8) order the commissioner of public safety to cancel the child's driver's license or permit or, for a child who does not have a driver's license or permit, order a denial of driving privileges for any period up to the child's 18th birthday; or

(9) order the child's parent or legal custodian to deliver the child to school at the beginning of each school day for a period of time specified by the court.

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