

RULES OF PROCEDURE FOR JUVENILE COURT

DELINQUENCY AND PETTY OFFENDERS

12/17/82
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SUPREME COURT

FILED

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 - (B) Child's Counsel and Guardian Ad Litem
 - (C) County Attorney
 - (D) Counsel and Guardian Ad Litem for Child's Parent(s) and Guardian
 - (E) Counsel for Petitioner
 - Subd. 3 Court Order Required
 - (A) Person(s) with Custody or Supervision of the Child, and Others
 - (B) Public
- 64.03 Court Rule May Define Process

RULE 65 Timing for Delinquency, Petty, Traffic and Juvenile Protection
Matters

65.01 Computation

65.02 Additional Time After Service by Mail

RULE 1

SCOPE, APPLICATION, GENERAL PURPOSE AND CONSTRUCTION

1.01 Scope and Application

Rules 1-35 and 65 govern the procedure in the juvenile courts of the State of Minnesota for all delinquency matters defined by Minn. Stat. 260.015, Subd. 5 and all matters defined by Minn. Stat. 260.015, Subd. 19, 20, 21, 22, and 23 which are defined for the purposes of these rules as petty matters.

Each rule governs both delinquency matters and petty matters unless otherwise stated by the rule.

1.02 Purpose and Construction

The purpose of Rules 1-35 and 65 is to establish uniform practice and procedure for the juvenile courts of the State of Minnesota, to assure that the constitutional rights of the child are protected and to promote the rehabilitation of the child and the protection of the public. These rules shall be construed to achieve these purposes.

1.03 Indian Child Welfare Act Applicability

Petty matters concerning an Indian child shall where applicable be governed by the Indian Child Welfare Act, 25 USCA Chapter 21, sections 1901-1963, and by these rules when they are not inconsistent with the Indian Child Welfare Act.

RULE 2

REFEREE

2.01 Authorization to Hear Cases

A referee may hear, as authorized by statute, any matter under the jurisdiction of the court in the manner provided for the hearing of matters by the court.

2.02 Objection to Assignment of Referee

The child's counsel or the county attorney may object to a referee presiding at a hearing. This objection shall be in writing and filed with the court within three (3) days after being informed that the matter is to be heard by a referee or the right to object is waived. The court may permit the filing of a written objection to a referee at any time. After the filing of an objection, a judge shall hear any motion and preside at any hearing.

2.03 Transmittal of Findings

Upon the conclusion of a hearing the referee shall transmit to the judge findings and recommendations in writing. Notice of the findings of the referee together with a statement relative to the right to a review before a judge shall be given either orally on the record, or in writing to the child, the child's counsel, the child's parent(s) and guardian, and their counsel, the county attorney and to any other person that the court may direct.

2.04 ReviewSubd. 1 Generally

A matter which has been decided by a referee may be reviewed in whole or in part by a judge.

Subd. 2 Filing

A motion for a review by a judge must be filed with the court within ten (10) days after the referee's findings and recommendations have been provided, pursuant to Rule 10.

Subd. 3 Right of Review Upon Filing of Timely Motion(A) Right of Child

The child is entitled to a review by a judge in any matter upon which a referee has made findings or recommendations.

(B) Right of County Attorney

The county attorney is entitled to a review by a judge from any pre-trial findings or recommendations of a referee except those dismissing a petition for lack of probable cause. The county attorney is not entitled to a review by a judge after jeopardy has attached.

(C) Right of Parent(s) and Guardian

The child's parent(s) and guardian are entitled to a review by a judge of a referee's findings or recommendations made after the allegations of a petition have been proved.

Subd. 4 The Court

The judge may grant a review at any time before confirming the findings and recommendations of the referee.

Subd. 5 Procedure

A review by a judge may be on the verbatim recording made pursuant to Rule 11 or may be de novo in whole or in part.

2.05 Order of the Court

The findings and recommendations of the referee become the order of the court when confirmed by the judge, subject to review pursuant to Rule 2.04.

RULE 3

RIGHT TO PARTICIPATE

3.01 Right of Child

The child who is the subject of a petition has the right to participate in all hearings.

3.02 Right of County Attorney

The county attorney has the right to participate in all hearings.

3.03 Right of Parent(s) and Guardian of Child

Subd. 1 Generally

The parent(s) and guardian of a child who is the subject of a petition may participate in hearings in their role as guardian ad litem of the child.

When the court has appointed a guardian ad litem the parent(s) and guardian of the child may not participate in court hearings except as provided by Rule 3.03, Subd. 2.

Subd. 2 Dispositions

(A) Separate Participation

The parent(s) and guardian of the child have the right to participate separately from the child at all hearings after the court has found that the allegations of the petition have been proved.

(B) Advisory of Right to Participate

The parent(s) and guardian of the child shall be advised by the court on the record, or in writing, at or before a finding that the allegations of the petition have

been proved, of the right to participate at all subsequent hearings after the court has found that the allegations of the petition have been proved.

3.04

Procedure

Persons represented by counsel shall participate in hearings through their counsel. Persons not represented by counsel may participate in their own behalf.

RULE 4

RIGHT TO COUNSEL

4.01 Right of Child to Counsel

Subd. 1 Generally

The child has the right to be represented by an attorney who shall act as the child's counsel.

Subd. 2 Advisory of Right to Counsel

A child not represented by counsel shall be advised orally by counsel, who shall not be the county attorney, or orally by the court on the record of the right to counsel at or before any hearing on a petition.

Subd. 3 Appointment of Counsel for Child

(A) When Parent or Child Cannot Afford to Retain Counsel

If the child or the parent(s) of the child cannot afford to retain counsel the child is entitled to representation by counsel appointed by the court at public expense.

(B) When Parent Can Afford to Retain Counsel

If the parent(s) of a child can afford to retain counsel in whole or in part and have not retained counsel for the child, and the child cannot afford to retain counsel, the child is entitled to representation by counsel appointed by the court at public expense. However, the court may order, after giving the parent(s) a reasonable

opportunity to be heard, that service of counsel shall be at the parent(s)' expense in whole or in part depending on their ability to pay.

4.02 Right of Parent(s) and Guardian to Counsel

Subd. 1 Generally

The parent(s) and guardian of the child who participate pursuant to Rule 3.03, Subd. 2 have the right to be represented by an attorney who shall act as their counsel after the court has found the allegations of the petition to be proved.

Subd. 2 Advisory of Right to Counsel

The parent(s) and guardian of the child shall be advised by the court on the record, or in writing, at or before a finding that the allegations of the petition have been proved, of the right to court-appointed counsel.

Subd. 3 Appointment of Counsel

If the parent(s) and guardian of a child participate separately pursuant to Rule 3.03, Subd. 2 and that person cannot afford to retain counsel, that person is entitled to representation by an attorney who shall act as their counsel appointed by the court at public expense. However, the court may order, after giving the parent(s) a reasonable opportunity to be heard, that service of counsel be at the parent(s)' expense in whole or in part depending on their ability to pay.

4.03 Right of Guardian Ad Litem to Counsel

The guardian ad litem of the child shall be represented by the child's counsel. However, in the event of a conflict between the child and the guardian ad litem, considered in the context of the matter, counsel for the child shall continue to represent the child. The court may appoint separate counsel to represent the guardian ad litem.

RULE 5

GUARDIAN AD LITEM

5.01 Appointment of Guardian Ad Litem

The court shall appoint a guardian ad litem, except as provided by Rule 5.02, to act in place of a parent or guardian to protect the interests of the child when it appears, at any stage of the proceedings, that the child is without a parent or guardian, or that, considered in the context of the matter, the parent or guardian is unavailable, incompetent, indifferent to, hostile to, or has interests in conflict with the child's interests.

5.02 Determination Not to Appoint Guardian Ad Litem

The court may determine not to appoint a guardian ad litem when:

- a) counsel has been appointed or is otherwise retained for the child, and
- b) the court finds that the interests of the child are otherwise protected.

5.03 Standards

In determining whether or not to appoint a guardian ad litem pursuant to Rule 5.02 the court should examine the totality of the circumstances. These circumstances include but are not limited to: the presence and competence of the child's parent(s) or guardian, considered in the context of

the matter, the parent or guardian's hostility to, indifference to or interests in conflict with the interests of the child, the child's age, maturity, intelligence, education, experience and ability to comprehend.

5.04 Findings

A determination of the court not to appoint a guardian ad litem when required by Rule 5.01 must be based on a finding on the record or in writing which states the facts on which the decision was made.

5.05 Discretionary Appointment of Guardian Ad Litem

In any other matter the court may appoint a guardian ad litem on its own motion or on the motion of the child's counsel or the county attorney when the court determines that an appointment is in the interests of the child.

5.06 Guardian Ad Litem Not Counsel for Child

When the court appoints a guardian ad litem, the guardian ad litem shall not be the child's counsel.

RULE 6

RIGHT TO REMAIN SILENT

6.01 Custody, Interrogation, Admissibility

A confession, admission or other statement given by a child who is in custody for a delinquent act, petty matter, probation or parole violation, which is given as a result of an interrogation by a peace officer, probation officer or parole officer or a person acting at their direction is admissible in court during a hearing concerning the child's delinquency, violation of a petty matter, probation or parole violation to the extent a statement is admissible against an adult defendant in a criminal matter, only after an advisory and waiver pursuant to Rule 6.01, Subd. 1 and Subd. 2.

Subd. 1 Advisory

A child shall be advised of the child's constitutional rights to the same extent that an adult in a criminal matter is advised prior to custodial interrogation by a peace officer. The advisory shall include but is not limited to the following:

- a) the child has the right to remain silent, and
- b) anything the child says can and will be used against the child in a court of law, and
- c) the child has the right to an attorney before and during any questioning, and

d) if the child cannot afford an attorney one will be appointed for the child by the court.

Subd. 2 Waiver

The child must voluntarily and intelligently waive the right to remain silent and the right to an attorney. In determining whether a child has voluntarily and intelligently waived the right to remain silent and the right to an attorney the court shall consider the totality of the circumstances. The totality of the circumstances includes but is not limited to the presence and competence of the child's parent (s) or guardian, the child's age, maturity, intelligence, education, experience and ability to comprehend.

A waiver made in court shall be on the record.

RULE 7

PRESENCE AT HEARINGS

7.01 Right to Attend Hearing

Any person who is entitled to summons or notice under these rules or who is given summons or notice shall have the right to attend the hearing to which the summons or notice relates.

7.02 Presence of Child

Subd. 1 Presence Required

The child shall have the right to be present at all hearings.

Subd. 2 Continued Presence Not Required

The further progress of a hearing shall not be prevented and the child shall be considered to waive the right to be present whenever:

- a) the child voluntarily and without justification is absent after a hearing has commenced, or
- b) a child, after warning, engages in conduct which unjustifiably interrupts the orderly procedure of the court and the due course of the hearing. The court may use all such methods of restraint as will ensure the orderly procedure of the court and the due course of the hearing. If the court orders restraint, the reasons for the restraint shall be stated on the record.

7.03 Exclusion of Other Persons Who Have Right to Attend Hearings

In any hearing the court may temporarily exclude the presence of any person, except counsel, the guardian ad litem for the child, or the child who is the subject of a delinquency or petty matter when it is in the best interest of the child to do so. If a person, other than counsel, the child's guardian ad litem, or the child who is the subject of a delinquency or petty matter, after warning, engages in conduct which disrupts the court, the person may be excluded from the courtroom. The exclusion of the person shall not prevent the court from proceeding with the hearing.

7.04 Record of Exclusion and Right to Continued Participation

Any exclusion of a person who has the right to attend a hearing shall be noted on the record and the reasons for the exclusion given. Counsel for the excluded person has the right to remain and participate in the hearing.

RULE 8

PRIVACY

8.01 Attendance at Hearings

Only the following may attend hearings:

- a) the child, guardian ad litem and counsel for the child, and
- b) the parent(s) and guardian of the child and their counsel and guardian ad litem and the legal custodian of the child, and
- c) the spouse of the child, and
- d) the county attorney, and
- e) persons requested by the child, the county attorney, or the parent(s) and guardian of the child and approved by the court, and
- f) persons authorized by the court under such conditions as the court may approve, and
- g) persons authorized by statute under such conditions as the court may approve.

RULE 9

NOTICE

9.01 Notice, Summons, Court Orders

Subd. 1 Notice

A notice is a document issued by the court which provides the information required by Rule 9.03.

Subd. 2 Summons

A summons is a document issued by the court which provides the information required by Rule 9.03 and orders the presence in court at a stated time and place of either:

- a) the person to whom it is directed, or
- b) the person to whom it is directed and others as set forth in the summons.

Subd. 3 Court Orders

An oral order on the record directed to person(s) in court which either orally or with written supplementation contains the information required by Rule 9.03 may provide notice and compel the presence of the person(s) at a stated time and place.

9.02 Procedure

Subd. 1 Generally

Summons or notice may be served by mail or by personal service.

Subd. 2 Service

(A) Minimum Required Service

(1) Child and Person(s) with Custody or Control

The court:

- a) shall orally on the record give notice to and order the child and the person(s) with custody or control of the child, who are present in court, to appear at subsequent hearings, or
- b) shall issue and cause a summons to be served by mail to the child and the person(s) with custody or control of the child, or
- c) may do both (a) and (b) above.

(2) Child's Counsel, County Attorney, Parent(s), Guardian, Custodian and Spouse and Their Counsel

The court:

- a) shall orally on the record give notice of subsequent hearings to the child's counsel, county attorney and to the parent(s), guardian, custodian and spouse of the child and their counsel who have not been served pursuant to Rule 9.02, Subd. 2 (A)(1) who are present in court, or
- b) shall issue and cause notice to be served by mail to the child's counsel, the county attorney and counsel for the child's parent(s), guardian, custodian and spouse who have not been served pursuant to Rule 9.02, Subd. 2(A)(2)(a), or

- c) shall, if the parent(s), guardian, custodian and spouse of the child are not represented by counsel, issue and cause notice to be served by mail to the parent(s), guardian, custodian and spouse unless the court finds that notice would be ineffectual and it would be in the best interest of the child to proceed without notice, or
- d) may do (a), (b) and (c) above.

(B) Discretionary Service

(1) Summons

At any time the court may require the service of summons to be by personal service.

(2) Notice

At any time the court may require the service of notice by personal service on any of the persons set forth in Rule 9.02, Subd. 2 (A)(2).

Subd. 3 Execution of Service

The summons or notice by personal service shall be served by any person authorized to serve process pursuant to Minn. Stat. 260.141, Subd. 2 and Rule 4.02 of the Minnesota Rules of Civil Procedure.

Subd. 4 Place of Service

The summons or notice may be served at any place within the state except where prohibited by law. If personal service cannot be made within the state a copy of the summons or notice may be personally served on a person to whom it is directed outside the state.

Subd. 5 Manner of Service(A) Personal Service

The summons or notice shall be served on the person to whom it is directed by delivering a copy to that person personally or by leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion residing therein.

(B) Service by Mail

Service by mail shall be made in the manner provided by Rule 4.05 of the Minnesota Rules of Civil Procedure.

Subd. 6 Timing

Summons or notice by personal service and summons or notice by mail shall be served on the person to whom it is directed sufficiently in advance of the hearing to which it relates to afford the person a reasonable opportunity to prepare for the hearing. At the request of the child's counsel the hearing shall not be held at the scheduled time if the summons or notice has been served less than twenty-four (24) hours before the hearing.

If personal service is made outside the state, it shall be made at least five (5) days before the date fixed for the hearing to which the summons or notice relates.

If service is made by mail a copy of the summons or notice shall be sent at least five (5) days before the time of the hearing or fifteen (15) days before the hearing if mailed to addresses outside the state.

Subd. 7 Proof of Service(A) Personal Service

On or before the date set for appearance, the person who served a summons or notice by personal service shall file a written statement with the court showing:

- i) that the summons or notice was served, and
- ii) the person on whom the summons or notice was served, and
- iii) the date and place of service.

(B) Service by Mail

On or before the date set for appearance, the person who served a summons or notice by mail shall file a written statement with the court showing:

- i) the name of the person to whom the summons or notice was mailed, and
- ii) the date the summons or notice was mailed, and
- iii) whether the summons or notice was sent by certified mail.

9.03 Content of Summons or Notice

Any summons or notice shall contain or have attached:

- a) a copy of the petition, court order, motion, affidavit or other legal documents, not previously provided, necessary to provide notice pursuant to Rule 9.02, Subd. 2, and
- b) a statement of the time and place of the hearing, and

- c) a statement describing the purpose of the hearing and the possible consequences of the hearing, and
- d) a statement of rights explaining the right to counsel, the right to remain silent and other basic rights, and
- e) if a motion for reference has been filed a copy of the motion for reference, and
- f) a statement that:
 - i) failure to appear in response to the summons may cause a warrant of arrest to be issued, and
 - ii) failure to appear in response to the notice or summons may result in a hearing being conducted without the presence of the child's parent(s) and guardian and appropriate relief granted on the petition, and
 - iii) the child's parent(s) and guardian have the right to separate participation at any hearing after the allegations of the petition have been proved; notice of those hearings may be given orally in court to those persons present, and
 - iv) further information concerning the date and consequences of subsequent hearings, if any, may be obtained from the court by a request in writing, and
- g) such other matters as the court may direct.

9.04 Waiver

Service is waived by voluntary appearance in court or by a written waiver of service filed with the court.

RULE 10

COPIES OF ORDERS

Court orders shall be stated on the record at the hearing or a copy of the written order shall be mailed to the child, the child's counsel, the county attorney and the parent(s), and guardian of the child and their counsel present at the hearing.

Copies of court orders shall be sent by the court to the child, child's counsel, the county attorney and the parent(s) and guardian of the child and their counsel who request such a copy in writing or on the record and to such other persons as the court may direct.

RULE 11

RECORDING

11.01 Procedure

A verbatim recording of all hearings shall be made by a stenographic reporter or by an electronic sound recording device. If the recording is made by an electronic sound recording device, qualified personnel to operate the device shall be assigned by the court. Any required transcripts shall be prepared by personnel assigned by the court.

11.02 Availability of TranscriptsSubd. 1 Child's Counsel and County Attorney

Transcripts of hearings for further use in the hearing or subsequent hearings, appeal, habeas corpus action or for other use as the court shall deem proper shall be made available to the child's counsel and the county attorney on application to the court. Applications for transcripts shall be made to the court in writing or on the record.

Subd. 2 Counsel for Parent(s) and Guardian

Transcripts of hearings for use in hearings after the allegations of the petition have been proved, for appeal from hearings after the allegations of the petition have been proved or for other use as the court deems proper shall be made available to counsel for the parent(s) and guardian of the child when they participate pursuant to Rule 3.03, Subd. 2. Applications for transcripts shall be made to the court in writing or on the record.

11.03 Expense

If the child's counsel or counsel for the parent(s) and guardian of the child apply to the court for a transcript of all or part of a hearing for an authorized use, pursuant to Rule 11.02, and the child or parent(s) of the child are unable to pay the preparation cost of the transcript, the court shall direct the preparation and delivery of the transcript to the child's counsel or counsel for the parent(s) and guardian of the child at public expense, in whole or in part, depending on the ability of the child and the parent(s) of the child to pay.

RULE 12

CONTINUANCES AND ADVANCEMENTS

12.01 By Court Order

Either on its own motion or by motion of the child's counsel, the county attorney, or counsel for the child's parent(s) or guardian when they participate pursuant to Rule 3.03, Subd. 2 the court may continue or advance a hearing for a reasonable time for good cause shown taking into consideration whether or not the child is in detention.

12.02 Existing Orders

The court may order that existing orders remain in effect during a continuance.

RULE 13

SUBPOENAS

13.01 Motion or Request for Subpoenas

On the court's own motion or at the request of the child's counsel or the county attorney, the clerk shall issue subpoenas requiring the attendance and testimony of witnesses and the production of records, documents or other tangible objects at any hearing.

Counsel for the parent(s) and guardian of the child have the right to request the issuance of subpoenas requiring the attendance and testimony of witnesses and the production of records, documents or other tangible objects at any hearing after the allegations of the petition have been proved.

13.02 Expense

The fees and mileage of witnesses shall be paid at public expense if the subpoena is issued by the court on its own motion or at the request of the county attorney.

If a subpoena is issued at the request of the child's counsel or counsel for the parent(s) and guardian, and the child or parent(s) of the child are unable to pay the fees and mileage of witnesses, these costs shall be paid at public expense, upon approval by the court, in whole or in part, depending on the ability of the child and the parent(s) of the child to pay.

All other fees shall be paid by the requesting person unless otherwise ordered by the court.

RULE 14

MOTIONS

14.01 Motions to be Signed

Every motion shall be in writing, state with particularity the grounds therefor, be signed by the person making the motion and filed with the court unless it is made in court and on the record.

14.02 Service of Motions

Subd. 1 When Required

Every written motion along with any supporting affidavits shall be served on the child, the county attorney and the parent(s) and guardian of the child.

Subd. 2 How Made

When service is required to be made upon a person represented by counsel, service shall be made upon counsel.

Service upon counsel is sufficient service upon the person counsel represents unless the court also orders service upon the person.

Service of motions may be made by personal service or by mail. Service by mail shall be complete upon mailing to the last known address of the person to be served.

Subd. 3 Time

Any motion required by this rule to be served, along with any supporting affidavits, shall be served at least

three (3) days before it is to be heard unless the court for good cause shown permits a motion to be made and served less than three (3) days before it is to be heard.

RULE 15

WAIVER OF COUNSEL AND OTHER CONSTITUTIONAL RIGHTS

15.01 Applicability

Rule 15 governs the waiver in court of counsel and other rights.

15.02 Waiver of Right to CounselSubd. 1 Standards

After being advised of the right to counsel, pursuant to Rule 4, a child may waive the right to counsel only if the waiver is voluntarily and intelligently made. In determining whether a child has voluntarily and intelligently waived the right to counsel the court shall look at the totality of the circumstances. These circumstances include but are not limited to: the presence and competence of the child's parent(s), guardian or guardian ad litem, and child's age, maturity, intelligence, education, experience and ability to comprehend.

Subd. 2 Renewal

After a child waives the right to counsel the child shall be advised of the right to counsel, by the court on the record, at beginning of each hearing at which the child is not represented by counsel.

15.03 Waiver of Rights Other than Right to Counsel

A child may voluntarily and intelligently waive any other right after being fully and effectively informed of the right by counsel or by the court on the record. In

determining whether the child has voluntarily and intelligently waived any other right to court shall look at the totality of circumstances. These circumstances include but are not limited to : the presence and competence of the child's parent(s), guradian or guardian ad litem and their interest iun protecting the child's rights, whether the child is represented by counsel, the child's age, maturity, intelligence, education, experience, and abiliuty to comprehend.

15.04 Recording

A waiver in court of the right to counsel or any other right shall be on the record.

RULE 16

IMMEDIATE CUSTODY

16.01 Warrant for Immediate CustodySubd. 1 Warrant with Probable Cause

A warrant for immediate custody of a child may issue if the court finds from the facts set forth separately in writing in or with the petition filed with the court and any supporting affidavits or sworn testimony that there is probable cause to believe that:

- a) the child has committed an act governed by Minn. Stat. 260.015 Subd. 5, 19, 20, 21, 22, or 23, and
- b)
 - i) the child failed to appear after having been personally served with a summons or subpoena, or
 - ii) reasonable efforts to personally serve the child have failed, or
 - iii) there is a substantial likelihood that the child will fail to respond to a summons, or
 - iv) the welfare of the child requires that the child be brought into the custody of the court.

Subd. 2 Warrant Without Probable Cause Petition

A warrant for immediate custody of a child without a finding of probable cause by the court may issue if the child has appeared in court in regard to a petition and:

- a) the child has left the custody of the detaining authority without permission of the court, or

- b) the child has violated a court order, or
- c) the child has violated the terms of probation.

16.02 Contents of Warrant for Immediate Custody

A warrant for immediate custody shall be signed by a judge and shall:

- a) order the child to be brought immediately before the court or the child to be taken to a detention facility designated by the court to be detained pending a detention hearing or the child to be transferred to an individual or agency, including but not limited to any welfare agency or hospital, as the welfare of the child might require, and
- b) state the name and address of the child, or if unknown designate the child by any name or description by which the child can be identified with reasonable certainty, and
- c) state the age and sex of the child, if the age of the child is unknown, that the child is believed to be of an age subject to the jurisdiction of the court, and
- d) state the reasons why the child is being taken into custody as set forth in Rule 16.01, and
- e) where applicable, state the reasons for a limitation on the time or location of the execution of the warrant, and
- f) state the date when issued, and the county and court where issued.

16.03 Execution of Warrant for Immediate Custody

Subd. 1 Who May Execute

The warrant for immediate custody may only be executed by a peace officer authorized by law to execute a warrant.

Subd. 2 How Executed

The warrant for immediate custody shall be executed by taking the child into custody.

Subd. 3 Where Executed

The warrant for immediate custody may be executed at any place in the state except where prohibited by law, unless the judge who issues the warrant limits in writing on the warrant the location where the warrant may be executed.

Subd. 4 When Executed

A warrant may be executed at any time unless the judge who issues the warrant limits in writing on the warrant the time during which the warrant may be executed.

Subd. 5 Possession of Warrant

A warrant for immediate custody need not be in the peace officer's possession at the time the child is taken into custody.

Subd. 6 Advisory

When a warrant is executed the child and the child's parent(s), guardian and custodian, if present, shall immediately be informed of the existence of the warrant for immediate custody and as soon as possible of the reasons why the child is being taken into custody.

RULE 17

INTAKE

The discretionary decision as to whether a delinquency or petty matter should be initiated lies with the county attorney

RULE 18

DETENTION

18.01 Generally

A child is detained when:

- a) taken into custody pursuant to Minn. Stat. 260.135, 260.145 or 260.165, and
- b) the court orders detention of the child, pursuant to Minn. Stat. 260.172 or 260.185, before a disposition, pursuant to Rule 30, and
- c) the court orders conditions or release, pursuant to Rule 18.01, Subd. 2 (C)(2), before a disposition, pursuant to Rule 30.

18.02 Release or Continued Detention

Subd. 1 Child Taken Into Custody With Court Order

(A) Release Prohibited

A child taken into custody with a court order may not be released within thirty-six (36) hours without a court order.

(B) Mandatory Release

A child shall not be held in detention for more than thirty-six (36) hours unless a detention hearing has commenced and the court has ordered continued detention.

Subd. 2 Child Taken Into Custody Without Court Order

(A) Release and Exception Permitting Detention

The officer taking a child into custody without a court

order shall release the child unless the officer reasonably believes:

- i) the child or others would be endangered, or
- ii) the child would not appear for a court hearing, or
- iii) the child would not remain in the care or control of the person to whose lawful custody the child is released, or
- iv) the child's health or welfare would be immediately endangered.

The person to whom the child is to be released may be requested to promise to bring the child to court at the time the court may direct and may be requested to sign a written promise to bring the child to court. Refusal to sign a written promise to bring the child to court when requested is sufficient evidence that the child would not appear for a court hearing.

(B) Mandatory Release

The child shall be released if a detention order is not signed within twenty-four (24) hours, pursuant to Rule 18.05, or a detention hearing has not commenced within thirty-six (36) hours, pursuant to Rule 18.06, and the court has not ordered continued detention.

(C) Discretionary Release

(1) By Officer, Detention Facility or County Attorney

Except when release is prohibited pursuant to court order or Rule 18.02, Subd. 1(A), the detaining officer,

the detaining officer's supervisor, the person in charge of the detention facility, or the county attorney may release a child any time prior to a detention hearing.

No conditions of release may be placed on a child released by the detaining officer, the detaining officer's supervisor, the person in charge of the detention facility or the county attorney.

(2) By Court

The court at any time may release the child and may impose one or more of the following conditions:

- a) require the parent(s), guardian, custodian or child to post bail, and
- b) place restrictions on the child's travel, associations or place of abode during the period of the child's release, and
- c) any other conditions deemed reasonably necessary and consistent with criteria for detaining the child.

Any conditions of release terminate after thirty-six (36) hours unless a detention hearing has commenced and the court has ordered continued detention.

Subd. 3 Release to Custody of Parent

A child released from detention shall be released to the custody of the child's parent(s), guardian, custodian or other suitable person.

18.03 Reports

Subd. 1 Report by Officer

The detaining officer or a person at the officer's direction shall file a signed report with the court and deliver a copy to the supervisor of the detention facility. The report shall state:

- a) the time the child was taken into custody, and
- b) the time the child was delivered for transportation to the detention facility, and
- c) the reasons why the child was taken into custody, and
- d) the reasons why the child has been placed in the detention facility.

Subd. 2 Report by Supervisor of Detention Facility

When a child has been delivered to a detention facility, the supervisor of the detention facility shall file with the court a signed report acknowledging receipt of the child.

Subd. 3 Timing of Reports

The reports required by Rule 18.03 shall be filed with the court on or before the court day following the detention of the child.

18.04 Identification ProceduresSubd. 1 Photographing(A) When Permitted

A detained child may be photographed only upon order of the court under such terms as the court shall order. An

order permitting the child to be photographed shall only be issued:

- i) when necessary for the welfare of the child, or
- ii) when necessary for the public safety, or
- iii) when necessary for the investigation of a delinquent act, or
- iv) as evidence of a line-up.

(B) Report

A report stating the name of the child photographed and the date the photograph was taken shall be filed with the court.

Subd. 2 Line-Up

(A) Generally

A child detained may be placed in a line-up.

(B) Exception

A child may choose not to participate in a line-up which is not related to the matter for which the child is detained unless ordered by the court to appear in a line-up pursuant to Rule 24.02, Subd. 2(A).

(C) Right to Counsel

A child has the right to have counsel present when placed in a line-up related to an act for which a petition has been filed alleging the child to be delinquent.

(D) Report

A report stating the name of the child who participated in the line-up and the date of the line-up shall be filed

with the court.

Subd. 3 Fingerprinting

(A) Generally

All children in custody alleged to have committed an act which would be a felony if it had been committed by an adult may be fingerprinted without a court order. Other children may only be fingerprinted pursuant to Rule 24.

(B) Report

A report stating the name of the child fingerprinted and the date of the fingerprinting shall be filed with the court.

18.05 Twenty-Four (24) Hour Request for Detention Hearing and Court Order

Subd. 1 Generally

A child taken into custody without a court order shall not be detained longer than twenty-four (24) hours, unless a detention hearing has been held and the court orders continued detention or a request for a detention hearing is made within that twenty-four (24) hours and the court orders continued detention.

Subd. 2 Request

The request for detention hearing may be made only under the supervision of the county attorney and shall be in writing or on the record and shall state:

- a) the name and address of the child, or if unknown, designate the child by a name or description by which

the child can be identified with reasonable certainty, and

b) the age and sex of the child, or if the age of the child is unknown, that the child is believed to be of an age which will make the child subject to procedures covered by these rules, and

c) the reasons why the child is in custody and needs to be detained.

Subd. 3 Court Order

A court may order continued detention only after a detention request has been filed.

18.06 Detention Hearing

Subd. 1 Generally

The court shall commence a detention hearing within thirty-six (36) hours when:

a) a request for a detention hearing has been filed pursuant to Rule 18.05, and

b) the court has ordered continued detention pursuant to Rule 18.05, and

c) a petition with probable cause has been filed pursuant to Rule 19.03, or

d) the child is detained by a warrant.

Subd. 2 Information of Hearing to be Provided

The court shall inform the child, child's counsel, county attorney, and the parent(s), guardian, custodian and spouse of the child of the time and place of a detention hearing. Failure to inform the parent(s), guardian,

custodian or spouse of the child or their non-attendance at the hearing shall not prevent a hearing from being conducted, or invalidate the proceeding or an order of detention.

Subd. 3 Advice of Rights

At the beginning of the detention hearing the court shall advise all persons present of:

- a) the reasons why the child was taken into custody, and
- b) the allegations of the delinquent act(s) or an offense pursuant to Minn. Stat. 260.015, Subd. 19, 20, 21, 22 or 23 set forth in the petition, and
- c) the purpose and scope of the detention hearing, and
- d) the right of the child to be represented by counsel at the detention hearing and at every other stage of the proceedings and where applicable, of the right to court-appointed counsel, and
- e) the right of the child to remain silent.

Subd. 4 Evidence

The court may admit any evidence, except privileged communications, including reliable hearsay and opinion evidence that is relevant to the decision whether to detain the child.

Subd. 5 Finding Necessary for Continued Detention

A child may be detained beyond thirty-six (36) hours from the time of being taken into custody if:

- a) prior to or during the detention hearing the court finds that the petition pursuant to Rule 19.03, Subd. 2 contains probable cause that the child has committed a delinquent act, or an offense pursuant to Minn. Stat. 260.015, Subd. 19, 20, 21, 22 or 23 or violated terms of probation, parole, field supervision or other court order, and
- b) at the detention hearing the court finds probable cause that:

- i) the child or others would be endangered if released, or
- ii) the child would not appear for a court hearing or not respond to a summons or notice if released, or
- iii) the child would not remain in the care or control of the person to whose lawful custody the child is released, or
- iv) release of the child would immediately endanger the child's health or welfare.

18.07 Release of Child

A child shall be released if the court does not find probable cause pursuant to Rule 18.06, Subd. 5(a) and (b).

18.08 Detention Order

Subd. 1 Alternatives

If the court finds probable cause, pursuant to Rule 18.06, Subd. 5(a) and (b), the court may:

- a) order the continued detention of the child, or
- b) release the child and impose conditions pursuant to Rule 18.02.

Subd. 2 Content

The order for continued detention shall be in writing and shall include the findings of fact pursuant to Rule 18.06, Subd. 5(a) and (b) which support continued detention or conditions of release.

18.09 Detention Review

Subd. 1 Informal Detention Review

(A) Eight (8) Days

An informal detention review must be held every eight (8) days.

(B) Change of Status

(1) Without Consent

The court by informal review may continue the child in detention without altered circumstances without the consent of the child, child's counsel or the county attorney.

(2) With Consent

The court by informal review may continue detention with altered circumstances with the consent of the child, child's counsel and the county attorney.

Subd. 2 Formal Detention Review

(A) On Motion of Court

The court may schedule a formal detention review

hearing at any time.

(B) On Request of Child or County Attorney

The child's counsel, or county attorney may request a formal hearing to present new evidence concerning continued detention by filing a request with the court. If the court finds a substantial basis for the request the court shall schedule a hearing and notify the child, child's counsel, county attorney, parent(s), guardian and custodian of the child and their counsel and spouse of the child of the time and place of the hearing pursuant to Rule 9.

(C) Evidence

Subject to constitutional limitations and privileged communications, the court may admit any evidence including reliable hearsay and opinion evidence that is relevant to the decision whether to continue the detention of the child.

(D) Finding Necessary for Continued Detention

At the conclusion of the formal review hearing the court may continue the child in detention if the court finds probable cause that:

- i) the child or others would be endangered if released, or
- ii) the child would not appear for a court hearing or not respond to a summons or notice if released, or
- iii) the child would not remain in the care or control of the person to whose lawful custody the child is released, or
- iv) release of the child would immediately endanger the child's health or welfare.

RULE 19
PETITION

19.01 Procedure for Petty Petition by Citation

Subd. 1 Drafting

A petition alleging a petty matter may be a citation pursuant to Minn. Stat. 260.132 or Minn. Stat. 260.195. A petition alleging a petty matter as a delinquency matter pursuant to Minn. Stat. 260.195 shall be by a delinquency petition.

Subd. 2 Filing

A petty petition may be filed directly with the court by a peace officer or attendance officer pursuant to Minn. Stat. 260.132 or Minn. Stat. 260.195.

Subd. 3 Endorsement

When a petty petition is filed by a peace officer or attendance officer directly with the court, the court may by rule or by order in a particular matter, require a copy of the petty petition to be sent to the county attorney and the endorsement of the county attorney on or with the petty petition prior to the issuance of notice pursuant to Rule 9. When an endorsement required by court rule is not made within a reasonable period of time, the petty petition may be dismissed.

Subd. 4 Contents of Petty Petition

Every petty petition filed with the court shall contain:

- a) the name, date of birth, residence and post office address of the child, and
- b) the names, residences and post office addresses of the child's parent(s) when known, and
- c) the name, residence, and post office address of the child's guardian if there is one, of the person having custody or control of the child, or of the nearest known relative if no parent or guardian can be found, and
- d) a citation to the subdivision of Minn. Stat. 260.015, Subd. 19, 20, 21, 22 or 23 on which the petty petition is based together with a recitation of the relevant portion of the subdivision.

19.02 Procedure for Delinquency Petition

Subd. 1. Drafting

A petition alleging that a child is delinquent shall be drafted under the supervision of the county attorney.

Subd. 2. Endorsement

No delinquency petition shall be filed or process issued thereon without the written endorsement of the county attorney that the county attorney approves the petition as to form and that the county attorney has found reasonable grounds to support the petition, unless a judge signifies on the petition that the county attorney is unavailable and the filing of the petition and issuance of process should not be delayed.

Subd. 3 Verification

The delinquency petition shall be verified by a person having knowledge of the facts and may be verified on information and belief.

19.03 Contents of Delinquency Petition

Every delinquency petition filed with the court in a delinquency matter shall contain:

- a) a statement that the child is delinquent and a simple, concise and direct statement of the alleged delinquent act, and
- b) the name, date of birth, residence and post office address of the child, and
- c) the names, residences and post office addresses of the child's parent(s) when known, and
- d) the name, residence and post office address of the child's guardian if there is one, of the person having custody or control of the child, or of the nearest known relative if no parent or guardian can be found, and
- e) the name, residence and post office address of the spouse of the child, and
- f) a citation of the subdivision of Minn. Stat. 260.015 on which the petition is based, together with a recitation of the relevant portion of the subdivision, and
- g) if the allegation of delinquency is based on a violation of law pursuant to Minn. Stat. 260.015, Subd.

5(a) or (b), a citation of the law violated and a statement of the offense and degree of the offense committed.

Two or more allegations of delinquent acts whether arising out of separate behavioral incidents or not may appear in the same petition in separate counts.

19.04 Petition with Probable Cause in Delinquency and Petty Matters

Subd. 1 When Required

In addition to the content requirements of Rule 19.01, 19.02 and 19.03, a petition with probable cause shall be filed with the court:

- a) before the court may issue a warrant pursuant to Rule 16.01, Subd. 1, or
- b) before a detention hearing is held for a child taken into custody without a warrant, or
- c) within ten (10) days of the county attorney receiving an order of the court requiring a showing of probable cause with the petition. The court may order a showing of probable cause:
 - i) on its own motion, or
 - ii) on the motion of the child which states sufficient reasons that a probable cause showing is necessary in addition to the discovery provided by Rule 24.

Subd. 2 In or With Petition

The facts establishing probable cause to believe the child has committed an act governed by Minn. Stat. 260.015

Subd. 5, 19, 20, 21, 22 or 23 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 so stating shall be made of this fact on the petition by the court. The testimony shall be recorded by a reporter or recording instrument and shall be transcribed and filed.

Subd. 3 Dismissal For Failure to Show Probable Cause

When a showing of probable cause is required and has not been made, the court shall dismiss the petition.

Subd. 4 Dismissal No Prohibition to Subsequent Petition

A dismissal of a petition for failure to show probable cause shall not prohibit a subsequent filing of a petition and further proceedings on the petition.

19.05 Amendment

A petition may be amended by order of the court at any time:

- a) before the introduction of evidence at the trial with consent of the county attorney, or
- b) after the introduction of evidence at the trial with consent of the child and the county attorney, or
- c) with the consent of the county attorney, after a trial and before a finding that the allegations of the petition have been proved, if no additional or different offense is alleged and if substantial rights of the child are not prejudiced.

No delinquency petition may be amended to a petty petition or to a neglect, dependency, or neglected and in foster care petition.

No petty petition may be amended to a delinquency petition or to a neglect, dependency, or neglected and in foster care petition.

Amendments shall be freely permitted in the interest of justice and the welfare of the child.

If the court orders amendment of the petition it shall grant the child's counsel and the county attorney such additional time to prepare for further proceedings in the cause as may be required to ensure a full and fair hearing.

19.06

Determination to Proceed on Petition

Upon the filing of a petition the court shall:

- a) dismiss the petition if it fails to allege an act governed by Minn. Stat. 260.015 Subd. 5, 19, 20, 21, 22, or 23, or
- b) promptly fix a time for arraignment, pursuant to Rule 20, and issue notice of the hearing pursuant to Rule 9, or
- c) refer a petty petition to the county attorney pursuant to Rule 19.01, Subd. 3.

RULE 20

ARRAIGNMENT

20.01 Generally

Arraignment is a hearing at which the child shall admit or deny the allegations of the petition.

20.02 Timing

Subd. 1 Child in Custody

The child in custody shall be arraigned within five (5) days of being taken into custody. A child in custody may be arraigned at a detention hearing. The child has the right to have a copy of the petition for three (3) days before being arraigned.

Subd. 2 Child Not in Custody

The child not in custody shall be arraigned within twenty (20) days after the child has been served with the petition.

The child has the right to have a copy of the petition for three (3) days before being arraigned.

20.03 Hearing Procedure

Subd. 1 Initial Procedure

At the commencement of the hearing the court shall on the record:

- a) verify the name, age and residence of the child who is the subject of the matter, and

- b) determine whether all necessary persons are present and identify those present for the record, and
- c) determine whether the child is either represented by counsel or waives counsel pursuant to Rule 15, and
- d) if the child appears without counsel, explain to the child and the child's parent(s) and guardian, if present, the child's right remain silent and other basic rights, and
- e) determine whether notice requirements have been met and if not, whether the affected persons waive notice, and
- f) if the child appears without counsel, explain to the child and the child's parent(s) and guardian, if present, the purpose of the hearing and the possible consequences of the hearing.

Subd. 2 Reading of Allegations of Petition

Unless waived by the child, the court shall read the allegations of the petition to the child and determine that the child understands the allegations of the petition, and if not, provide an explanation.

Subd. 3 Motions

The court shall hear any motions made pursuant to Rule 14 addressed to the sufficiency of the petition or jurisdiction of the court without requiring the child to admit or deny the allegations of the petition prior to making a finding on the motion.

RULE 21

ADMISSION OR DENIAL

21.01 Generally

The child may admit or deny the allegations or remain silent. If the child remains silent or if the court refuses to accept an admission, the court shall enter on the record a denial of the petition.

21.02 Denial

Subd. 1 Denial Without Appearance

By rule of the court or by court order in a particular matter, a written denial or a denial on the record of the allegations of a petition may be entered by child's counsel without the personal appearance of the child, child's parent(s), or guardian or their counsel.

Subd. 2 Further Proceedings After Denial

When a denial is entered the court shall schedule further proceedings pursuant to Rule 25 or Rule 27.

21.03 Admission

Subd. 1 Questioning of Child

Before accepting an admission by the child the court shall determine under the totality of the circumstances whether the child understands all applicable rights. The court shall on the record, or by written document signed by the child and child's counsel, if any, filed with the court, determine the following:

- a) whether the child understands:
 - i) the nature of the offense alleged, and
 - ii) the right to a trial, and
 - iii) the presumption of innocence until the state proves the allegations beyond a reasonable doubt, and
 - iv) the right to remain silent, and
 - v) the right to testify on the child's own behalf, and
 - vi) the right to confront witnesses against oneself, and
 - vii) the right to subpoena witnesses, and
- b) whether the child understands that the child's behavior constitutes the act which is admitted, and
- c) whether the child makes any claim of innocence, and
- d) whether the plea is made freely, under no threats or promises, and
- e) in a delinquency matter, whether the child understands:
 - i) the possible effect a finding that the allegations of delinquency are proved or an adjudication of delinquency may have on a decision to refer the child for prosecution as an adult, and
 - ii) where applicable, the possible effect an adjudication of delinquency has on sentencing in adult court.

Subd. 2 Factual Basis for Admission

The court shall refuse to accept an admission unless there is a factual basis for the admission.

Subd. 3 Withdrawal of Admission

After filing a motion with the court:

- a) a child may at any time withdraw an admission after showing that withdrawal is necessary to correct a manifest injustice, or
- b) the court may allow a child to withdraw an admission before a finding on a petition for any fair and just reason.

Subd. 4 Admission to a Lesser Offense or a Different Offense

With the consent of the county attorney and the approval of the court, the child shall be permitted to enter:

- a) an admission to a lesser included offense or to an offense of lesser degree, or
- b) an admission to a different offense than alleged in the original petition.

An admission to a lesser included offense or to an offense of lesser degree may be entered without an amendment of the petition. If an admission to an offense different than that alleged in the petition is accepted, the petition must be amended on the record or a new petition must be filed with the court.

Subd. 5 Acceptance or Non-acceptance of Admission

The court shall make a finding within fifteen (15) days of an admission:

- a) that the admission has been accepted and allegations of the petition have been proved, or
- b) that the admission has not been accepted.

Subd. 6 Future Proceedings

If the court accepts an admission and makes a finding that the allegations of the petition are proved the court shall schedule further proceedings pursuant to Rule 30.

If the court does not accept the admission the court shall schedule further proceedings pursuant to Rule 21.01, 21.02 and 25 or 27.

RULE 22

SETTLEMENT DISCUSSIONS

22.01 Generally

For the purpose of achieving the objectives of the juvenile court, settlement discussions may be utilized.

22.02 Procedure

The county attorney may enter into settlement discussions and reach a settlement agreement with the child only through the child's counsel and may not enter into settlement discussions with a child not represented by counsel unless the parent(s) or guardian are present with the child.

The child's counsel may make a settlement agreement only with the consent of the child and shall ensure that the decision to enter into a settlement agreement is made by the child.

The court shall require disclosure of any settlement agreement in advance of an admission of the allegations of the petition. When the child enters an admission, the court shall reject or accept the admission on the terms of the settlement agreement. The court may postpone its acceptance or rejection until it has received a pre-disposition report. If the court rejects the settlement agreement, it shall advise the child, child's counsel, child's parent(s) or guardian, if present, and the

county attorney of this decision on the record and shall call upon the child to either affirm or withdraw the admission.

22.03 Settlement Agreement on Record

All terms of a settlement agreement shall be entered on the record.

22.04 Settlement Agreement Not Admissible

If the child enters an admission which is rejected or which is withdrawn, the admission, the settlement discussions and the settlement agreement shall not be admissible in any subsequent proceeding against the child.

22.05 Settlement Agreement Not to Include Disposition Recommendation

Settlement agreements shall not include recommendations as to disposition unless permitted by court rule.

RULE 23

ADVISORY BY COUNTY ATTORNEY OF EVIDENCE, IDENTIFICATION
PROCEDURE AND ADDITIONAL OFFENSES

23.01 Evidence and Identification Procedures

Pursuant to Rule 23.04, the county attorney shall advise the child's counsel of:

- a) any evidence against the child obtained as a result of a search, search and seizure, wiretapping or any form of electronic or mechanical eavesdropping, and
- b) any confessions, admissions, or statements in the nature of confessions made by the child, and
- c) any evidence against the child discovered as a result of confessions, admissions or statements in the nature of confessions made by the child, and
- d) any identification procedures involving the child, including but not limited to line-ups or other observations of the child and the exhibition of photographs of the child.

23.02 Additional Offenses

Pursuant to Rule 23.04, the county attorney shall advise the child's counsel of any additional acts governed by Minn. Stat 260.015 Subd. 5, 19, 20, 21, 22 or 23, the evidence of which may be offered at the trial under any exceptions to the general exclusionary rule. Such additional acts shall be described with sufficient particularity to enable the child to prepare for the trial.

The advisory need not include acts for which the child has been the subject of a hearing, or that may be offered in rebuttal of character witnesses for the child or as a part of the occurrence or episode out of which the petition against the child arose.

23.03 Advisory

Any advisory required by this rule shall be in writing and may be given either personally or by mail to the last known residential or business address of the child's counsel or by leaving it at this address with a person of suitable age and discretion then residing or working there. If the child is not represented by counsel any advisory required by this rule shall be in writing and may be given either personally or by mail to the last known residential address of the child or by leaving it at this address with a person of suitable age and discretion then residing there.

23.04 Timing

Any advisory required by this rule shall be made within five (5) days of the county attorney being notified by the court of a denial of the allegations of a petition or as soon thereafter as the information which must be provided becomes known to the county attorney.

RULE 24

DISCOVERY

24.01 Disclosure by County AttorneySubd. 1 Disclosure by County Attorney Without Order of Court

Without order of the court following the filing of a petition, the county attorney upon request for disclosure by the child's counsel shall within five (5) days of the receipt of the request, make the following disclosures.

(A) Trial Witnesses

The county attorney shall disclose to the child's counsel the names and addresses of the persons whom the county attorney intends to call as witnesses at the trial or reference hearing, together with their prior record of adult convictions, any prior record of allegations of delinquency which have been proved and any prior delinquency adjudications within the actual knowledge of the county attorney. The county attorney shall permit the child's counsel to inspect and copy the witnesses' relevant written or recorded statements and any written summaries of the substance of relevant oral statements made by the witnesses to the county attorney or agents of the county attorney within the knowledge of the county attorney.

(B) Statements of Child and Accomplices

The county attorney shall disclose and permit the child's counsel to inspect and copy any relevant written or

recorded statements made by the child and accomplices within the possession or control of the county attorney, the existence of which is known by the county attorney, and shall provide the child's counsel with the substance of any oral statements made by the child and accomplices which the county attorney intends to offer in evidence at the trial or reference hearing.

(C) Documents and Tangible Objects

The county attorney shall disclose and permit the child's counsel to inspect and copy books, papers, documents, photographs and tangible objects which the county attorney intends to introduce in evidence at the trial or reference hearing, or which were obtained from or belong to the child or concerning which the county attorney intends to offer evidence at the trial or reference hearing. The county attorney shall also permit the child's counsel to inspect and photograph buildings or places concerning which the county attorney intends to offer evidence at the trial or reference hearing.

(D) Reports of Examinations and Tests

The county attorney shall disclose and permit the child's counsel to inspect and copy any results or reports of physical or mental examinations, scientific tests, experiments or comparisons made in connection with the particular matter.

(E) Record of the Child

The county attorney shall inform the child's counsel of any prior allegations of delinquency which have been proved and of prior adjudications of delinquency of the child known to the county attorney provided the child's counsel informs the county attorney of the child's record of prior allegations of delinquency which have been proved and any prior adjudications of delinquency known to the child and the child's counsel.

(F) Exculpatory Information

The county attorney shall disclose to the child's counsel any material or information within the possession and control of the county attorney that tends to disprove the allegation that the child has committed the alleged act.

(G) Scope of the County Attorney's Obligations

The county attorney's obligations under this rule extend to material and information in the possession or control of members of the county attorney's staff and of any others who have participated in the investigation or evaluation of the matter and who either regularly report or in the particular matter reported to the county attorney's office.

Subd. 2 Disclosure Upon Order of Court

Upon motion of the child's counsel with notice pursuant to Rule 9 to the county attorney, the court at any time

before trial may require the county attorney to disclose to the child's counsel and to permit the inspection, copying or testing of any relevant materials and information not subject to disclosure without order of the court under Rule 24.01, Subd. 1, provided, however, a showing is made that the information relates to the allegations or a reduction of culpability of the child as to the allegations of delinquency or to a reference determination pursuant to Rule 32.

Subd. 3 Information Not Subject to Disclosure by County Attorney

(A) Opinions, Theories or Conclusions

Unless otherwise provided by these rules, any legal research, records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the county attorney or members of the county attorney's staff or officials or official agencies participating in the matter are not subject to disclosure.

(B) Reports

Except as provided in Rule 24.01, Subd. 1, (C)-(F), reports, memoranda or internal documents made by the county attorney or members of the county attorney's staff or by agents of the county attorney in connection with the matter are not subject to disclosure.

(C) Prosecution Witnesses Under County Attorney's Certificate

The information relative to the witnesses and persons described in Rules 24.01, Subd. 1 (A) and (B), shall not be

subject to disclosure if approved by the court when the county attorney files a written certificate with the court that to do so may subject the witnesses or persons or others to physical harm or coercion, provided, however, that non-disclosure under this rule shall not extend beyond the time the witnesses are sworn to testify.

24.02 Disclosure by Child

Subd. 1 Information Subject to Discovery Without Order of Court

Without order of the court, following the filing of a petition, the child's counsel on request of the county attorney shall, within five (5) days of the receipt of the request, make the following disclosures.

(A) Documents and Tangible Objects

The child's counsel shall disclose and permit the county attorney to inspect and copy books, papers, documents, photographs and tangible objects which the child intends to introduce in evidence at the trial or reference hearing or concerning which the child intends to offer evidence at the trial or reference hearing, and shall also permit the county attorney to inspect and photograph buildings or places concerning which the child intends to offer evidence at the trial or reference hearing.

(B) Reports of Examinations and Tests

The child's counsel shall disclose and permit the county attorney to inspect and copy any results or reports of physical or mental examinations, scientific tests,

experiments and comparisons made in connection with the particular matter within the possession or control of the child which the child intends to introduce in evidence at the trial or reference hearing or which were prepared by a witness whom the child intends to call at the trial or reference hearing when the results or reports relate to the testimony of the witness.

(C) Notice of Defense, Witness for the Child and Record

(1) Notice of Defenses

The child's counsel shall inform the county attorney in writing of any defense, other than that of a denial, on which the child intends to rely at the trial, including but not limited to the defenses of self-defense, entrapment, mental illness or deficiency, duress, alibi, double jeopardy, statute of limitations, collateral estoppel, a defense pursuant to Minn. Stat. 609.035 or intoxication.

(2) Witnesses for the Child

The child's counsel shall provide the county attorney with the names and addresses of persons whom the child intends to call as witnesses at the trial or reference hearing together with their prior record of adult convictions, any prior record of proven allegations of delinquency and any prior delinquency adjudications within the actual knowledge of the child's counsel.

(3) Statements of Witnesses for the Child

The child's counsel shall permit the county attorney to inspect and copy any relevant written or recorded statements of the persons whom the child intends to call as witnesses at the trial or reference hearing and which are within the possession or control of the child's counsel and shall permit the county attorney to inspect and copy any written summaries within the knowledge of the child or the child's counsel of the substance of any oral statements made by such witnesses to the child's counsel or obtained by the child at the direction of counsel.

(4) Alibi

If the child intends to offer evidence of an alibi, the child's counsel shall also inform the county attorney of the specific place or places where the child contends the child was when the alleged delinquent act occurred and shall inform the county attorney of the names and addresses of the witnesses the child intends to call at the trial in support of the alibi.

(5) Record

The child's counsel shall inform the county attorney of any prior allegations of a delinquency which have been proved and any prior adjudications of delinquency of the child provided the county attorney

informs the child's counsel of the record of prior allegations of delinquency which have been proved and of any prior delinquency adjudications known to the county attorney.

Subd. 2 Discovery Upon Order of Court

(A) Discovery Procedures With Child

On the motion of the county attorney with notice pursuant to Rule 9 to the child's counsel and a showing that one or more of the following procedures will be of material aid in determining whether the child committed the alleged act or the court should order reference pursuant to Rule 32, the court at any time before a trial or reference hearing may, subject to constitutional limitations, order the child to:

- a) appear in a line-up, or
- b) speak for identification by witnesses to an offense or for the purpose of taking voice prints, or
- c) be fingerprinted or permit palm prints or footprints to be taken, or
- d) permit measurements of the child's body to be taken, or
- e) pose for photographs not involving re-enactment of a scene, or
- f) permit the taking of samples of blood, hair, saliva, urine and other materials of the child's body which involve no unreasonable intrusion, or

- g) provide specimens of handwriting, or
- h) submit to reasonable physical or medical inspection of the child's body.

(B) Notice of Time and Place of Discovery Procedures With Child

Whenever the personal appearance of the child is required for procedures ordered pursuant to Rule 24.02, Subd. 2(A), the county attorney shall inform the child's counsel of the time and place of the procedure.

(C) Medical Supervision

Blood tests shall be conducted under medical supervision and the court may require medical supervision for any other test ordered pursuant to this rule when the court deems such supervision necessary. Upon motion of the child's counsel, the court may order the child's appearance delayed for a reasonable time or may order that tests take place at the child's residence or some other convenient place.

(D) Notice of Results of Disclosure

The county attorney shall make available to the child's counsel the results of the discovery procedures provided by Rule 24.02, Subd. 2 (A) within five (5) days from the date the results become known to the county attorney, unless otherwise ordered by the court.

Subd. 3 Information Not Subject to Disclosure by Child

(A) Opinions, Theories or Conclusions

Unless otherwise provided by these rules, any legal research, records, correspondence, reports or memoranda to

the extent that they contain the opinions, theories, or conclusions of the child, the child's counsel, members of counsel's staff or counsel's agents participating in the representation of the child are not subject to disclosure.

(B) Reports

Except as provided by Rule 24.02, Subd. 1 (A) and (B) and (C) (2), (3), and (5), reports, memoranda or internal documents made by the child's counsel or members of counsel's staff, or counsel's agents in connection with the defense of the matter against the child are not subject to disclosure.

Subd. 4 Other Methods Not Excluded

The discovery procedures provided for by this rule do not exclude other lawful methods available for obtaining evidence.

24.03 Regulation of Discovery

Subd. 1 Investigations Not to be Impeded

(A) County Attorney

The county attorney or agents for the county attorney shall not advise persons having relevant material or information to refrain from discussing the case with opposing counsel or from showing opposing counsel any relevant materials nor shall they otherwise impede opposing counsel's investigation of the case.

(B) Child, Child's Counsel or Agents for Child's Counsel

The child, child's counsel, or agents for the child or child's counsel shall not advise persons having relevant

material or information to refrain from discussing the case with opposing counsel or from showing opposing counsel any relevant materials nor shall they otherwise impede opposing counsel's investigation of the case except the child counsel's may:

- i) advise the child that the child need not talk to anyone, and
- ii) advise the child's parent(s) and guardian that they may refrain from discussing any relevant material or information obtained as a result of privileged communication between the child and child's counsel.

Subd. 2 Continuing Duty to Disclose

If, after compliance with any discovery rule or order, the county attorney or the child's counsel discovers additional material, information or witnesses subject to disclosure, the county attorney or the child's counsel shall promptly notify the opposing side of the existence of the additional material or information and the identity of the witnesses.

The county attorney and the child's counsel have a continuing duty at all times before and during trial to supply the materials and information required by these rules.

Subd. 3 Time, Place and Manner of Discovery and Inspection

An order of the court permitting discovery shall specify the time, place and manner of making the discovery and

inspection permitted and may prescribe such terms and conditions as are just.

Subd. 4 Custody of Materials

Any materials furnished to the county attorney or the child's counsel under discovery rules or court orders shall remain in the custody of the county attorney or the child's counsel and shall be used only for the purpose of the matter and shall be subject to such other terms and conditions as the court may prescribe.

Subd. 5 Protective Orders

Upon a showing of reasonable cause, the court may at any time order that specified disclosures be restricted or deferred or make such other order as is appropriate. However, all materials and information to which the county attorney or the child's counsel is entitled must be disclosed in time to afford the opportunity to make beneficial use of it.

Subd. 6 Excision

When some parts of certain material are discoverable under these rules and other parts are not discoverable, as much of the material shall be disclosed as is consistent with the discovery rules. Material excised pursuant to judicial order shall be sealed and preserved in the records of the court to be made available to the reviewing court in the event of an appeal or habeas corpus proceeding.

Subd. 7 Sanctions(A) Continuance or Order

If at any time it is brought to the attention of the court that the county attorney, the child or child's counsel has failed to comply with an applicable discovery rule or order, the court may upon motion and notice, pursuant to Rule 9, order discovery or inspection, grant a continuance, or enter such order as it deems just in the circumstances.

(B) Contempt

Any person who willfully disobeys a court order under these discovery rules may be held in contempt.

Subd. 8 Expense

If the child or the parent(s) of the child cannot afford the costs of discovery, these costs will be at public expense in whole or in part depending on the ability of the child or the parent(s) of the child to pay.

24.04 DepositionsSubd. 1 Generally

Whenever there is a reasonable probability that the testimony of a prospective witness will be used at a trial pursuant to Rule 27 or at a reference hearing pursuant to Rule 32, and:

- a) there is a reasonable probability the witness will be unable to be present or to testify at the trial or hearing because of the witness's existing physical or mental illness, infirmity or death, or

b) the person requesting an order to take the deposition has been unable to procure the attendance of the witness by subpoena, order of the court, or other reasonable means, or

c) there is a stipulation by counsel, or

d) for any other reason accepted by the court,

the court may at any time after the petition is filed, upon motion and notice pursuant to Rule 9, order that the testimony of that witness be taken.

The court may order that the deposition be taken orally before any designated person authorized to administer oaths and that any designated book, paper, document, record, recording or other material not privileged, be produced at the same time and place. The order shall direct the child to be present at the taking of the deposition.

Subd. 2 Failure to Appear

If a child who is not detained fails to appear at the deposition without reasonable excuse after having received notice, the deposition may be taken and used to the same extent as though the child had been present.

Subd. 3 Procedure

(A) Oral Deposition

Depositions shall be taken upon oral examination.

(B) Oath and Record

The witness shall be put on oath and a verbatim record of the testimony shall be made in the manner directed by the court.

In the event the court orders that the testimony at a deposition be recorded by other than stenographic means, the order shall designate the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If this order is made, the county attorney or the child's counsel may nevertheless arrange to have a stenographic transcription made at their own expense.

(C) Scope and Manner of Examination -- Objections, Motion to Terminate

(1) Consent Required

In no event shall the deposition of a child who is the subject of the delinquency or petty petition be taken without the child's consent pursuant to Rule 6 if the child is physically restrained or pursuant to Rule 15.03.

(2) Scope and Manner of Taking

The scope and manner of examination and cross-examination in the taking of a deposition to be used at trial shall be the same as that allowed at the trial.

The scope and manner of examination and cross-examination in the taking of a deposition to be used at a reference hearing shall be the same as would be allowed at a reference hearing.

(3) Objections

All objections made at the time of the examination to the qualifications of the person taking the deposition, or to the manner of taking it, or to the evidence presented or to the conduct of any person present at the depositions and any other objection to the proceedings shall be recorded by the person before whom the deposition is taken. Evidence objected to shall be taken subject to the objections.

(4) Limitation upon Motion

At any time, on motion of the child's counsel or the county attorney, or of the deponent, the court may limit the taking of the deposition to that which is commensurate in cost and duration with the needs of the case, the resources available and substantiality of the issues.

At any time during the taking of the deposition, on motion of the child's counsel or the county attorney, or of the deponent, and upon a showing that the examination is being conducted in bad faith or in such manner as to annoy, embarrass or oppress the deponent, the child, the child's counsel, or county attorney or to elicit privileged testimony, the court which ordered the deposition taken may order the person conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of taking the deposition by ordering as follows:

a) that certain matters not be inquired into or that the scope of examination be limited to certain matters, or

b) that the examination be conducted with no one present except persons designated by the court.

Upon demand of the child's counsel, the county attorney or the deponent, the taking of the deposition shall be suspended for the time necessary to move for the order.

Subd. 4 Use of Deposition

(A) Unavailability of Witness

At any hearing, all or a part of a deposition so far as otherwise admissible under the rules of evidence may be used as substantive evidence if it appears that:

i) the witness is unable to be present or to testify at the trial or hearing because of the witness's existing physical or mental illness, infirmity or death, or

ii) the person offering the deposition has been unable to procure the attendance of the witness by subpoena, order of the court, or other reasonable means, or

iii) there is a stipulation by counsel, or

iv) for any other reason accepted by the court.

(B) Inconsistent Testimony

Any deposition may also be used by the child's counsel

or the county attorney for the purpose of contradicting or impeaching the testimony of the deponent as a witness. A deposition may not be used if it appears that the absence of the witness was procured or caused by the person offering the deposition, unless part of the deposition has previously been offered.

(C) Substantive Evidence

A deposition may be used as substantive evidence so far as otherwise admissible under the rules of evidence, if the witness refuses to testify despite an order of the court to do so.

Subd. 5 Transcription, Certification and Filing

When the testimony is fully transcribed, the person before whom the deposition was taken shall certify on the deposition that the witness was duly sworn and that the deposition is a verbatim record of the testimony given by the witness. That person shall then securely seal the deposition in an envelope endorsed with the title of the case and marked "Deposition of (here insert name of witness)" and shall promptly file it with the court in which the case is pending or send it by registered or certified mail to the clerk thereof for filing.

Upon the request of the child's counsel or the county attorney, documents and other things produced during the examination of a witness, or copies thereof, shall be

marked for identification and annexed as exhibits to the deposition, and may be inspected and copied by the child's counsel and the county attorney. The person taking the deposition shall mark the exhibits, and after giving opposing counsel an opportunity to inspect and copy them, return the exhibits to the person producing them. The exhibits may then be used in the same manner as if annexed to the deposition.

Subd. 6 Expense of Depositions

If the child or the parent(s) of the child cannot afford the costs of depositions, these costs shall be paid at public expense in whole or in part, depending on the ability of the child or the parent(s) of the child to pay.

RULE 25

PRETRIAL CONFERENCE

25.01 Timing

Upon motion of the child's counsel, the county attorney or upon its own motion, the court may order a pretrial conference pursuant to rules of court adopted by the court.

Pretrial issues and motions required to be decided before trial shall be heard immediately prior to trial whenever there has been no pretrial conference unless the court orders otherwise for good cause.

25.02 Evidentiary Issues

The court shall determine if there are any other constitutional, evidentiary, procedural or other issues and schedule a time for these issues to be heard pursuant to Rule 26.

RULE 26

EVIDENTIARY HEARING

26.01 Scheduling of Evidentiary Hearing

An evidentiary hearing to determine issues raised pursuant to Rule 23 or 25 or by motion of the child's counsel or the county attorney if no pretrial conference is held:

a) may be held by the court at any time before the trial on its own motion, the motion of the county attorney or the child's counsel, and

b) shall be held by the court before the trial upon motion of the county attorney accompanied by a showing that a pretrial evidentiary hearing is necessary to preserve the right of appeal for the county attorney.

Any issue not determined prior to trial shall be determined as part of the trial.

26.02 Evidence Admissible

The court shall admit only such evidence as would be admissible in a criminal proceeding.

26.03 Witnesses

The child's counsel and the county attorney may call witnesses and offer evidence and may cross-examine the witnesses of the other.

RULE 27

TRIALS

27.01 Generally

A trial is a hearing held to determine if the allegations of the petition are proved.

27.02 Timing

Subd. 1 Commencement of Trial

A trial shall commence:

- a) for a child held in detention, within thirty (30) days from the date of the denial of the allegations of the petition, or
- b) for a child not held in detention, within sixty (60) days from the date of the denial of the allegations of the petition, unless good cause is shown by the county attorney or the child's counsel why the child should not be brought to trial within sixty (60) days.

Subd. 2 Dismissal

If the trial has not commenced within the time set forth above or a continuance has not been granted, the petition shall be dismissed.

Subd. 3 Effect of Mistrial; Order of New Trial

Upon a declaration of a mistrial, or an order of the trial court or a reviewing court granting a new trial, a new trial shall be commenced:

- a) within thirty (30) days for a child held in detention, or

- b) within sixty (60) days for a child not held in detention.

27.03 Procedure

Subd. 1 Initial Procedure

At the beginning of the trial if the court has not previously determined the following information at a prior hearing, the court shall:

- a) verify the name, age and residence of the child who is the subject of the matter, and
- b) determine whether all necessary persons are present and identify those present for the record, and
- c) determine whether notice requirements have been met and if not whether the affected persons waive notice, and
- d) if the child appears without counsel, explain to the child and the child's parent(s) and guardian, if present, the child's right to counsel, the right to remain silent and other basic rights, and
- e) if the child appears without counsel, explain to the child and the child's parent(s) and guardian, if present, the purpose of the hearing and the possible consequences of the hearing.

Subd. 2 Conduct and Procedure

(A) Trial Rights

The child's counsel and the county attorney shall have the right to:

- i) present evidence, and
- ii) present witnesses, and

- iii) cross-examine witnesses, and
- iv) present arguments in support of or against the allegations of the petition.

(B) Trial Order

The order of the hearing shall be as follows:

- i) the county attorney may make an opening statement, confining the statement to the facts that the state expects to prove, and
- ii) the child's counsel may make an opening statement, or may make it immediately before offering evidence. The statement shall be confined to a statement of the defense and the facts expected to be proved, and
- iii) the county attorney shall offer evidence in support of the petition, and
- iv) the child's counsel may offer evidence in defense of the child, and
- v) the county attorney may offer evidence in rebuttal of the defense evidence, and the child's counsel may then offer evidence in rebuttal of the county attorney's rebuttal evidence. In the interests of justice the court may permit either the county attorney or the child's counsel to offer evidence upon the original case, and
- vi) at the conclusion of the evidence, the county attorney may make a closing argument, and
- vii) the child's counsel may make a closing argument.

27.04 Evidence

The court shall admit only such evidence as would be admissible in a criminal trial.

27.05 Standard of Proof

To be proved at trial, allegations in the delinquency or petty petition must be proved beyond a reasonable doubt.

27.06 Finding on Petition

Within fifteen (15) days of the conclusion of the trial, the court shall make a finding that the allegations in the petition have or have not been proved. For good cause, the court may extend this period for an additional fifteen (15) days. All findings shall be in writing or on the record. The court shall dismiss the petition if the allegations have not been proved.

27.07 Further Proceedings

If the court makes a finding that the allegations of the petition have been proved the court shall schedule further proceedings pursuant to Rule 29.

RULE 28

MOTION FOR NEW TRIAL

28.01 New Trial

Subd. 1 Grounds

The court on written motion of the child's counsel may grant a new trial on any of the following grounds:

- a) if required in the interests of justice, or
- b) irregularity in the proceedings of the court, or any court order or court abuse of discretion, whereby the child was deprived of a fair trial, or
- c) misconduct of the county attorney, or
- d) accident or surprise which could not have been prevented by ordinary prudence, or
- e) material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the trial, or
- f) errors of law occurring at the trial and objected to at the time or if no objection is required, assigned in the motion, or
- g) the finding that the allegations of the petition are proved is not justified by the evidence or is contrary to law.

Subd. 2 Basis of Motion

A motion for a new trial shall be made and heard on the files, exhibits and minutes of the court. Pertinent facts

that would not be a part of the minutes may be shown by affidavit except as otherwise provided by these rules. A full or partial transcript of the court reporter's notes of the testimony taken at the trial or other verbatim recording thereof may be used on the hearing of the motion.

Subd. 3 Time for Motion

Notice of a motion for a new trial shall be served pursuant to Rule 9 within fifteen (15) days after the finding that the allegations of the petition are proved. The motion shall be heard within thirty (30) days after the finding that the allegations of the petition are proved, unless the time for the hearing is extended by the court for good cause shown within the thirty (30) day period.

Subd. 4 Time for Serving Affidavits

When a motion for new trial is based on affidavits, they shall be served with the notice of motion. The county attorney shall have ten (10) days after such service in which to serve opposing affidavits pursuant to Rule 9. The period may be extended by the court upon an order extending the time for hearing under this rule. The court may permit reply affidavits.

28.02 Joinder of Motions

Any motion to vacate the findings that the allegations of a petition are proved shall be joined with a motion for a new trial.

28.03 New Trial on Court's Own Motion

The court on its own motion within fifteen (15) days after the findings that the allegations of the petition are proved, with the consent of the child, may order a new trial upon any of the grounds specified in Rule 28.01, Subd. 1.

RULE 29

ADJUDICATION

29.01 Adjudication

If the court finds that the allegations of the petition are proved, the court shall adjudicate or withhold adjudication of the child as delinquent or an offender pursuant to Minn. Stat. 260.015, Subd. 19, 20, 21, 22 or 23 on each of the allegations proved.

29.02 Withholding of Adjudication

When it is in the best interests of the child and the protection of the public to do so, the court may withhold an adjudication.

If the child is not held in detention, the court may withhold an adjudication for a period not to exceed ninety (90) days from the findings that the allegations of the petition have been proved. The court may extend the withholding of adjudication for an additional successive period not to exceed ninety (90) days.

If the child is held or is to be held in detention, the court may withhold an adjudication and enter an order to hold the child in detention for a period not to exceed fifteen (15) days from the findings that the allegations of the petition have been proved. If the child is in detention, this withholding of adjudication must be for the purpose of completing any consideration, or any investigation or examination ordered pursuant to Rule 30.03, Subd. 1. The court may extend this withholding of adjudication and enter an order to hold the child in

detention for an additional successive period not to exceed fifteen (15) days.

During any withholding of adjudication of delinquency the court may enter an order pursuant to Minn. Stat. 260.185, Subd. 1 (a) or (b).

During any withholding of adjudication of a petty matter the court may enter an order pursuant to Minn. Stat. 260.194, Subd. 1(a), (b), (e), or (g) or Minn. Stat. 260.195 Subd. 3.

29.03 Further Proceedings

If the court makes an adjudication the court shall schedule further proceedings pursuant to Rule 30.

RULE 30

DISPOSITION

30.01 Generally

After a child has been adjudicated, pursuant to Rule 29, the court may conduct a disposition hearing immediately or continue the matter for a disposition hearing at a later time.

30.02 Timing

The court shall make a disposition of the matter:

- a) within forty-five (45) days from the adjudication of delinquency for a child not held in detention, and in no matter longer than one-hundred and eighty (180) days from the findings that the allegations of the petition have been proved, or
- b) within fifteen (15) days from the adjudication of a child held in detention, and in no matter longer than thirty (30) days from the findings that the allegations of the petition have been proved.

30.03 Pre-Disposition ReportsSubd. 1 Investigations and Evaluations

The court may order an investigation of the personal and family history and environment of the child, and medical, psychological or chemical dependency evaluations of the child:

- a) at any time after the allegations of a petition have been admitted or proved, or

- b) at any time before the allegation of a petty petition have been proved, or
- c) before the allegations of a delinquency petition have been proved with the consent of the child, child's counsel and the parent(s) or guardian of the child.

Subd. 2 Placement

With the consent of the child at any time or without consent of the child after the allegations of a petition alleging the child to be delinquent pursuant to Minn. Stat. 260.015, Subd. 5 (a) or (b) have been proved, the court may place the child with the consent of the Commissioner of Corrections in an institution maintained by the Commissioner of Corrections for the detention, diagnosis, custody and treatment of persons adjudicated to be delinquent in order that the investigation and evaluations may be conducted pursuant to Rule 30.03, Subd. 1.

Subd. 3 Advisory

The court shall advise the child, the child's counsel, the county attorney and the child's parent(s) and guardian and their counsel present in court that a pre-disposition investigation is being ordered, the nature of the evaluations to be included and the date when the reports resulting from the investigation are to be filed with the court.

Subd. 4 Filing and Inspection of Reports

The person making the report shall file the report twenty-four (24) hours prior to the time scheduled for the disposition hearing and the reports shall be available for inspection and copying by the child's counsel, the county attorney and counsel for the parent(s) and guardian of the child. When the child or the child's parent(s) and guardian are not represented by counsel, the court may limit the inspection of reports by the child or the child's parent(s) and guardian if the court determines it is in the best interest of the child.

Subd. 5 Discussion of Contents of Reports

The person preparing the pre-disposition report shall discuss the contents of the report with the child and the parent(s) and guardian of the child unless the child's counsel or counsel for the parent(s) and guardian of the child objects on the record or in a written statement filed with the court to a complete discussion of the report with their client.

Subd. 6 Discussion of Content of Report -- Limitation by Court

The court may limit the extent of the discussion of the contents of the report with the child, the parent(s) and guardian of the child by the person preparing the pre-disposition report, if the court finds the limitation to be in the best interests of the child. The limitation may be made on the court's own motion or upon the objection of the child's counsel or the counsel for the parent(s) and

guardian of the child or on the written request of the person making the pre-disposition report.

30.04 Hearing

Subd. 1 Procedure

Disposition hearings shall be separate from the hearing at which the petition is proved and may be held immediately following the hearing at which the allegations of the petition are proved.

Disposition hearings shall be conducted in an informal manner designed to facilitate opportunity for all participants to be heard.

Subd. 2 Evidence

The court may receive any information, except privileged communication, that is relevant to the disposition of the cause including reliable hearsay and opinions.

30.05 Order

The disposition order made by the court shall contain written findings of fact to support the disposition ordered and shall also set forth in writing the following information:

- a) why the best interests of the child are served by the disposition ordered, and
- b) what alternative dispositions were recommended to the court and why such recommendations were not ordered.

30.06 Informal ReviewSubd. 1 Timing

The court shall review all disposition orders except disposition to the Commissioner of Corrections at least every six (6) months.

Subd. 2 Modification of Disposition

Upon review the court may modify the disposition when:

a) there appears to be a change of circumstances sufficient to indicate that a change of disposition is necessary, or

b) it appears that a disposition is inappropriate.

The court shall inform the child, the child's counsel, the county attorney and the child's parent(s) and guardian and their counsel in writing of the modification of disposition within ten (10) days of the modification and of the right to a formal review hearing pursuant to Rule 30.07.

30.07 Formal ReviewSubd. 1 Formal Review Hearing Upon Written Objection to Modification

The child's counsel, the county attorney or the counsel for the parent(s) and guardian of the child may object in writing to a modification of disposition and demand a formal review hearing by filing a written objection with the court within ten (10) days of being informed of the modification.

Upon an objection to a modification of disposition being filed with the court, the court shall order a formal review hearing be held within ten (10) days of the filing of the objection.

Subd. 2 Formal Review Hearing Upon Written Request

The child's counsel, the county attorney or the counsel for the parent(s) and guardian of the child may request a formal review hearing or the court may hold a formal review hearing on its own motion when:

- a) there appears to be a change of circumstances sufficient to indicate that a change of disposition is necessary, or
- b) it appears that the disposition is inappropriate.

A request for a formal review hearing shall be in writing and shall list the reasons supporting the request. Upon a request for a formal review hearing being filed with the court, the court shall within ten (10) days determine if there is good cause to believe that (a) or (b) above exists. If the court finds from the request for a formal review that there is good cause to believe that (a) or (b) above exists, the court shall hold a formal review hearing within ten (10) days of the finding.

If the court finds from the request for a formal review that there is not good cause to believe that (a) or (b) above exists, the court shall inform the person making the request that the request has been denied.

Subd. 3 Notice

Notice of the formal review hearing shall be given to the child, the child's counsel, the county attorney and the

parent(s) and guardian of the child and their counsel,
pursuant to Rule 9.

Subd. 4 Procedure and Evidence

Formal review hearings shall be conducted pursuant to
Rule 30.04.

RULE 31

APPEAL

31.01 Appeal by Child, Parent(s), or Guardian of the ChildSubd. 1 Appealable Orders(A) Appeal by Child

A child may appeal from a final order of the court.

(B) Appeal by Parent(s) or Guardian of the Child

If the parent(s) or guardian participate separately pursuant to Rule 3.03, Subd. 2, they may appeal from a final order of the court which occurs after the allegations of the petition have been proved.

Subd. 2 Procedure

The procedure upon appeal by the child or the parent(s) or guardian of the child shall be as follows.

(A) Stay

An appeal does not stay the order of the court but the reviewing court may in its discretion and upon application stay the order.

(B) Notice of Appeal

Within thirty (30) days of the filing of the appealable order, the child's counsel or counsel for the parent(s) or guardian of the child shall file a written notice of appeal with the clerk of court where the matter was heard. Within five (5) days after filing the notice of appeal, that notice shall be served upon the county attorney and the child's counsel or counsel for child's parent(s) or

guardian when the child or child's parent(s) or guardian have not filed the appeal. Proof of such service must be filed with the clerk of court not more than three (3) days after such service. Failure to file proof of service does not deprive the reviewing court of jurisdiction over the appeal, but is grounds only for such action as the reviewing court deems appropriate, including dismissal of the appeal.

(C) Transcript, Affidavits, Papers, Files, Exhibits

The court reporter shall file with the clerk of court the original transcript and affidavits of delivery of the transcript to the county attorney and the child's counsel and to the counsel for the parent(s) or guardian of the child when they have appealed. The clerk of court shall transmit to the reviewing court any original papers, files and exhibits.

31.02 Appeal by County Attorney

Subd. 1 Appealable Orders

The county attorney may appeal from any pretrial order of the court except an order dismissing a petition for lack of probable cause. The county attorney may not appeal until after the pretrial conference or pretrial evidentiary hearing has been held, whichever is held later, and all issues raised in the pretrial conference or evidentiary hearing have been determined by the court. No appeal by the county attorney may be taken after jeopardy has attached.

Subd. 2 Procedure

The procedure upon appeal by the county attorney shall be as follows.

(A) Stay

Upon oral notice on the record or upon written notice filed with the court that the county attorney intends to appeal, the court shall order a stay of proceedings of five (5) days to allow time to perfect the appeal.

(B) Notice of Appeal

Within five (5) days after entry of the order staying the proceedings pursuant to Rule 31.02, Subd. 2(A), the county attorney shall file a written notice of appeal with the clerk of court where the matter was heard. Within five (5) days after filing the notice of appeal, that notice shall be served upon the child's counsel and counsel for child's parent(s) or guardian and proof of such service must be filed with the clerk of court not more than three (3) days after such service. Failure to file proof of service does not deprive the reviewing court of jurisdiction over the county attorney's appeal, but is grounds only for such action as the reviewing court deems appropriate, including dismissal of the appeal.

(C) Transcript, Affidavits, Papers, Files, Exhibits

The court reporter shall file with the clerk of court the original transcript and affidavits of delivery of the transcript to the county attorney and the child's counsel.

The clerk of court shall transmit to the reviewing court any original papers, files and exhibits.

(D) Attorney's Fees

Upon appeal by the county attorney, reasonable attorney's fees incurred shall be allowed to the child and shall be paid at public expense.

(E) Joinder

The county attorney may appeal from one or several of the pretrial orders joined in a single appeal.

(F) Effect on Case in Court

An appeal by the county attorney under this rule bars further appeal by the county attorney from orders existing at the time of appeal.

An appeal by the county attorney does not deprive the court of jurisdiction from any existing orders not included in this appeal.

Subd. 3 Cross-Appeal by Child

Upon appeal by the county attorney, the child's counsel may obtain review of any pretrial order which will adversely affect the child by filing a notice of cross-appeal with the clerk of the reviewing court within ten (10) days after service of notice of the appeal by the county attorney. Within five (5) days after the notice of cross-appeal is filed, the notice of cross-appeal shall be served upon the county attorney and counsel for the child's parent(s) and guardian by the child's counsel. Failure to

serve the notice does not deprive the reviewing court of jurisdiction over the child's cross-appeal, but is grounds only for such action as the reviewing court deems appropriate, including a dismissal of the cross-appeal.

31.03 Court Hearing Appeal

Subd. 1 Appeal from a District Court Juvenile Court

An appeal from a district court juvenile court is taken directly to the Supreme Court in the same manner in which appeals are taken in civil actions.

Subd. 2 Appeal from a County Probate-Juvenile Court

An appeal from a county probate-juvenile court is taken to the district court and shall be on the record in the same manner in which appeals are taken in civil actions.

RULE 32

REFERENCE OF DELINQUENCY MATTERS

32.01 Initiation of Reference Proceedings of Delinquency Matters

Proceedings to refer a delinquency matter pursuant to Minn. State. 260.125 may be initiated only upon motion of the county attorney after a delinquency petition has been filed, pursuant to Rule 19.

The motion shall include a statement of the grounds supporting the motion for reference.

Upon the filing of the motion for reference the court shall schedule a reference hearing to be held within thirty (30) days after the filing. The court may extend the hearing date for a period not to exceed an additional sixty (60) days for good cause shown.

32.02 Notice of Reference Hearing

A copy of the motion for reference, a copy of the delinquency petition, if not already served, and notice of the hearing shall be served pursuant to Rule 9.

32.03 Reference Study

If probable cause has been shown, pursuant to Rule 19.03 or Rule 32.05, Subd. 1, the court, on its own motion or on the motion of the child's counsel or the county attorney, may order a social, psychiatric or psychological study concerning the child who is the subject of the reference.

Preparation costs and court appearance expenses for persons appointed by the court to conduct studies shall be paid at public expense.

The person making a report shall file the report forty-eight (48) hours prior to the time scheduled for the hearing.

The reports resulting from studies ordered pursuant to this rule shall be made available for inspection and copying by the child's counsel and the county attorney.

32.04 Hearing

Subd. 1 Initial Procedure by Court

At the beginning of the reference hearing if the court has not previously determined the following information at a prior hearing the court shall:

- a) verify the name, age and residence of the child who is the subject of the matter, and
- b) determine whether all necessary persons are present and identify those present for the record, and
- c) determine whether notice requirements have been met and if not whether the affected persons waive notice, and
- d) if the child appears without counsel, explain to the child and the child's parent(s) and guardian, if present, the purpose of the hearing and the possible consequences of the hearing.

Subd. 2 Conduct and ProcedureA) Reference Hearing Rights

The child's counsel and the county attorney shall have the right to:

- i) present evidence, and
- ii) present witnesses, and
- iii) cross-examine witnesses, and
- iv) present arguments for or against reference.

B) Order of Reference Hearing

The order of the hearing shall be as follows:

- i) the county attorney may make an opening statement, confining the statement to the facts that the county expects to prove, and
- ii) the child's counsel may make an opening statement, or may make it immediately before offering evidence. The statement shall be confined to a statement of the defense and the facts expected to be proved, and
- iii) the county attorney shall offer evidence in support of the petition, and
- iv) the child's counsel may offer evidence in defense of the child, and
- v) the county attorney may offer evidence in rebuttal of the defense evidence, and the child's counsel may then offer evidence in rebuttal of the county attorney's rebuttal evidence. In the

interests of justice the court may permit either party to offer evidence upon the original case, and vi) at the conclusion of the evidence, the county attorney may make a closing argument, and vii) the child's counsel may make a closing argument.

32.05 Necessary Finding

The court may order a reference only if the court finds probable cause, pursuant to Rule 32.05, Subd. 1 and a demonstration by clear and convincing evidence that the child is not suitable for treatment or the public safety is not served, pursuant to Rule 32.05, Subd. 2.

Subd. 1 Probable Cause

A showing of probable cause to believe the child committed the offense alleged by the delinquency petition shall be made pursuant to Rule 11 of the Minnesota Rules of Criminal Procedure.

Subd. 2 Clear and Convincing

The county attorney shall demonstrated by clear and convincing evidence, that the child is not suitable for treatment or that the public safety is not served under the provisions of the laws relating to juvenile courts.

If a prima facie demonstration pursuant to Minn. Stat. 260.125, Subd. 3 has not been established or has been rebutted by significant evidence, the court, in making its determination as to whether the county attorney has demonstrated by clear and convincing evidence that the child is not suitable for treatment or that the public safety is not served under the provisions of the laws

relating to juvenile courts, shall consider the totality of the circumstances. This totality of the circumstances may include but is not limited to:

- a) the seriousness of the offense in terms of community protection,
- b) the circumstances surrounding the offense,
- c) whether the offense was committed in an aggressive, violent, premeditated or willful manner,
- d) whether the offense was directed against persons or property, the greater weight being given to an offense against persons, especially if personal injury resulted,
- e) the reasonably foreseeable consequences of the act,
- f) the absence of adequate protective and security facilities available to the juvenile treatment system,
- g) the sophistication and maturity of the child as determined by consideration of the child's home, environmental situation, emotional attitude and pattern of living,
- h) the record and previous history of the child,
- i) whether the child acted with particular cruelty or disregard for the life or safety of another,
- j) whether the offense involved a high degree of sophistication or planning by the child, and

k) whether there is sufficient time available before the child reaches age nineteen (19) to provide appropriate treatment and control.

32.06 Order

Subd. 1 Timing

Within fifteen (15) days of the conclusion of the hearing the court shall enter an order in which it directs either:

- a) retention of jurisdiction by the juvenile court, or
- b) reference of the alleged offense for prosecution.

For good cause, the court may withhold the entry of its order for an additional fifteen (15) days.

Subd. 2 Content

(A) Upon Referral

If the court orders a reference for adult prosecution, the order shall state:

- i) the alleged offense which is being referred, and
- ii) findings of fact and conclusions of law as to why the child is not suitable to treatment or the public safety is not served under the provisions of the laws relating to the juvenile court.

(B) Upon Retention

If the court decides not to order reference, the order shall contain in writing findings of fact and conclusions of law as to why a reference for prosecution was not ordered.

32.07 Retention of Matter by Juvenile CourtSubd. 1 Further Proceedings

If following a reference hearing the court retains jurisdiction further hearings shall be held pursuant to Rule 20.

Subd. 2 Objection to a Judge or Referee Presiding at Further Proceedings(A) Advisory

The judge or referee shall advise the child, child's counsel and the county attorney at the conclusion of the reference hearing or in separate notice that either the child's counsel or the county attorney may object to the participation of the judge or referee who heard the reference hearing presiding in further hearings.

(B) How and When Made

Objection to a judge or referee shall be made in writing and filed with the court within three (3) days after the child, child's counsel, and the county attorney have been informed that the further hearings have been assigned to the judge or referee who presided at the reference hearing.

(C) Effect of Objection

If there is an objection by the child's counsel or the county attorney, the judge or referee who conducted the reference hearing shall not preside at further hearings.

(D) Failure to Object

If an objection is not filed pursuant to Rule 32.07, Subd. 2 (B), the child and the county attorney are deemed to have consented to the assignment of the judge or referee.

32.08 Termination of Jurisdiction Upon Reference

Once the court enters an order referring an alleged violation for prosecution in the adult court the jurisdiction of the juvenile court terminates within 30 days or before if the prosecuting authority files notice of intent to prosecute.

RULE 33

PROCEEDINGS WHEN CHILD IS BELIEVED TO BE MENTALLY ILL OR
MENTALLY DEFICIENT

33.01 Competency to Proceed

No child shall be subject to a trial or reference hearing for any delinquent act or petty matter while mentally ill or mentally deficient so as to be incapable of understanding the proceedings or participating in the child's defense.

33.02 Proceedings

Subd. 1 Hearing Request

Whenever the court determines upon its own motion or upon the written request of the county attorney, the child's counsel or counsel for the parent(s) or guardian of the child that there is no reason to believe the child is not competent to proceed pursuant to Rule 33.01, Subd. 1, the court shall suspend the proceeding and schedule a hearing to determine the child's competency to proceed.

Subd. 2 Conduct of Hearing

Hearings shall be conducted in an informal manner designed to facilitate opportunity for all participants to be heard and to present comments concerning the mental illness or mental deficiency of the child.

The child's counsel and the county attorney shall have the right to:

- a) present evidence, and
- b) call and examine witnesses, and
- c) cross-examine witnesses, and
- d) present arguments.

The order of proceeding shall be determined by the court.

Subd. 3 Evidence

The court may receive any information that is relevant in determining whether the child is competent to proceed including reliable hearsay and opinions.

Subd. 4 Timing

The hearing shall commence within sixty (60) days of the filing of the written request or the petition shall be dismissed.

33.03 Finding

If the court finds the child is not competent to proceed, the court shall dismiss the petition without prejudice unless jeopardy has attached.

33.04 Notice

Notice of the hearing(s) and findings of the court shall be given, pursuant to Rules 9 and 10.

RULE 34

RECORDS

34.01 Generally

Juvenile court records include:

- a) all documents filed with the court, and
- b) all documents maintained by the court, and
- c) all reporter's notes and tapes, electronic recordings and transcripts of hearings and trials, and
- d) all documents maintained by juvenile probation officers, county home schools and county detention facilities.

34.02 Availability of Juvenile Court Records

Subd. 1 By Statute or Rule

Juvenile court records shall be available for inspection, copying and release as required by statute or these rules.

Subd. 2 No Order Required

(A) Court and Court Personnel

Juvenile court records shall be available to the court and court personnel.

(B) Child's Counsel and Guardian Ad Litem

Juvenile court records of the child shall be available for inspection, release to and copying by the child's counsel and guardian ad litem.

(C) County Attorney

Juvenile court records shall be available for inspection, release to and copying by the county attorney. However, if the matter has not had court action taken on it for over one (1) year, the court may require an ex-parte showing by the county attorney that inspection, release or copying of the court records is necessary and in the best interest of the child, the public safety, or the functioning of the juvenile court system.

(D) Counsel and Guardian Ad Litem for Child's Parent(s) or Guardian

Juvenile court records shall be available for inspection, release to or copying by counsel and guardian ad litem for the child's parent(s) or guardian.

Subd. 3 Court Order Required(A) Individuals or Agencies

The court may order juvenile court records to be made available for inspection, copying, disclosure or release, subject to such conditions as the court may direct, to:

- i) a representative of a state or private agency providing supervision or having custody of the child under order of the court, or
- ii) any individual for whom such record is needed to assist or to supervise the child in fulfilling a court order, or
- iii) any other person having a legitimate interest in the child or in the operation of the court or the child.

(B) Public

A court order is required before any inspection, copying, disclosure or release to the public of the record of a child. Before any court order is made the court must find that inspection, copying, disclosure or release is:

- i) in the best interests of the child, or
- ii) in the interests of public safety, or
- iii) necessary for the functioning of the juvenile court system, or
- iv) in the interests of the protection of the rights of a victim of a delinquent act.

The record of the child shall not be inspected, copied, disclosed or released to any present or prospective employer of the child or the military services.

34.03 Court Rule May Define Process

- All inspection and release of juvenile court records may be subject to individual court rules to provide for an efficient, just and orderly process of allowing inspection, copying, disclosure, or release.

RULE 35

TIME

35.01 Computation

Governed by Rule 65.

RULE 36

JUVENILE TRAFFIC OFFENDER

36.01 Applicability

Rule 36 and Rule 65 govern the procedure in the juvenile courts of the State of Minnesota for all juvenile non-delinquency traffic offender matters.

36.02 Procedure

The following rules govern the procedure for juvenile non-delinquency traffic matters.

Subd. 1 Referee

Governed by Rule 2, except Rule 2.04, Subd. 3(c).

Subd. 2 Right to Participate

(A) Right of Child

Governed by Rule 3.01.

(B) Right of County Attorney

Governed by Rule 3.02.

(C) Right of Parent(s) and Guardian

Governed by Rule 3.03, Subd. 1, paragraph 1.

Subd. 3 Counsel for Child

The court may appoint counsel to represent the child to be paid for at public expense in whole or in part depending on the ability of the child and the child's parent(s) to pay pursuant to Minn. Stat. 260.251.

Subd. 4 Warrant for Immediate Custody

(A) Warrant with Probable Cause

A warrant for immediate custody of the child may issue if the court finds from facts set forth in a notarized affidavit filed with the court or on the record that there is probable cause to believe:

- i) that a citation alleging a juvenile traffic violation has been filed with the court, and
- ii) the child has failed to appear after having been personally served with a summons, or
- iii) reasonable efforts to personally serve the child have failed, or
- iv) there is substantial likelihood that the child will fail to respond to a summons.

(B) Contents of Warrant for Immediate Custody

Governed by Rule 16.02.

(C) Execution of Warrant for Immediate Custody

Governed by Rule 16.03.

Subd. 5 Detention

Governed by Rule 36.02, Subd. 4 (A)(i) and Rule 18 except Rule 18.06, Subd. 1 (c), and Subd. 5 (a).

Subd. 6 Presence at Hearings

Governed by Rule 7.

Subd. 7 Privacy

Governed by Rule 8.

Subd. 8 Notice

Governed by Minn. Stat. 260.193, Subd. 5 and when not inconsistent, by Rule 9.

Subd. 9 Copies of Orders

Governed by Rule 10.

Subd. 10 Recording

Governed by Rule 11.

Subd. 11 Continuances and Advances

Governed by Rule 12.

Subd. 12 Subpoenas

Governed by Rule 13.

Subd. 13 Motions

Governed by Rule 14.

Subd. 14 Traffic Petition by Citation

(A) Drafting

A petition alleging a juvenile traffic offense may be a citation pursuant to Minn. Stat. 260.193. A petition alleging a juvenile traffic matter as a delinquency matter pursuant to Minn. Stat. 260.193, Subd. 2 shall be governed by Rules 1-35.

(B) Contents of Traffic Petition by Citation

Every traffic petition filed with the court shall contain:

- a) the name, date of birth, residence and post office address of the child, and

- b) the name, residence and post office address of a parent or guardian, or if no parent or guardian can be found, of the nearest known relative, and
- c) the date and place of the alleged violation, and
- d) a citation to the statute, ordinance, rule or regulation alleged to be violated.

Subd. 15 Arrest

Governed by Rule 20, except Rule 20.03, Subd. 1(e).

Subd. 16 Admission or Denial

(A) Generally

Governed by Rule 21.01.

(B) Denial

Governed by Rule 21.02, Subd. 1. When a denial is entered the court shall schedule further proceedings pursuant to Rule 36, Subd. 18 and 19.

(C) Admission

Before accepting an admission by the child the court shall determine whether the child understands all applicable rights. The court shall make the determinations governed by Rule 21.03, Subd. 1(a) and (d), Subd. 3, 4 and 5 on the record, or by written document signed by the child and counsel, if any, and filed with the court.

If the court accepts an admission and makes a finding that the allegations are proved the court shall schedule further proceedings pursuant to Rule 36, Subd. 21.

Subd. 17 Discovery

Governed by court rule or order.

Subd. 18 Pretrial Conference

Governed by court rule or order.

Subd. 19 Trials

Governed by Rule 27.

Subd. 20 Post-trial Motions

Governed by Rule 28.

Subd. 21 Disposition

A disposition hearing shall be held pursuant to Rule
30.04.

Subd. 22 Appeal

Governed by Rule 31.01, Subd. 1(A), Subd. 2, Rule 31.02
and Rule 31.03.

Subd. 23 Reference

Governed by Minn. Stat. 260.193, Subd. 7 and where not
inconsistent, by Rule 32.01, 32.02, 32.04 except Subd.
1(d), 32.06, 32.07 and 32.08.

Subd. 24 Records

Governed by Minn. Stat. 260.193, Subd. 9 and 10 and
where not inconsistent by Rule 34.

Subd. 25 Time

Governed by Rule 65.

RULE 37

SCOPE, APPLICATION, GENERAL PURPOSE AND CONSTRUCTION

37.01 Scope and Application

Rules 37 through 65 govern the procedure for all juvenile protection matters in the juvenile court of the State of Minnesota. Juvenile protection matters include all dependency, neglect, neglected and in foster care, termination of parental rights and review of out of home placement matters.

37.02 Purpose and Construction

These rules establish uniform practice and procedure for the juvenile courts of the State of Minnesota.

37.03 Indian Child Welfare Act Applicability

Juvenile protection matters concerning an Indian child shall where applicable be governed by the Indian Child Welfare Act, 25 USCA Chapter 21, sections 1901 - 1963, and by these rules when they are not inconsistent with the Indian Child Welfare Act.

RULE 38

REFEREE

38.01 Authorization to Hear Cases

A referee may hear, as authorized by statute, any matter under the jurisdiction of the court in the manner provided for the hearing of matters by the court.

38.02 Objection to Assignment of Referee

The county attorney and counsel for those persons who have the right to participate may object to a referee presiding at a hearing. This objection shall be in writing and filed with the court within three (3) days after being informed that the matter is to be heard by a referee or the right to object is waived. The court may permit the filing of a written objection at any time. After the filing of an objection, a judge shall hear any motion and shall preside at any hearing.

38.03 Transmittal of Findings

Upon the conclusion of a hearing the referee shall transmit to the judge findings and recommendations in writing. Notice of the findings of the referee together with a statement relative to the right to a review before a judge shall be given either orally on the record, or in writing to persons present at the hearing who have the right to participate, their counsel and guardian ad litem, the county attorney and to any person that the court may direct.

38.04 Review

Subd. 1 Generally

A matter which has been decided by a referee may be reviewed in whole or in part by a judge.

Subd. 2 Filing

A motion for a review by a judge must be filed with the court within ten (10) days after the referee's findings and recommendations have been provided, pursuant to Rule 45.

Subd. 3 Right of Review Upon Filing of Timely Motion

Persons who have the right to participate and the county attorney are entitled to a review by a judge in any matter upon which a referee has made findings or recommendations.

Subd. 4 Discretionary Review

The judge may grant a review at any time before confirming the findings and recommendations of the referee.

Subd. 5 Procedure

A review by a judge may be on the verbatim recording made pursuant to Rule 46 or may be de novo in whole or in part.

38.05 Order of the Court

The findings and recommendations of the referee become the order of the court when confirmed by the judge, subject to review pursuant to Rule 38.04.

RULE 39

RIGHT TO PARTICIPATE

39.01 Right of Child

Subd. 1 Under Twelve (12) Years of Age

A child who is the subject of a petition who has not reached the age of twelve (12) years has the right to participate through the child's guardian ad litem and may personally participate upon order of the court.

Subd. 2 Twelve (12) Years of Age and Older

A child who is twelve (12) years of age or older who is the subject of a petition has the right to participate in all hearings unless excluded from the hearing pursuant to Rule 42.03. When the child is excluded from the hearing the child may participate through the child's counsel and guardian ad litem.

39.02 Right of Parent(s) and Guardian

The parent(s) and guardian of a child who is the subject of a petition have the right to participate in all hearings on a petition unless excluded from the hearing pursuant to Rule 42.03. When excluded from the hearing the excluded person has the right to participate through their counsel.

39.03 County Welfare Board and County Attorney

The county welfare board has the right to participate in the hearings through the county attorney.

The county attorney also may participate in a matter in which counsel, other than the county attorney, has drafted and filed a petition pursuant to Rule 53.01, Subd. 1 and the county welfare board does not participate. The county attorney must inform the court of the county attorney's intent to participate in writing or on the record at or before a first appearance on the petition. In such matter when the county attorney has not so informed the court of the intent to participate at or before a first appearance on the petition, the county attorney may only participate when requested by the court upon the court's own motion or upon motion of the county attorney with good cause shown.

39.04 Guardian Ad Litem

The guardian ad litem of a child or of the parent of a child who is the subject of a petition has the right to participate as such guardian in all hearings.

39.05 Petitioner

When a petition has been drafted and filed by counsel other than the county attorney pursuant to Rule 53.01, the court may permit the petitioner to participate in all hearings unless excluded pursuant to Rule 42.03. When excluded from the hearing the excluded person has the right to participate through their counsel.

39.06 Procedure

Persons represented by counsel shall participate in hearings through their counsel. Persons not represented by counsel may participate in their own behalf.

RULE 40

RIGHT TO COUNSEL

40.01 Right of Child and Parent(s) to Separate Counsel

Subd. 1 Generally

The child has the right to be represented by an attorney who shall act as the child's counsel and who shall not be counsel for the parent(s) or guardian.

The parent(s) and guardian of the child have the right to be represented by an attorney who shall act as their counsel.

Subd. 2 Advisory of Right to Counsel

Any child, parent or guardian who is not represented by counsel, if present in court, shall be advised of the right to court appointed counsel by the court on the record, or in writing at or before any hearing.

Subd. 3 Appointment of Counsel

(A) Child

When the child cannot afford to retain counsel, the child is entitled to representation by counsel appointed by the court at public expense. However, the court may order, after giving the parent(s) a reasonable opportunity to be heard, that service of counsel shall be at the parent (s)' expense in whole or in part depending on their ability to pay.

(B) Parent(s) and Guardian

When the parent(s) or guardian cannot afford to retain counsel the parent(s) and guardian are entitled to representation by counsel appointed by the court at public expense. However, the court may order, after giving the parent(s) a reasonable opportunity to be heard, that service of the parent(s)' counsel shall be at the parent(s)' expense in whole or in part depending on their ability to pay.

40.02 Right of Guardian Ad litem to Counsel

The guardian ad litem for the child shall be represented by the child's counsel.

However, in the event of a conflict between the child and the guardian ad litem, considered in the context of the matter, counsel for the child shall continue to represent the child. The court may appoint separate counsel to represent the guardian ad litem.

RULE 41

GUARDIAN AD LITEM

41.01 Appointment of Guardian Ad Litem

The court shall appoint a guardian ad litem, except as provided by Rule 41.02, to protect the interest of the child when it appears, at any stage of the proceedings, that the child is without parent or guardian, or that considered in the context of the matter, the parent or guardian is unavailable, incompetent, indifferent to, hostile to, or has interests in conflict with the child's interests.

41.02 Determination Not to Appoint Guardian Ad Litem

The court may determine not to appoint a guardian ad litem when:

- a) counsel has been appointed or is otherwise retained for the child, and
- b) the court finds that the interests of the child are otherwise protected.

41.03 Standards

In determining whether or not to appoint a guardian ad litem pursuant to Rule 41.02 the court should examine the totality of the circumstances. These circumstances include but are not limited to: the presence and competence of the child's parent(s) or guardian, considered in the context of the matter the parent or guardian's hostility to,

indifference to or interests in conflict with the interests of the child, the child's age, maturity, intelligence, education, experience and ability to comprehend.

41.04 Findings

A determination of the court not to appoint a guardian ad litem when required by Rule 41.01 must be based on a finding on the record or in writing which states the facts on which the decision was made.

41.05 Discretionary Appointment of Guardian Ad Litem

In any other matter the court may appoint a guardian ad litem on its own motion or on the motion of the child's counsel or the county attorney when the court determines the an appointment is in the interests of the child.

41.06 Guardian Ad Litem Not Counsel for Child

When the court appoints a guardian ad litem, the guardian ad litem shall not be the child's counsel.

41.07 Guardian For More Than One Child

A person may be a guardian ad litem for more than one child in a hearing.

41.08 Guardian Ad Litem for Parent

The court shall appoint a guardian ad litem for the parent of a child who is the subject of a juvenile protection matter when:

- a) the parent is incompetent so as to be unable 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 child's parent is under eighteen (18) years of age and is without a parent or guardian, or that considered in the context of the matter, the parent or guardian is unavailable, incompetent, indifferent to hostile to, or has interests in conflict with the interests of the minor parent.

RULE 42

PRESENCE AT PROCEEDINGS

42.01 Right to Attend Hearing

Any person who is entitled to summons or notice under these rules or who is given summons or notice shall have the right to attend the hearing to which the summons or notice relates.

42.02 Absence Does not Bar Hearing

The absence from a hearing of a person who has the right to attend shall not prevent the hearing from proceeding provided appropriate notice has been served.

42.03 Exclusion of Persons Who Have Right to Attend Hearings

In any hearing the court may temporarily exclude the presence of any person other than counsel or guardian ad litem when it is in the best interest of the child to do so. If a person other than counsel or guardian ad litem, after warning, engages in conduct which disrupts the court, the person may be excluded from the courtroom. The exclusion of the person shall not prevent the court from proceeding with the hearing.

42.04 Record of Exclusion and Right to Continued Participation

Any exclusion of a person who has the right to attend a hearing shall be noted on the record and the reasons for the exclusion given. The counsel and guardian ad litem of the excluded person have the right to remain and participate in the hearing.

RULE 43

PRIVACY

43.01 Attendance at Hearings

Only the following may attend hearings:

- a) the child, guardian ad litem and counsel for the child, and
- b) the parent(s), and guardian of the child and their counsel, guardian ad litem and legal custodian of the child, and
- c) the spouse of the child, and
- d) the county welfare board and county attorney, and
- e) the petitioner and petitioner's counsel when the petitioner has the right to participate pursuant to Rule 39.05, and
- f) persons requested by a person with the right to participate or by the county attorney who are approved by the court, and
- g) persons authorized by the court under such conditions as the court may approve, and
- h) persons authorized by statute under such conditions as the court may approve.

RULE 44

NOTICE

44.01 Notice, Summons, Court Orders

Subd. 1 Notice

A notice is a document issued by the court which provides the information required by Rule 44.03.

Subd. 2 Summons

A summons is a document issued by the court which provides the information required by Rule 44.03 and orders the presence in court at a stated time and place of either:

- a) the person to whom it is directed, or
- b) the person to whom it is directed and others as set

forth in the summons.

Subd. 3 Court Orders

An oral order on the record directed to person(s) in court which order either orally or with written supplementation contains the information required by Rule 44.03 may provide notice and compel the presence of the person(s) at a stated time and place.

44.02 Procedure

Subd. 1 Generally

Summons or notice may be served by mail or by personal service.

Subd. 2 Discretionary Service

At any time the court may require the service of summons or notice to be by personal service.

At any hearing the court may provide notice to those present of a future hearing by a court order pursuant to Rule 44.02, Subd. 3.

Except for a child who has reached twelve (12) years of age, a person properly served under these rules who does not attend the hearing for which notice was given or who was not served pursuant to Rule 44.02, Subd. 3 need not be served notice of future hearings in the matter unless that person requests notice in writing or on the record. However, that person may be served at the court's discretion.

Subd. 3 Minimum Required Initial Service

(A) Child and Person(s) with Custody or Control

The court shall issue and cause a summons to be served by personal service to the person(s) with custody or control of the child and to the child who has reached twelve (12) years of age.

(B) Child's Counsel, County Attorney, Parent(s), Guardian, Custodian and Spouse and Their Counsel

The court, unless it finds that notice would be ineffectual and it would be in the interest of the child to proceed without notice, shall issue and cause notice to be served to the persons with the right to participate, their counsel and guardian ad litem, and the child's custodian not served pursuant to Rule 44.02, Subd. 3(A), the child's spouse and the county attorney.

Subd. 4 Execution of Personal Service

The summons or notice by personal service shall be served by any person authorized to serve process pursuant to Minn. Stat. 260.141, Subd. 2 and Rule 4.02 of the Minnesota Rules of Civil Procedure.

Subd. 5 Place of Service

The summons or notice may be served at any place within the state except where prohibited by law. If personal service cannot be made within the state a copy of the summons or notice may be personally served on a person to whom it is directed outside the state.

Subd. 6 Manner of Service

(A) Personal Service

The summons or notice shall be served on the person to whom it is directed by delivering a copy to that person personally or by leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion residing therein.

(B) Service by Mail

Initial service by mail to satisfy Rule 44.02, Subd. 3(B) shall be by certified mail to the last known address. All other service by mail shall be by ordinary mail to the last known address unless certified mail to the last known address is ordered by the court.

Subd. 7 Timing

(A) Juvenile Protection Matters Except Termination of Parental Rights Matters

Summons or notice by personal service and summons or notice by mail shall be served on the person to whom it is directed sufficiently in advance of the hearing to which it relates to afford the person a reasonable opportunity to prepare for the hearing. At the request of counsel the hearing shall not be held at the scheduled time if the summons or notice has been served less than three (3) days before the hearing.

If personal service is made outside the state, it shall be made at least five (5) days before the date fixed for the hearing to which the summons or notice relates.

If service is made by mail a copy of the summons or notice shall be sent at least five (5) days before the time of the hearing or fifteen (15) days before the hearing if mailed to addresses outside the state.

(B) Termination of Parental Rights Matters

Summons or notice by personal service or mail shall be made at least ten (10) days before the day of the hearing.

In addition to the requirements of statute and these rules, initial service by certified mail for a hearing for termination of parental rights shall also require publication as provided by Minn. Stat. 645.11 for three (3) weeks before the hearing with the last publication being at least ten (10) days before the day of the hearing.

Subd. 8 Proof of Service

(A) Personal Service

On or before the date set for appearance, the person who served a summons or notice by personal service shall file a written statement with the court showing:

- i) that the summons or notice was served, and
- ii) the person on whom the summons or notice was served, and
- iii) the date and place of service.

(B) Service by Mail

On or before the date set for appearance, the person who served a summons or notice by mail shall file a written statement with the court showing:

- i) the name of the person to whom the summons or notice was mailed, and
- ii) the date the summons or notice was mailed, and
- iii) whether the summons or notice was sent by certified mail.

44.03 Content of Summons or Notice

Any summons or notice shall contain or have attached:

- a) a copy of the petition, court order, motion, affidavit or other legal documents, not previously provided, necessary to provide notice pursuant to Rule 44.02, and
- b) a statement of the time and place of the hearing, and

- c) a statement describing the purpose of the hearing and the possible consequence of the hearing that custody of the child may be removed from the parent(s) or legal custodian and placed with another, and
- d) a statement explaining the right to counsel, and
- e) a statement that:
 - i) even with failure to appear in response to the notice or summons the hearing may still be conducted and appropriate relief granted on the petition, and
 - ii) further information concerning the date and place of subsequent hearings, if any, may be obtained from the court by a request in writing, and
- f) such other matters as the court may direct.

44.04 Waiver

Service is waived by voluntary appearance in court or by a written waiver of service filed with the court.

However, a waiver in a termination of parental rights matter pursuant to Minn. Stat. 260.231, Subd. 3 by a parent requires written concurrence by the parent's guardian ad litem if the parent is a minor or incompetent.

RULE 45

COPIES OF ORDERS

Court orders shall be stated on the record at the hearing or a copy of the written order shall be mailed to persons who have the right to participate, their counsel, their guardian ad litem and the county attorney who are present at the hearing to which the order relates.

Copies of court orders shall be sent by the court to the persons who have the right to participate, their counsel and guardian ad litem and the county attorney who request such a copy in writing or on the record and to such other persons as the court may direct.

RULE 46

RECORDING

46.01 Procedure

A verbatim recording of all hearings shall be made by a stenographic reporter or by an electronic sound recording device. If the recording is made by an electronic sound recording device, qualified personnel to operate the device shall be assigned by the court. Any required transcripts shall be prepared by personnel assigned by the court.

46.02 Availability of Transcripts

Transcripts of hearings for further use in the hearing or subsequent hearings, appeal, habeas corpus action or for other use as the court shall deem proper shall be made available to counsel for all persons who have the right to participate and the county attorney on application to the court. Applications for transcripts shall be made to the court in writing or on the record.

46.03 Expense

If counsel for any person with the right to participate applies to the court for a transcript of all or part of a hearing for an authorized use, pursuant to Rule 46.02, and that person is unable to pay the preparation cost of the transcript, the court shall direct the preparation and delivery of the transcript to that person's counsel at public expense, in whole or in part, depending on the ability of the person to pay.

RULE 47

CONTINUANCES AND ADVANCEMENTS

47.01 By Court Order

Either on its own motion or by motion of counsel for a person who has the right to participate or the county attorney, the court may continue or advance a hearing for a reasonable time for good cause shown taking into consideration whether or not the child is placed outside the child's home by court order.

47.02 Existing Orders

The court may order that existing orders remain in effect during a continuance.

RULE 48

SUBPOENAS

48.01 Motion for Subpoenas

On the court's own motion or at the request of counsel for a person who has the right to participate or the county attorney, the clerk shall issue subpoenas requiring the attendance and testimony of witnesses and the production of records, documents or other tangible objects at any hearing.

48.02 Expense

The fees and mileage of witnesses shall be paid by public funds if the subpoena is issued by the court on its own motion or at the request of the county attorney.

If a subpoena is issued at the request of counsel for a person who has the right to participate, and that person is unable to pay the fees and mileage of witnesses, these costs shall be paid at public expense upon order of the court, in whole or in part, depending on the ability of that person to pay.

All other fees shall be paid by the requesting person unless otherwise ordered by the court.

RULE 49

MOTIONS

49.01 Motions to be Signed

Every motion shall be in writing, state with particularity the grounds therefor, be signed by the person making the motion and filed with the court unless it is made in court and on the record.

49.02 Service of Motions

Subd. 1 When Required

(A) Prior to First Appearance

Every written motion along with any supporting affidavits served prior to the first appearance shall be served on:

- i) the guardian ad litem for the child, and
- ii) the child who has reached twelve (12) years of age, and
- iii) persons who have the right to participate who are entitled to receive initial service of a petition pursuant to Rule 44, their counsel and guardian ad litem, and
- iv) the county attorney.

(B) After First Appearance

Every motion along with any supporting affidavits served at or after the first appearance shall be served on:

- i) the guardian ad litem for the child, and
- ii) the child who has reached twelve (12) years of age, and

- iii) persons who are exercising their right to participate, their counsel and guardian ad litem, and
- iv) the county attorney who is exercising the right to participate, and
- v) such other persons as the courts may order.

Subd. 2 How Made

When service is required to be made upon a person represented by counsel, service shall be made upon counsel.

Service upon counsel is sufficient service upon the person counsel represents unless the court also orders service upon the person.

Service of motions may be made by personal service or by mail. Service by mail shall be complete three (3) days after mailing to the last known address of the person to be served.

Subd. 3 Time

Any written motion along with any supporting affidavits shall be served at least five (5) days before it is to be heard unless the court for good cause shown permits a motion to be made and served less than five (5) days before it is to be heard.

49.03 Ex Parte Motion

A motion may be made ex parte when permitted by statute or rule.

RULE 50

WAIVER OF COUNSEL AND OTHER RIGHTS

50.01 Waiver of Right to Counsel and Other Rights

Subd. 1 Standards

A person entitled to counsel pursuant to Rule 40 and to any other right pursuant to these rules may waive the right to counsel and any other right only if the waiver is voluntarily and intelligently made. If the child is not present or if the court determines in writing or on the record, based on the totality of the circumstances, that the child is incapable of understanding the proceedings or participating in the child's own behalf, the guardian ad litem may waive the right to counsel and any other right.

Subd. 2 Recording

A waiver of counsel or any other right shall be on the record.

Subd. 3 Renewal

After a person waives the right to counsel that person shall be advised of the right to counsel, pursuant to Rule 40, at each subsequent hearing at which that person is present and is not represented by counsel.

RULE 51

IMMEDIATE CUSTODY

51.01 Order for Immediate Custody

Subd. 1 Order Upon Probable Cause

An order for immediate custody of a child may issue if a court finds from the facts set forth separately in writing in or with the petition filed with the court and any supporting affidavits or sworn testimony that there is probable cause to believe that a juvenile protection matter exists and that the child is the subject of that matter and that there is probable cause to believe that:

- a) the child failed to appear after having been personally served with a summons or subpoena, or
- b) reasonable efforts to personally serve the child have failed, or
- c) there is a substantial likelihood that the child will fail to respond to a summons, or
- d) the welfare of the child requires that the child be brought into the custody of the court.

Subd. 2 Order Without Probable Cause Petition

An order for immediate custody of a child without a finding of probable cause by the court may issue if the child has appeared in court in regard to a petition and:

- a) the child has left the custody of the court ordered placement without permission of the court, or
- b) the child has violated a court order.

51.02 Contents of Order for Immediate Custody

An order for immediate custody shall be signed by a judge and shall:

- a) order the child to be brought immediately before the court or the child to be taken to a placement facility designated by the court to be placed pursuant to Minn. Stat. 260.173, pending a hearing pursuant to Rule 52 and
- b) state the name and address of the child, or if unknown designate the child by any name or description by which the child can be identified with reasonable certainty, and
- c) state the age and sex of the child, if the age of the child is unknown, that the child is believed to be of an age subject to the jurisdiction of the court, and
- d) state the reasons why the child is being taken into custody as set forth in Rule 51.01, and
- e) where applicable, state the reasons for a limitation on the time or location of the execution of the order, and
- f) state the date when issued, and the county and court where issued.

51.03 Execution of Order for Immediate Custody

Subd. 1 Who May Execute

The order for immediate custody may only be executed by a peace officer authorized by law to execute a warrant.

Subd. 2 How Executed

The order for immediate custody shall be executed by taking the child into custody.

Subd. 3 Where Executed

The order for immediate custody may be executed at any place in the state except where prohibited by law, unless the judge who issues the order limits the location where the order may be executed.

Subd. 4 When Executed

An order may be executed at any time unless the judge who issues the order limits the time during which the order may be executed.

Subd. 5 Possession of Order

An order for immediate custody need not be in the peace officer's possession at the time the child is taken into custody.

Subd. 6 Advisory

When an order is executed the child, if capable of understanding, and the child's parent(s), guardian and custodian, if present, shall immediately be informed of the existence of the order for immediate custody and as soon as possible of the reasons why the child is being taken into custody.

RULE 52

PREHEARING PLACEMENT (DETENTION)

52.01 Generally

A child is placed (detained) when:

- a) taken into custody, pursuant to Minn. Stat. 260.135, 260.145 or 260.165,
- b) the court orders placement of the child, pursuant to Minn. Stat. 260.172 or 260.185 before a disposition, pursuant to Rule 62 and
- c) the court orders conditions of release, pursuant to Rule 52.02, Subd. 3, before a disposition, pursuant to Rule 62.

52.02 Release or Continued Placement

Subd. 1 Child Taken Into Custody With Court Order

(A) Release Prohibited

A child taken into custody with a court order may not be released within seventy-two (72) hours without a court order.

(B) Mandatory Release

A child shall not be held in placement for more than seventy-two (72) hours unless a hearing has commenced and the court has ordered continued placement.

Subd. 2 Child Taken Into Custody Without Court Order - Mandatory Release

The child shall be released if a hearing pursuant to Rule 52.04 has not commenced within the time required by statute, and the court has not ordered continued placement.

Subd. 3 Discretionary Release by the Court

The court at any time before an initial hearing may release a child in placement pursuant to Minn. Stat. 260.165 and may impose one or more of the following conditions:

- a) place restrictions on the child's travel, associations or place of abode during the period of the child's release, and
- b) any other conditions deemed reasonably necessary and consistent with criteria for protecting the child.

Any conditions of release terminate after seventy-two (72) hours unless a hearing has commenced and the court has ordered continued placement and continuation of the condition(s).

Subd. 4 Discretionary Release by Officer or County Attorney

Except when release is prohibited pursuant to court order or Rule 52.02, Subd. 1(A), the detaining officer, the detaining officer's supervisor, or the county attorney may release a child anytime prior to a placement hearing.

The detaining officer, the detaining officer's supervisor, or the county attorney who releases the child may not place any conditions of release on the child.

Subd. 5 Release to Custody of Parent

A child released from placement shall be released to the custody of the child's parent(s), guardian, custodian or other suitable person.

52.03 Reports

Subd. 1 Report by Detaining Officer

Any report required by Minn. Stat. 260.171, Subd. 5 shall be filed with the court on or before the court day following placement of the child and the report shall include at least:

- a) the time the child was taken into custody, and
- b) the time the child was delivered for transportation to the placement facility, and
- c) the reasons why the child was taken into custody, and
- d) the reasons why the child has been placed, and
- e) a statement that the child and the child's parent(s) and guardian have received the advisory required by Minn. Stat. 260.171, Subd. 4, or the reasons why the advisory has not been made, and
- f) if disclosure of the location of the placement has not been made because there is reason to believe that the child's health and welfare would be immediately endangered, reasons to support the non-disclosure.

Subd. 2 Report by Supervisor of Placement Facility

Any report required by Minn. Stat. 260.171, Subd. 6 shall be filed with the court on or before the court day following placement. The report shall include, at least, acknowledgement of receipt of the child and state the time the child arrived at the placement facility.

52.04 Placement Hearing (Detention Hearing)

Subd. 1 Generally

The court shall commence a placement hearing within

seventy-two (72) hours when the child has been taken into custody and not released.

Subd. 2 Continuance

The court may continue the placement hearing for a period not to extend eight (8) days when witnesses are to be called.

Subd. 3 Information of Hearing to be Provided

The court shall inform the child, child's counsel, child's guardian ad litem, county attorney, and the parent(s), guardian, custodian and spouse of the child, and those persons required by Minn. Stat. 124.2129, Subd. 4 of the time and place of a placement hearing. Failure to inform the parent(s), guardian, custodian or spouse of the child or their non-attendance at the hearing shall not prevent a hearing from being conducted, or invalidate the proceeding or an order of placement.

Subd. 4 Advice of Rights

At the beginning of the hearing the court shall advise all persons present of:

- a) the reasons why the child was taken into custody, and
- b) the statutory allegations set forth in the petition, and
- c) the purpose and scope of the hearing, and
- d) the right of the child and parents to be represented by counsel at the hearing and at every other hearing and where applicable, of the right to court-appointed counsel.

Subd. 5 Evidence

The court may admit any evidence, except privileged communications, including reliable hearsay and opinion evidence that is relevant to the decision whether to continue the child in placement.

Subd. 6 Finding Necessary for Continued Placement

A child may be detained after a placement hearing if:

a) prior to or during the hearing the court finds that the petition:

i) alleges that the child has appeared in court in regard to a petition and the child has left the custody of the court-ordered placement without permission of the court, or the child has violated a court order, or

ii) contains probable cause that a juvenile protection matter exists and that the child is the subject of that matter, and

b) at the hearing the court finds probable cause that:

i) the child or others would be endangered if the child is released, or

ii) the child would not appear for a court hearing or would not respond to a summons or notice if the child is released, or

iii) the child would not remain in the care or control of the person to whose lawful custody the child is released, or

iv) release of the child would immediately endanger the child's health or welfare.

52.05 Release of the Child

A child shall be released after a placement hearing if the court does not make the findings pursuant to Rule 52.04, Subd. 6(a) and (b).

52.06 Placement Order

Subd. 1 Alternatives

If the court makes the findings, pursuant to Rule 52.04, Subd. 6(a) and (b), the court may:

- a) order the continued placement of the child, or
- b) release the child and impose conditions pursuant to Rule 52.02, Subd. 3.

Subd. 2 Content

The order for continued placement shall be in writing and shall include the findings of fact pursuant to Rule 52.04, Subd. 6(a) and (b) which support continued placement or conditions of release.

52.07 Placement Review

Subd. 1 Informal Placement Review

(A) Timing

An informal placement review must be held every eight (8) days.

(B) Change of Status

(1) Without Consent

The court by informal review may continue the child

in placement without altered circumstances without the consent of the persons with the right to participate, their guardian ad litem(s) or the county attorney.

(2) With Consent

The court by informal review may continue placement with altered circumstances with the consent of the persons with the right to participate, their guardian ad litem(s) and the county attorney.

Subd. 2 Formal Placement Review

(A) On Motion of Court

The court may schedule a formal placement review hearing at any time.

(B) On Request of A Person with the Right to Participate or County Attorney

Counsel for a person with the right to participate or the county attorney may request a formal hearing to present new evidence concerning continued placement by filing a request with the court. If the court finds a substantial basis for the request the court shall schedule a hearing and notify persons entitled to notice of the time and place of the hearing pursuant to Rule 44.

(C) Evidence

The court may admit any evidence, except privileged communication, including reliable hearsay and opinion evidence that is relevant to the decision whether to continue the placement of the child.

(D) Finding Necessary for Continued Placement

At the conclusion of the formal review hearing the court may continue the child in placement if the court finds probable cause that:

- i) the child or others would be endangered if released, or
- ii) the child would not appear for a court hearing or not respond to a summons or notice if released, or
- iii) the child would not remain in the care or control of the person to whose lawful custody the child is released, or
- iv) release of the child would immediately endanger the child's health or welfare.

RULE 53

PETITION

53.01 Procedure

Subd. 1 Drafting and Filing

All petitions shall be drafted and filed under the supervision of the county attorney unless Minnesota Statute or the court by rule or order permits counsel, other than the county attorney, to draft and file a petition with the court.

Subd. 2 Verification

The petition shall be verified by a person having knowledge of the facts or may be verified on information and belief.

53.02 Contents

Every petition filed with the court in a juvenile protection matter shall contain:

- a) a statement that the child is the subject of a juvenile protection matter and a simple, concise and direct statement of facts in support of the petition, and
- b) the name, date of birth, residence and post office address of the child, and
- c) the names, residences and post office addresses of the child's parent(s) when known, and
- d) the name, residence and post office address of the child's guardian if there is one, of the person having

custody or control of the child, or of the nearest known relative if no parent or guardian can be found, and

e) the name, residence and post office address of the spouse of the child, and

f) a citation of the subdivision(s) of Minn. Stat. 260.015, 257.071 or 260.221 on which the petition is based, together with a recitation of the relevant portion of the subdivision(s).

53.03 Petition with Probable Cause

Subd. 1 When Required

In addition to the content requirements of Rule 53.02, a petition with probable cause shall be filed with the court:

a) before the court may issue an order pursuant to Rule 51.01, Subd. 1, or

b) before a placement hearing is held for a child taken into custody without an order.

Subd. 2 In or With Petition

The facts establishing probable cause to believe that a juvenile protection 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 so stating shall be made of this fact on the petition by the court. The testimony shall be recorded by a reporter or recording instrument and shall be transcribed and filed.

53.04 Amendment

A juvenile protection petition may be amended by order of the court at any time.

Additional facts consistent with the allegations of the petition may be added to the petition at anytime. However, facts consistent with the allegations of the petition which occur after the filing of the petition need not be added to the petition in order to be proved at trial.

Amendments shall be freely permitted in the interest of justice and the welfare of the child.

A juvenile protection petition may not be amended to a petition alleging a non-juvenile protection matter.

If the court orders amendment of the petition it shall grant all persons who have the right to participate such additional time to prepare for further proceedings in the matter as may be required to ensure a full and fair hearing.

53.05 Timing

If a child is taken into custody and is placed out of the child's home a petition must be filed prior to the time a placement hearing must be commenced pursuant to Minn. Stat. 260.172.

53.06 Determination to Proceed on Petition

Upon the filing of a petition the court shall promptly fix a time for a first appearance on the petition and issue notice of the hearing pursuant to Rule 44.

RULE 54

FIRST APPEARANCE

54.01 Generally

First appearance is a hearing at which the child and the child's parent(s) and guardian shall be required to admit or deny the allegations of the petition.

54.02 Timing

Subd. 1 Child in Placement

When the child is placed out of the child's home by court order a first appearance shall be within ten (10) days of the child being placed. A first appearance may be at a placement hearing held pursuant to Rule 52.

Subd. 2 Child Not in Placement

When the child is not placed outside the child's home by court order a first appearance shall be within twenty (20) days after the child and the child's parent(s) and guardian have been served with the petition.

Subd. 3 Possession of Petition

The child and the child's parent(s) and guardian, their counsel and guardian ad litem have the right to have a copy of the petition for three (3) days before a first appearance.

54.03 Hearing Procedure

Subd. 1 Initial Procedure

At the commencement of the hearing the court shall on the record:

- a) verify the name, age and residence of the child who is the subject of the matter, and
- b) determine whether all necessary persons are present and identify those present for the record, and
- c) determine whether the child and the child's parent(s) and guardian are either represented by counsel or waive counsel, and
- d) determine whether notice requirements have been met and if not, whether the affected persons waive notice, and
- e) if the child or the child's parent(s) and guardian appear without counsel, explain the right to counsel and other basic rights, and
- f) if the child or the child's parent(s) and guardian appear without counsel, explain the purpose of the hearing and the possible transfer of custody of the child from the parent(s), guardian or custodian to another, when such transfer is permitted by law.

Subd. 2 Reading of Allegations of Petition

Unless waived by the child and the child's parent(s) and guardian, the court shall read the allegations of the petition and determine that the child and the child's parent(s) and guardian understand the allegations of the petition, and if not, provide an explanation.

Subd. 3 Motions

The court shall hear any motions, made pursuant to Rule 49, addressed to the sufficiency of the petition or jurisdiction of the court without requiring any person to admit or deny the allegations of the petition prior to making a finding on the motion.

RULE 55

ADMISSION OR DENIAL

55.01 Generally

The child and the child's parent(s) and guardian may admit or deny the allegations of the petition or remain silent. If either the child or the child's parent(s) and guardian who are present at the hearing deny the allegations of the petition, remain silent or if the court refuses to accept an admission, the court shall enter a denial of the petition on the record.

55.02 Denial

Subd. 1 Denial Without Appearance

By rule of the court or by court order in a particular matter, a written denial or a denial on the record of the allegations of a petition may be entered by counsel without the personal appearance of the person represented by counsel.

Subd. 2 Further Proceedings After Denial

When a denial is entered the court shall schedule further proceedings pursuant to Rule 58 or Rule 59.

55.03 Admission

Subd. 1 Admission Without Appearance

By rule of the court or by court order in a particular matter, a written admission or an admission on the record of the allegations of the petition may be entered by counsel without personal appearance of the person represented by counsel.

Subd. 2 Questioning of Person Admitting the Allegations of Petition

Before accepting an admission on the record or by written documents the court shall on the record, or by written document signed by the person admitting and counsel, if any, and filed with the court, determine the following:

- a) whether the person admitting acknowledges an understanding of:
 - i) the nature of the allegations of the petition, and
 - ii) the right to a trial, and
 - iii) the right to testify, and
 - iv) the right to subpoena witnesses, and
- b) whether the person admitting acknowledges an understanding that the facts being admitted establish the allegations of the petition, and
- c) whether the person admitting acknowledges an understanding that a possible effect of a finding that the allegations are proved may be the transfer of legal custody of the child to another, when such transfer is permitted by law.

Subd. 3 Factual Basis for Admission

The court shall refuse to accept an admission unless there is a factual basis for the admission.

Subd. 4 Withdrawal of Admission

After filing a motion with the court:

- a) an admission may be withdrawn at any time upon a showing that withdrawal is necessary to correct a manifest injustice, or
- b) the court may allow a withdrawal of an admission before a finding on the petition for any fair and just reason.

Subd. 5 Acceptance or Non-acceptance of Admission

The court shall make a finding within fifteen (15) days of an admission:

- a) that the admission has been accepted and the allegations of the petition have been proved, or
- b) that the admission has not been accepted.

Subd. 6 Future Proceedings

If the court makes a finding that the admission is accepted and the allegations of the petition are proved the court shall schedule further proceedings pursuant to Rule 61.

If the court makes a finding that the admission has not been accepted, the court shall schedule further proceedings pursuant to Rule 51.01, Rule 51.02 and Rule 58 or Rule 59.

RULE 56

SETTLEMENT DISCUSSIONS

56.01 Generally

For the purpose of achieving the objectives of the juvenile court, settlement discussions may be utilized.

56.02 Procedure

The court shall require disclosure of any settlement agreement in advance of an admission of the allegations of the petition. When a person admits the allegations of a petition, the court shall reject or accept the admission on the terms of the settlement agreement. The court may postpone its acceptance or rejection until it has received a pre-disposition report. If the court rejects the settlement agreement, it shall advise the person(s) entering into the settlement agreement of this decision on the record and shall call upon the person(s) admitting to either affirm or withdraw the admission.

56.03 Settlement Agreement on Record

The settlement agreement shall be filed with the court or affirmed on the record.

56.04 Settlement Agreement May Include Disposition Recommendation

Settlement agreements may include recommendations as to disposition.

RULE 57

DISCOVERY

57.01 Generally

For purposes of this rule:

- a) participants are persons with the right to participate, pursuant to Rule 39, and
- b) the officer is the person designated by the court to take testimony, pursuant to Rule 57.09, Subd. 3.

57.02 Methods of Discovery

A participant may obtain discovery by: depositions upon oral examination, inspection of documents or other tangible things, physical and mental examinations and disclosure of information within the scope of this rule. Unless the court orders otherwise, the frequency and sequence of discovery methods are not limited.

The discovery procedures provided for by this rule do not exclude other lawful methods for obtaining evidence.

57.03 Scope of Discovery

Subd. 1 Generally

A participant may obtain discovery regarding any matter, not privileged, which is relevant to the pending action including the existence, nature, custody, condition, and location of any documents, data, photographs or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be

inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Subd. 2 Written, Recorded or Transcribed Statements

A participant may obtain a written, recorded or transcribed statement concerning the matter previously made by that participant or another.

Subd. 3 Witnesses

(A) Generally

Counsel for a participant and the county attorney shall:

- i) provide to other counsel and the county attorney the names and addresses of persons intended to be called as witnesses at trial,
- ii) permit other counsel and the county attorney to inspect and copy any written or recorded statements of the persons intended to be called as witnesses at trial and which are within the possession or control of counsel or the county attorney, and
- iii) permit other counsel and the county attorney to inspect and copy any written summaries within the knowledge of counsel or the county attorney or the substance of any oral statements made by such witnesses to counsel or the county attorney or obtained at the direction of counsel or the county attorney.

(B) Experts

(1) Generally

Counsel for any participant and the county attorney may obtain discovery of the identity of each person expected to be called as an expert witness at trial and the substance of the facts and opinions to which an expert witness is expected to testify and a summary of the grounds for each opinion.

(2) Limitations

Facts and opinions held by an expert not expected to be called as a witness at trial are discoverable only as otherwise provided in Rule 57.09.

Subd. 4 Trial Preparation Materials

Subject to the provisions of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under this rule and prepared in anticipation of trial by or for another participant or that person's representative only upon a showing that the participant seeking discovery has substantial need of the materials in preparation for trial and that person is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of counsel concerning the matter.

57.04 Stipulation Regarding Discovery Procedure

The participants may, by stipulation, provide that discovery be made at any time or place, upon any notice and in any manner, and modify the procedures provided by these rules for methods of discovery.

57.05 Duty to Disclose

Subd. 1 Supplementation of Response

A participant is under a continuing duty to disclose, and where applicable, permit inspection of:

- a) the existence of any designated documents, data, photographs or other tangible things within the scope of Rule 57, and
- b) the identity and location of persons having knowledge of discoverable matters, and
- c) the identity of each person expected to be called as a witness at trial.

Subd. 2 Amendment

A participant shall amend discovery previously provided upon receiving knowledge that information previously given was incomplete, incorrect, or if correct, no longer true, and the circumstances are such that a failure to disclose additional information constitutes a knowing concealment.

57.06 Protective Orders

Subd. 1 Generally

Upon motion and for good cause shown, the court may

make any order which justice requires to protect a participant from annoyance, embarrassment, oppression or undue burden or expense including one or more of the following:

- a) that discovery not be had or that it may be had only on specific terms and conditions, or
- b) that discovery may be had only by a method other than that selected by the participant seeking it, or
- c) that certain matters not be inquired into or that the scope of discovery be limited to certain matters, or
- d) that discovery be conducted with no one present except persons designated by the court, or
- e) that a deposition after being sealed be opened only by order of the court, or
- f) that the participants simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

Subd. 2 Denial

If the motion for protective order is denied in whole or in part the court may on such terms and conditions as are just, order that any participant provide or permit discovery.

57.07 Expenses

The costs of discovery shall be at the expense of the requesting participant. However, when the participant is

unable to afford the costs of discovery, the costs shall be at public expense in whole or in part depending on the ability of the participant to pay.

57.08 Physical and Mental Examinations

Subd. 1 Generally

If the physical or mental condition of a participant is in controversy, the court may order the participant to submit to a mental or physical examination by a licensed professional. For purposes of this rule:

- a) a mental examination shall include any testing or evaluation by a licensed psychologist or psychiatrist, and
- b) a physical examination shall include any testing or evaluation by a licensed physician.

The order may be only on motion for good cause shown and upon notice to the participant to be examined and to all other participants. The order shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made.

Subd. 2 Copy of Report of Examination

The participant causing the examination to be made shall deliver to the participant examined a copy of a detailed written report of the examining professional setting his findings and conclusions, together with like

reports of all earlier examinations of the same condition. After such delivery, the participant causing the examination to be made shall be entitled, upon request, to receive from the participant examined a like report of any examination, previously or thereafter made of the same mental or physical condition. If the participant examined refuses to deliver such report, the court, on motion and notice may make an order requiring delivery on such terms as are just. If an examining professional fails or refuses to make such a report, the court may exclude his testimony at any hearing.

By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the participant examined waives any privilege that person may have in the proceeding or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the participant for the same mental or physical condition.

Other participants may obtain copies of the report of an examination upon motion and a showing that the report would be of material aid to the requesting participant .

Subd. 3 Disclosure after Waiver of Privilege

When medical privilege has been waived by a participant under this rule, such participant within ten (10) days of a written request by another participant:

- a) shall furnish to the requesting participant copies of all reports previously or thereafter made by any treating or examining professional, and
- b) shall provide written authority signed by the participant of whom request is made to permit the inspection of all hospital, medical treatment center, psychological or psychiatric records, concerning the physical or mental condition of such participant.

Depositions of treating or examining professional shall not be taken except upon order of the court for good cause shown upon motion and notice pursuant to Rule 44 and upon such terms as the court may provide.

Disclosures under this rule shall include the conclusions of such treating or examining professional.

57.09 Depositions

Subd. 1 Generally

Following the initial appearance, any participant may take the testimony of any other person or participant by deposition upon oral examination when there is a reasonable probability that the testimony of a prospective witness will be used at a hearing, and:

- a) there is a reasonable probability that the witness will be unable to be present or to testify at the hearing because of the witness's existing physical or mental illness, infirmity or death, or

- b) the participant taking the deposition cannot procure the attendance of the witness at a hearing by a subpoena, order of the court or other reasonable means, or
- c) there is a stipulation by counsel.

The court may order that the testimony of a person may be taken by oral deposition upon motion pursuant to Rule 49 and a showing that the information sought cannot be obtained by other means.

Attendance of witnesses at oral deposition may be compelled by subpoena as provided by Rule 48.

Subd. 2. Notice of Taking

A participant desiring to take the deposition of a person upon oral examination shall give reasonable notice pursuant to Rule 44. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify the deponent. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice. The court may for good cause shown, lengthen or shorten the time for taking the deposition.

Subd. 3 Before Whom Taken

(A) Persons Authorized

Deposition shall be taken before an officer authorized

to administer oaths by the laws of the United States, or before a person appointed by the court in which the matter is pending. A person so appointed has the power to administer oaths and take testimony.

(B) Disqualification for Interest

No deposition shall be taken before an officer who is a relative or employee of a participant or the participant's attorney.

Subd. 4 Recording

A deposition shall be recorded by an electronic recording device, in which event the court shall designate the manner of recording, preserving and filing the deposition. The court may order additional procedures be followed to insure that the recorded testimony will be accurate and trustworthy, including but not limited to:

- a) equipment shall be of high quality and tested before being used,
- b) the person who operates and monitors the equipment shall not otherwise participate in the interrogation process. This person should be someone independent of the participants and their counsel,
- c) speakers shall identify themselves whenever necessary for clarity of the record,
- d) the original tape recording should be labeled, placed in a sealed envelope, and delivered promptly to the court, and
- e) any participant:

i) may make a copy of the recorded deposition, and
ii) may make a written transcript of the deposition, at that participant's expense. To be used in court, the person copying or transcribing the recorded deposition shall certify that the copy or transcript is true and accurate. The participant producing the transcript shall give notice to all other participants pursuant to Rule 44 that a transcript had been made and shall make the transcript available for photocopying at the expense of any participant who requests a copy.

A participant may nevertheless arrange to have a stenographic transcription made at that participant's expense.

Subd. 5 Procedure

(A) Examination and Cross Examination of Witnesses

Examination and cross examination of witnesses may proceed as permitted at trial. The officer before whom the deposition is taken shall put the witness on oath. The testimony shall be recorded by the officer or by a person at the officer's direction and in the officer's presence. Testimony shall be recorded pursuant to Rule 57.09, Subd. 4.

(B) Objections

(1) Officer, Recording, Conduct, Evidence or Other

Oral objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of recording it, or to the

evidence presented, or to the conduct of any participant, or any other objection to the proceeding shall be noted by the officer on the record. Evidence objected to shall be taken subject to the objection.

(2) Accuracy of Transcript

Objections to the accuracy or trustworthiness of the recording, by electronic or stenographic means, shall be in writing and filed with the court within ten (10) days of the filing of the recorded deposition.

(3) Review by Court

The court shall rule on any objection by reviewing the original tape and transcript, if any, of the deposition.

(C) Limitation or Termination

At any time, on motion of the child's counsel or the county attorney, or of the deponent, the court may limit the taking of the deposition to that which is commensurate in cost and duration with the needs of the case, the resources available and substantiality of the issues.

At any time during the taking of a deposition on motion of a participant or of the deponent and upon a showing that the examination is being conducted in bad faith, or in such a manner as unreasonably to annoy, embarrass, or oppress the participant or deponent, the court may order the person conducting the examination to cease from taking the deposition or may limit the scope and manner of taking the

deposition by ordering as follows:

i) that certain matters not be inquired into or that the scope of the examination be limited to certain matters, or

ii) that the examination be conducted with no one present except the persons designated by the court.

Upon demand of a participant or the deponent, the taking of the deposition shall be suspended for the time necessary to move the court for the order. If the court orders termination, the deposition shall resume only upon further order of the court.

(D) Examination and Alteration of Transcript

When testimony is stenographically transcribed, the deposition shall be submitted to the deponent for examination and shall be read to or by the deponent unless such examination or reading are waived by the deponent or by the participants. Any changes in form or substance which the deponent desires to make, shall be entered upon the deposition by the officer with a statement of the reasons given by the deponent for making those changes.

(E) Signature of Deponent

The stenographically transcribed deposition shall be signed by the deponent after examination and alteration of the transcript or a waiver of either. Participants may forego signing by stipulation, by waiver or if the deponent is ill, or cannot be found or refuses to sign. If the

deposition is not signed by the deponent within fifteen (15) days of submitting it to the deponent, the officer shall sign it and state on the record the fact of the waiver, illness, absence or refusal to sign by the deponent together with any reason given therefor. The deposition may then be used as though fully signed, unless on a motion to suppress the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(F) Certification of Deposition and Exhibits

The officer shall certify on the deposition that the deponent was duly sworn and the the deposition is a true record of the testimony given by the deponent. The officer shall then place the deposition in an envelope addressed with the title of the matter and marked "Deposition of (here insert the name of the deponent)" and shall promptly deliver or mail it to the clerk of court.

Documents and things produced for inspection during the examination of the deponent shall upon request of a participant be marked for identification and annexed to and returned with the deposition and may be copied and inspected by any participant, except that:

- i) the person producing the materials may substitute copies to be marked for identification if that person affords to all participants fair opportunity to verify the copies by comparison with the originals, and

ii) if the person producing the materials requests their return, the officer shall mark them, give each participant an opportunity to inspect and copy them and then return the materials to the person producing them and the materials may then be used in the same manner as if annexed to and returned with the deposition.

Any participant may move for an order that the original be annexed to and returned with the deposition to the court pending final disposition of the case.

(G) Notice of Filing

The participant taking the deposition shall give prompt notice of its filing to all other parties.

(H) Copies

Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any participant or the deponent.

(I) Procedural Failure of Requesting Participant

If the participant giving the notice of the taking of a deposition fails to attend or proceed therewith or if that participant fails to serve a subpoena on the deponent and the deponent because of the failure does not attend and another participant attends in person or by counsel pursuant to the notice, the court may order the participant giving notice to pay such other participant the amount of the reasonable expenses incurred by that participant and

the participant's counsel in so attending, including reasonable attorney's fees.

Subd. 6 Use of Deposition

(A) Unavailability of Witness

All or a part of a deposition so far as otherwise admissible under the Rules of Evidence may be used at any hearing against any participant who was present or represented at the taking of the deposition or had reasonable notice thereof, if it appears that:

- a) the witness is unable to be present or to testify at the hearing because of the witness's existing physical or mental illness, infirmity, imprisonment or death, or
- b) the person offering the deposition has been unable to procure the attendance of the witness by subpoena, order of the court or other reasonable means, or
- c) the witness is at a greater distance than one hundred (100) miles from the place of the hearing or is out of state, or
- d) there is a stipulation by counsel, or
- e) upon application and notice that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of the witness orally in open court, to allow the deposition to be used.

The court shall not allow the deposition to be used if it appears that the absence of the witness was procured by the party offering the deposition.

(B) Inconsistent Testimony

Any deposition may also be used by a participant for the purpose of contradicting or impeaching the testimony of the deponent as a witness. A deposition may not be used if it appears that the absence of the witness was procured by the person offering the deposition, unless part of the deposition has previously been offered.

(C) Substantive Evidence

A deposition may be used as substantive evidence so far as otherwise admissible under the rules of evidence if the witness refuses to testify despite an order of the court to do so.

Subd. 7 Objection at Hearing

Subject to the provision of this rule, objections may be made at any hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of evidence if the witness were then present and testifying.

Subd. 8 Effect of Taking or Using Depositions

A participant does not make a deponent that participant's witness for any purpose by taking that person's deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than

that of contradicting or impeaching the deponent makes the deponent the witness of the participant introducing the deposition, but this shall not apply to the use by an adverse participant of a deposition under this rule. At any hearing a participant may rebut any relevant evidence contained in the deposition whether introduced by the offering participant or any other participants.

Subd. 9 Errors and Irregularities

The effect of errors and irregularities in depositions shall be as follows:

- a) all errors and irregularities in notice for taking the deposition are waived unless written objection is promptly served upon the participant giving notice,
- b) objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could have been discovered with reasonable diligence,
- c) errors and irregularities in the manner of taking the deposition, in the questions and answers, in the oath or affirmation, or in the conduct of the participants, and errors of any kind which might be obviated, removed or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition,

- d) objection to the competency of a witness or to the competency or relevancy of testimony are not waived by failure to make them before or during the taking of a deposition, unless the ground of the objection is one that might have been obviated or removed if presented at that time,
- e) errors and irregularities in the manner in which:
 - i) the testimony is transcribed and preserved, or
 - ii) the deposition is prepared, signed, certified, sealed, endorsed, transmitted, or filed,are dealt with by the officer taking the deposition, or are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been ascertained.

57.10 Failure to Comply; Sanctions

Subd. 1 Compelling Discovery

A participant upon reasonable notice to other participants may apply for an order compelling discovery as follows.

(A) Procedure

An application for an order may be made to the court in which the action is pending, or on matters relating to a deponent's failure to answer questions propounded under Rule 57, to the court in the county where the deposition is being taken. An application for an order to a deponent who

is not a participant shall be made to the court in the county where the deposition is being taken.

(B) Failure to Answer

If a deponent fails to answer a question propounded under Rule 57 or if a participant in response to a request for inspection or disclosure authorized by Rule 57 fails to respond or permit inspection or disclosure, the discovering participant may move for an order compelling inspection or disclosure. When taking a deposition upon oral examination the proponent of the question may complete or adjourn the examination before applying for an order. If the court denies the motion in whole or in part, the court may make such protective order as it would have been empowered to make on a motion pursuant to Rule 57.

(C) Evasive or Incomplete Answers

For purposes of this rule, an evasive or incomplete answer is to be treated as a failure to answer.

(D) Expenses of Motion

(1) When Motion Granted

If the motion is granted the court shall, after opportunity for hearing, require the participant or deponent whose conduct necessitated the motion, the participant or counsel advising such conduct, or both to pay the moving participant reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the

motion was substantially justified or that circumstances make an award of expenses unjust.

(2) When Motion Denied

If the motion is denied, the court shall, after opportunity for hearing, require the moving participant or counsel advising the motion, or both of them, to pay the participant or deponent who opposed the motion reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that circumstances make an award of expenses unjust.

(3) Apportionment

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the participants and persons in a just manner.

Subd. 2 Failure to be Sworn or Answer

If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county in which the deposition is being taken, the failure may be considered a contempt of court.

Subd. 3 Failure to Appear or Respond

If a participant fails:

- a) to appear before the officer who is to take that designated person's deposition, after being served with proper notice, or

b) to serve a written response to a request for inspection or disclosure permitted under Rule 57, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, including orders within the scope of this rule.

In lieu of any order or in addition thereto, the court shall require the participant failing to act, or that participant's counsel or both to pay reasonable expenses including attorney's fees caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described herein may not be excused on the ground that the discovery sought is objectionable unless the participant failing to act has applied for a protective order as provided by Rule 57.

Subd. 4 Order

If a participant fails to obey an order to provide or permit discovery, including an order under these rules, the court in which the action is pending may make such orders in regard to the failure as are just, including the following:

a) an order that the matters regarding which the order was made, or any other designated facts, shall be taken to be established for purposes of the proceeding, in accordance with the claim of the participant who

obtained the order, or

b) an order refusing to allow the disobedient participant to support or oppose designated claims, or prohibiting the disobedient participant from introducing designated matters in evidence, or

c) an order striking the petition or parts thereof, or staying further proceedings until the order is obeyed or dismissing the proceeding or any part thereof, or rendering a judgment by default against the disobedient participant, or

d) in lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the participant failing to act or the participant's counsel, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances made an award of expenses unjust.

The failure to act described herein may not be excused on the ground that the discovery sought is objectionable unless the participant failing to act has applied for a protective order as provided in Rule 57.06.

RULE 58

PRETRIAL CONFERENCE

58.01 Timing

Upon motion of a person with the right to participate or the county attorney or upon the court's own motion, the court may order a pretrial conference pursuant to rules of court adopted by the court.

Pretrial issues and motions shall be heard immediately prior to the trial whenever there has been no pretrial conference unless the court orders otherwise for good cause.

RULE 59

TRIALS

59.01 Generally

A trial is a hearing held to determine if the allegations of the petition are proved.

59.02 Timing

Subd. 1 Commencement of Trial

A trial shall commence:

- a) for a child placed outside of child's home by court order, within ninety (90) days from the date of the denial of the allegations of the petition, or
- b) for a child not placed outside the child's home by court order, within one hundred twenty (120) days from the date of the denial of the allegations of the petition.

Subd. 2 Dismissal

If the trial has not commenced within the time set forth above or a continuance has not been granted, the petition shall be dismissed unless good cause is shown why the matter has not been brought to trial within the required time.

Subd. 3 Effect of Mistrial; Order of New Trial

Upon a declaration of a mistrial, or an order of the trial court or a reviewing court granting a new trial, a new trial shall be commenced within sixty (60) days.

59.03 Procedure

Subd. 1 Initial Procedure

At the beginning of the trial if the court has not previously determined the following information at a prior hearing, the court shall:

- a) verify the name, age and residence of the child, who is the subject of the cause, and
- b) determine whether all necessary persons are present and identify those present for the record, and
- c) determine whether notice requirements have been met and if not whether the affected persons waive notice, and
- d) if the child or the child's parent(s) and guardian appears without counsel, explain the right to counsel, and other basic rights, and
- e) if the child or the child's parent(s) and guardian appears without counsel, explain the purpose of the hearing and the possible transfer of custody of the child from parent(s), guardian or custodian to another.

Subd. 2 Conduct and Procedure

(A) Trial Rights

The counsel for the persons with the right to participate and the county attorney shall have the right to:

- i) present evidence, and
- ii) present witnesses, and
- iii) cross-examine witnesses, and

iv) present arguments in support of or against the allegations of the petition.

(B) Trial Order

The order of the hearing shall be as follows:

- i) counsel who drafted and filed the petition pursuant to Rule 53 may make an opening statement confining the statement to the facts expected to be proved, and
- ii) other counsel, in order determined by the court, may then make an opening statement or may make the statement immediately before offering evidence. The statement shall be confined to a statement of the facts expected to be proved, and
- iii) counsel who drafted and filed the petition pursuant to Rule 53 shall offer evidence in support of the petition, and
- iv) other counsel, in order determined by the court, may offer evidence on behalf of the person they represent, and
- v) counsel who drafted and filed the petition pursuant to Rule 53 may offer evidence in rebuttal, and
- vi) other counsel, in order determined by the court, may offer evidence in rebuttal, and
- vii) when evidence is presented by counsel, other counsel may, in order determined by the court, cross examine witnesses, and

viii) at the conclusion of the evidence, counsel other than counsel who drafted and filed the petition pursuant to Rule 53, in order determined by the court, may make a closing statement, and

ix) counsel who drafted and filed the petition pursuant to Rule 53 may then make a closing statement.

59.04 Evidence

The court shall admit only such evidence as would be admissible in a civil trial.

59.05 Standard of Proof

To be proved at trial, allegations of the petition must be proved by clear and convincing evidence.

59.06 Finding on Petition

Within fifteen (15) days of the conclusion of the trial, the court shall make a finding that the allegations of the petition have or have not been proved. For good cause, the court may extend this period for an additional fifteen (15) days. All findings shall be in writing or on the record. The court shall dismiss the petition if the allegations have not been proved.

59.07 Further Proceedings

If the court makes a finding that the allegations of a petition alleging dependency, neglect, or neglected and in foster care have been proved, the court shall schedule further proceedings pursuant to Rule 61.

If the court terminates parental rights of both parents or of the only known living parent, the court shall make orders pursuant to Minn. Stat. 260.242.

If the matter is a review of out of home placement, the court shall make Findings and Orders pursuant to Minn. Stat. 260.192.

RULE 60

MOTION FOR NEW TRIAL

60.01 New Trial

Subd. 1 Generally

In granting a new trial the court may either:

- a) conduct a completely new trial, or
- b) open the previous trial and take additional testimony or evidence.

Subd. 2 Stay of Previous Finding

If the court grants a new trial, the court shall stay the finding that the allegations of the petition have been proved.

Subd. 3 Finding

Upon conclusion of the trial, the court shall make a finding pursuant to Rule 59.06.

60.02 Grounds

The court on written motion of counsel for a participant or the county attorney may grant a new trial on any of the following grounds:

- a) irregularity in the proceedings of the court, any court order or court abuse of discretion, whereby a person was deprived of a fair trial, or
- b) misconduct of counsel, or
- c) fraud, misrepresentation or other conduct of any person with the right to participate, their counsel, guardian ad litem or the county attorney, or

- d) accident or surprise which could not have been prevented by ordinary prudence, or
- e) material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the trial, or
- f) errors of law occurring at the trial and objected to at the time or if no objection is required, assigned in the motion, or
- g) the finding that the allegations of the petition are proved is not justified by the evidence or is contrary to law, or
- h) if required in the interests of justice.

60.03 Procedure

Subd. 1 Basis of Motion

A motion for a new trial shall be made and heard on the files, exhibits and minutes of the court. Pertinent facts that would not be a part of the minutes may be shown by affidavit except as otherwise provided by these rules. A full or partial transcript of the court reporter's notes of the testimony taken at the trial or other verbatim recording thereof may be used on the hearing of the motion.

Subd. 2 Time for Motion

Notice of a motion for a new trial shall be served pursuant to Rule 44 within fifteen (15) days after the finding that the allegations of the petition are proved.

The motion shall be heard within thirty (30) days after the finding that the allegations of the petition are proved, unless the time for the hearing is extended by the court for cause shown within the thirty (30) day period.

Subd. 3 Time for Serving Affidavits

When a motion for new trial is based on affidavits, they shall be served with the notice of motion. The county attorney and any person with the right to participate shall have ten (10) days after such service in which to serve opposing affidavits pursuant to Rule 45. The period may be extended by the court upon an order extending the time for hearing under this rule. The court may permit reply affidavits.

Subd. 4 Joinder of Motions

Any motion to vacate the findings that the allegations are proved shall be joined with a motion for a new trial.

60.04 New Trial on Court's Own Motion

The court on its own motion within fifteen (15) days after the findings that the allegations are proved, with the consent of counsel for the persons with the right to participate and the county attorney, may order a new trial upon any of the grounds specified in Rule 60.02.

RULE 61

ADJUDICATION

61.01 Adjudication

If the court finds that the allegations of a petition alleging dependency, neglect, or neglected and in foster care are proved, the court shall adjudicate the child as dependent, neglected or neglected and in foster care or withhold adjudication of the child.

61.02 Withholding Adjudication

When it is in the best interests of the child or the child's parents to do so, the court may withhold an adjudication.

The court may withhold adjudication for a period not to exceed ninety (90) days from the finding that the allegations of the petition have been proved. The court may extend the withholding of adjudication for an additional successive period not to exceed ninety (90) days.

During the withholding of an adjudication the court may enter an order pursuant to Minn. Stat. 260.191, Subd. 1.

61.03 Further Proceedings

If the court makes an adjudication the court shall schedule further proceedings pursuant to Rule 62.

RULE 62

DISPOSITION

62.01 Generally

After a adjudication of dependency, neglected or neglected and in foster care or after terminating parental rights, pursuant to Rule 61, the court may conduct a disposition hearing immediately or continue the matter for a disposition hearing at a later time.

Dispositions in regard to review of out of home placement matters shall be pursuant to Minn. Stat. 260.192 and Minn. Stat. 124.2129, Subd. 4.

62.02 Timing

The court shall make a disposition of the matter:

- a) within forty-five (45) days from the finding of the allegations of the petition have been proved for a child not placed outside the home by court order pursuant to Minn. Stat. 260.172, and in no matter longer than one-hundred-eighty (180) days from the findings that the allegations of the petition have been proved, or
- b) within fifteen (15) days from the finding of the allegations of the petition have been proved for a child placed outside the home by court order pursuant to Minn. Stat. 260.172, and in no matter longer than thirty (30) days from the findings that the allegations of the petition have been proved.

62.03 Pre-Disposition Reports

Subd. 1 Investigations and Evaluations

At any time after the filing of a petition, the court may order upon its own motion, or the motion of the county attorney or counsel for a person with the right to participate:

- a) an investigation of the personal and family history and environment of the child, and
- b) medical, psychological or chemical dependency evaluations of the child and any participant.

Subd. 2 Advisory

The court shall advise the persons present in court that a pre-disposition investigation is being ordered, the nature of the evaluations to be included and the date when the reports resulting from the investigation are to be filed with the court.

Subd. 3 Filing and Inspection of Reports

The person making the report shall file the report forty-eight (48) hours prior to the time scheduled for the hearing and the reports shall be available for inspection, release to, and copying by the county attorney and counsel and guardian ad litem for persons with the right to participate. When the child or the child's parent(s) and guardian are not represented by counsel, the court may limit the inspection of reports by the child or the child's parent(s) and guardian but not their counsel or guardian ad

litem if the court determines it is in the best interest of the child.

Subd. 4 Discussion of Contents of Reports

The person making the pre-disposition report shall discuss the contents of the report with all persons who have exercised the right to participate who are capable of understanding the contents of the report.

Subd. 5 Discussion of Content of Report--Limitation by Court

The court may limit the extent of the discussion of the contents of the pre-disposition report with the persons who have the right to participate if the court finds the limitation to be in the best interests of the child. The limitation may be made:

- a) on the court's own motion, or
- b) upon the objection in writing or on the record by counsel or guardian ad litem for a person who has the right to participate, or
- c) on the written request of the person making the pre-disposition report.

62.04 Hearing

Subd. 1 Procedure

Disposition hearings shall be separate from the ~~hearing~~
~~at which the petition is proved and may be held immediately~~
trial pursuant to Rule 59 and the adjudication pursuant to
Rule 61.

~~following the hearing at which the allegations of the petition are proved.~~

Disposition hearings shall be conducted in an informal manner designed to facilitate opportunity for all participants to be heard.

Subd. 2 Evidence

The court may receive any information, except privileged communications, that is relevant to the disposition of the cause including reliable hearsay and opinions.

62.05 Order

The disposition order made by the court shall contain written findings of fact to support the disposition ordered and shall also set forth in writing the following information:

- a) a disposition plan, and
- b) why the best interests of the child are served by the disposition ordered, and
- c) what alternative dispositions were recommended to the court and why such recommendations were not ordered.

62.06 Informal Review

Subd. 1 Timing

The court shall review all disposition orders at least every six (6) months.

Subd. 2 Modification of Disposition

Upon review the court may modify the disposition when:

- a) there appears to be a change of circumstances sufficient to indicate that a change of disposition is necessary, or

b) it appears that a disposition is inappropriate. Within ten (10) days of a modification of a deposition, the court shall inform in writing those persons entitled to notice pursuant to Rule 44 of the modification of the disposition and the right to a formal review hearing pursuant to Rule 62.07, Subd. 1.

62.07 Formal Review

Subd. 1 Formal Review Hearing Upon Written Objection to Modification

Counsel for those persons with the right to participate and the county attorney may object in writing to a modification of disposition and demand a formal review hearing by filing a written objection with the court within ten (10) days of being informed of the modification.

Upon an objection to a modification of disposition being filed with the court, the court shall order a formal review hearing be held within ten (10) days of the filing of the objection.

Subd. 2 Formal Review Hearing Upon Written Request

Counsel for those persons with the right to participate and the county attorney may request a formal review hearing or the court may hold a formal review hearing on its own motion when:

- a) there appears to be a change of circumstances sufficient to indicate that a change of disposition is necessary, or

b) it appears that the disposition is inappropriate.

A request for a formal review hearing shall be in writing and shall list the reasons supporting the request. Upon a request for a formal review hearing being filed with the court, the court shall within ten (10) days make a finding that there is good cause to believe that (a) or (b) above exists. If the court finds from the request for a formal review that there is good cause to believe that (a) or (b) above exists, the court shall hold a formal review hearing within ten (10) days of the finding. If the court finds from the request for a formal review that there is not good cause to believe that (a) or (b) above exists, the court shall inform the person making the request that the request has been denied.

Subd. 3 Notice

Notice of the formal review hearing shall be given to those persons entitled to notice pursuant to Rule 44.

Subd. 4 Procechure

Formal review hearings shall be conducted pursuant to Rule 62.04.

RULE 63

APPEAL

63.01 Appeal

Subd. 1 Appealable Orders

Any person with the right to participate may appeal from a final order of the court.

Subd. 2 Procedure

The procedure upon appeal shall be as follows:

(A) Stay

An appeal does not stay the order of the court but the reviewing court may in its discretion and upon application stay the order.

(B) Notice of Appeal

Within thirty (30) days of the filing of the appealable order, the person appealing shall file a written notice of appeal with the clerk of court where the matter was heard. Within five (5) days after filing the notice of appeal, that notice shall be served upon all other persons who exercised their right to participate and proof of such service must be filed with the clerk of court not more than three (3) days after such service. Failure to file proof of service does not deprive the reviewing court of jurisdiction over the appeal, but is grounds only for such action as the reviewing court deems appropriate, including dismissal of the appeal.

(C) Transcript, Affidavits, Papers, Files, Exhibits

The court reporter shall file with the clerk of court the original transcript and affidavits of delivery of the transcript to any person who exercised their right to participate or who has appealed. The clerk of court shall transmit to the reviewing court any original papers, files and exhibits.

(D) Attorneys' Fee

Upon appeal if the child or the child's parent(s) or guardian cannot afford the costs of appeal, these costs shall be paid at public expenses in whole or in part depending on the ability of the child, and the child's parent(s) to pay.

Subd. 3 Cross-Appeal

Upon appeal by a person with the right to participate, any other person with the right to participate may obtain review of any pretrial order which will adversely affect that person by filing notice of cross-appeal with the clerk of the reviewing court within ten (10) days after service of notice of the appeal. Within five (5) days after the notice of cross-appeal is filed, notice of the cross-appeal shall be served upon counsel for the other persons who exercised their right to participate and the person who appealed, by the counsel for the person bringing the cross appeal. Failure to serve the notice does not deprive the reviewing court of jurisdiction over the cross-appeal, but

is grounds only for such action as the reviewing court deems appropriate, including a dismissal of the cross appeal.

63.0² Court Hearing Appeal

Subd. 1 Appeal from a District Court Juvenile Court

An appeal from a district court juvenile court is taken directly to the Supreme Court in the same manner in which appeals are taken in civil actions.

Subd. 2 Appeal from a County Probate-Juvenile Court

An appeal from a county probate-juvenile court is taken to the district court and shall be on the record in the same manner in which appeals are taken in civil actions.

RULE 64

RECORDS

64.01 Generally

Juvenile court records include:

- a) all documents filed with the court, and
- b) all documents maintained by the court, and
- c) all reporter's notes and tapes, electronic recordings and transcripts of hearings and trials.

64.02 Availability of Juvenile Court Records

Subd. 1 By Statute or Rule

Juvenile court records shall be available for inspection, copying and release as required by statute or these rules.

Subd. 2 No Order Required

(A) Court and Court Personnel

Juvenile court records shall be available to the court and court personnel without a court order.

(B) Child's Counsel and Guardian Ad Litem

Juvenile court records of the child shall be available for inspection, copying and release to the child's counsel and guardian ad litem without a court order.

(C) County Attorney

Juvenile court records shall be available for inspection, copying or release to the county attorney. However, if the matter has not had court action taken on it for over one (1) year, the court may require an ex parte

showing by the county attorney that inspection or copying of the court records is necessary and in the best interest of the child, public safety, or the functioning of the juvenile court system.

(D) Counsel and Guardian Ad Litem for Child's Parent(s) and Guardian

Juvenile court records shall be available for inspection by counsel and guardian ad litem for the child's parent(s) and guardian.

(E) Counsel for Petitioner

Juvenile court records shall be available for inspection, copying or release to counsel for a petitioner who has the right to participate pursuant to Rule 39.05. However, if the court no longer has jurisdiction over the matter the court may require an ex parte showing by counsel that inspection, copying or release of the court records is necessary and in the best interest of the child, public safety or the functioning of the juvenile court system.

Subd. 3 Court Order Required

(A) Person(s) with Custody or Supervision of the Child, and Others

The court may order juvenile court records to be made available for inspection, copying disclosure or release, subject to such conditions as the court may direct, to:

- i) a representative of a state or private agency providing supervision or having custody of the child under order of the court, or

ii) any individual for whom such record is needed to assist or to supervise the child in fulfilling a court order, or

iii) any other person having a legitimate interest in the child or in the operation of the court.

(B) Public

A court order is required before any inspection, copying, disclosure or release to the public of the record of a child. Before any court order is made the court must find that inspection, copying disclosure or release is:

- i) in the best interests of the child, or
- ii) in the interests of public safety, or
- iii) necessary for the functioning of the juvenile court system

The record of the child shall not be inspected, copied, disclosed or released to any present or prospective employer of the child or the military services.

64.03 Court Rule May Define Process

All inspection and release of juvenile court records may be subject to individual court rules to provide for an efficient, just and orderly process of allowing inspection, copying, disclosure or release.

RULE 65

TIMING FOR DELINQUENCY, PETTY, TRAFFIC AND JUVENILE
PROTECTION MATTERS

65.01 Computation

Unless otherwise provided by statute the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When a period of time prescribed or allowed is three 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, Washington's Birthday (President's Day), Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or Congress of the United States or by the State.

65.02 Additional Time After Service by Mail

Whenever a person has the right or is required to do an act within a prescribed period after the service of a notice or other paper and the notice or other paper is served by mail, three (3) days shall be added to the prescribed period.