

STATE OF MINNESOTA

IN SUPREME COURT

C1-01-927

OFFICE OF  
APPELLATE COURTS  
APR 24 2007  
FILED

**ORDER ESTABLISHING DEADLINE FOR  
SUBMITTING COMMENTS ON PROPOSED  
AMENDMENTS TO THE RULES OF JUVENILE  
PROTECTION PROCEDURE AND RULES OF  
ADOPTION PROCEDURE**

WHEREAS the Advisory Committee on the Rules of Juvenile Protection Procedure filed a report on April 11, 2007, proposing changes to the Rules of Juvenile Protection Procedure and Rules of Adoption Procedure; and

WHEREAS this Court will consider the proposed changes without a hearing after soliciting and reviewing comments on the proposed changes;

NOW THEREFORE IT IS HEREBY ORDERED that any individual wishing to provide statements in support of or opposition to the proposed changes shall submit twelve copies in writing addressed to Frederick K. Grittner, Clerk of the Appellate Courts, 25 Rev. Dr. Martin Luther King Jr. Blvd, St. Paul, Minnesota 55155, no later than Friday, June 8, 2007. A copy Committee's report containing the proposed changes is annexed to this order.

Dated: April 23, 2007

BY THE COURT:



Russell A. Anderson  
Chief Justice

STATE OF MINNESOTA  
IN SUPREME COURT  
C1-01-927

OFFICE OF  
APPELLATE COURTS

APR 11 2007

FILED

**MINNESOTA SUPREME COURT  
ADVISORY COMMITTEE ON THE RULES OF  
JUVENILE PROTECTION PROCEDURE**

**FINAL REPORT OF THE 2006 RULES COMMITTEE  
AND PROPOSED AMENDMENTS TO:**

- **RULES OF JUVENILE PROTECTION PROCEDURE**
- **RULES OF ADOPTION PROCEDURE**

April 11, 2007

MINNESOTA JUDICIAL BRANCH  
STATE COURT ADMINISTRATOR'S OFFICE  
COURT SERVICES DIVISION  
105 MINNESOTA JUDICIAL CENTER  
25 REV. DR. MARTIN LUTHER KING JR. BLVD.  
ST. PAUL, MN 55155  
651-297-7587

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## **I. INTRODUCTION**

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### **A. COMMITTEE MEMBERSHIP**

#### **Chair**

Hon. Timothy Bloomquist, District Court Judge, Kanabec County, 10<sup>th</sup> Judicial District

#### **Supreme Court Liaison**

Hon. Lorie S. Gildea, Associate Justice, Minnesota Supreme Court

#### **Members**

Ann Ahlstrom, Staff Attorney, State Court Administrator's Office

Jody Alholinna, Attorney, Alholinna Law Office, Minneapolis

Gail Clapp, Juvenile Court Operations Manager, Hennepin County

Gary Debele, Attorney, Walling, Berg & Debele, P.A., Minneapolis

Heidi Drobnick, Attorney, Swanson, Drobnick, & Tousey, L.L.P., Woodbury

Teresa Fredrickson, Court Administrator, Kandiyohi County

Jane Glander, Manager, 3<sup>rd</sup> Judicial District Guardian Ad Litem Program

Peter Gorman, Assistant Public Defender, 4<sup>th</sup> District Public Defender's Office

Jane Gustafson, Assistant County Attorney, Todd County Attorney's Office

Dianne Heins, Pro Bono Counsel, Faegre & Benson, Minneapolis

Shari Larson, Attorney, McGregor

Shireen Lee, Coordinator, Carlton and St. Louis County (Range) Guardian Ad Litem Programs

Suzanne Lelwica, Social Services Supervisor, Mille Lacs County Social Services

Hon. Margaret Shaw Johnson, District Court Judge, Winona County, 3<sup>rd</sup> Judicial District

Joyce Miyamoto, Sr. Assistant County Attorney, Hennepin County Attorney's Office

Irene Opsahl, Supervising Attorney, Legal Aid Society of Minneapolis

Hon. Denise Reilly, District Court Judge, Hennepin County, 4<sup>th</sup> Judicial District

Hon. Waldemar Senyk, District Court Judge, Otter Tail County, 7<sup>th</sup> Judicial District

Hon. Mark Starr, District Court Judge, St. Louis County, 6<sup>th</sup> Judicial District

Hon. Terri Stoneburner, Minnesota Court of Appeals

Diana Sweeney, Assistant Public Defender, 9<sup>th</sup> District Public Defender's Office

Joanne Vavrosky, Assistant County Attorney, St. Louis County Attorney's Office

Rockwell Wells, Assistant County Attorney, Crow Wing County Attorney's Office

Hon. Renee Worke, Minnesota Court of Appeals

#### **Staff Attorney**

Judith Nord, Staff Attorney, State Court Administrator's Office

## **I. INTRODUCTION**

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### **B. COMMITTEE PURPOSE**

The Rules of Juvenile Protection Procedure were promulgated by the Minnesota Supreme Court on December 29, 1999, and became effective March 1, 2000. The Rules of Adoption Procedure were promulgated on September 30, 2004, and became effective January 1, 2005. The Rules of Guardian Ad Litem Procedure were promulgated on August 27, 1997, and became effective on January 1, 1999.

Recognizing the need for a standing committee to review the rules on an ongoing basis, on May 31, 2001, the Supreme Court established the Advisory Committee on the Rules of Juvenile Protection Procedure. The Committee was directed to:

1. Review case law relating to the three sets of rules;
2. Review federal and state statutes relating to the three sets of rules;
3. Review case management best practices relating to the three sets of rules;
4. Review implementation of, and consider requests for revisions to, the three sets of rules; and
5. Annually submit to the Supreme Court a report recommending any necessary revision of the three sets of rules.

The Committee was given a clear directive that the Court would be unlikely to adopt proposed amendments that were inconsistent with existing statutes.

### **C. COMMITTEE PROCEDURES**

In May 2006, following over 10 months of deliberations from March 2005 to January 2006, the Committee submitted its report recommending numerous revisions to each set of rules. The Court took that report under advisement and, in December 2006, issued an order promulgating the vast majority of the proposed amendments.

Pending the promulgation of the proposed amendments recommended in May 2006, during a meeting in November 2006 the Committee discussed several new issues, some merely technical in nature and some resulting from recent amendments to federal statutes. The Committee's proposed amendments are set forth in this report. Due to the nature and limited number of the proposed amendments, the Committee did not submit them for public comment.

The Committee achieved consensus regarding each of the proposed amendments set forth in this report.

## II. PROPOSED AMENDMENTS – JUVENILE PROTECTION RULES

### RULES OF JUVENILE PROTECTION PROCEDURE

Following is a summary of proposed amendments to the Rules of Juvenile Protection Procedure.

#### **RULE 22: PARTICIPANTS**

On July 3, 2006, President Bush signed the Safe and Timely Interstate Placement of Foster Children Act (P.L. 109-239). The law amends Titles IV-B and IV-E of the Social Security Act and, in pertinent part, requires the highest state court participating in and receiving funds from the federal Court Improvement Program to promulgate a rule ensuring that foster parents, pre-adoptive parents, and relative caregivers of a child in foster care are notified of all proceedings involving the child and have a right to be heard. Minnesota participates in and receives annual grants from the federal Court Improvement Program.

Minnesota Statutes § 260C.152, subd. 3, and Juvenile Protection Rules 22.01 and 22.02, subd. 2, currently mandate that notice and an opportunity to be heard shall be provided to foster parents and relative caregivers, but not pre-adoptive parents.

Consistent with P.L. 109-239, the Committee recommends that Rules 22.01(g) and 22.02 be amended as noted below to provide for notice and a right to be heard by foster parents, pre-adoptive parents, and relative caregivers. The Department of Human Services has submitted to the Legislature a bill recommending the same revision to Minnesota's statutes.

#### ***Rule 22.01. Participant Status***

*Unless already a party pursuant to Rule 21, or unless otherwise specified, participants to a juvenile protection matter shall include:*

- (a) the child;*
- (b) any parent who is not a legal custodian and any alleged, adjudicated, or presumed father;*
- (c) the responsible social services agency, when the responsible social services agency is not the petitioner;*
- (d) any guardian ad litem for the child's legal custodian;*
- (e) grandparents with whom the child has lived within the two (2) years preceding the filing of the petition;*
- (f) relatives or other persons providing care for the child and other relatives who request notice;*
- (g) current foster parents, ~~and~~ persons proposed as long-term foster care parents, and persons proposed as pre-adoptive parents;*
- (h) the spouse of the child, if any; and*
- (i) any other person who is deemed by the court to be important to a resolution that is in the best interests of the child.*

## II. PROPOSED AMENDMENTS – JUVENILE PROTECTION RULES

### ***Rule 22.02. Rights of Participants***

***Subd. 1. Generally.*** Unless a participant intervenes as a party pursuant to Rule 23, or is joined as a party pursuant to Rule 24, the rights of a participant shall be limited to:

- (a) notice and a copy of the petition pursuant to Rule 32;*
- (b) attending hearings pursuant to Rule 27; and*
- (c) offering information at the discretion of the court, except as provided in subdivision 2.*

***Subd. 2. Foster Parents, Pre-Adoptive Parents, and Relatives Providing Care.*** Notwithstanding subdivision 1, any foster parent, pre-adoptive parent, relative providing care for the child, or relative to whom the responsible social services agency recommends transfer of permanent legal and physical custody of the child, shall have a right ~~be provided an opportunity~~ to be heard in any hearing regarding the child. Any other relative may request an opportunity to be heard. This subdivision does not require that a foster parent, pre-adoptive parent, or relative providing care for the child be made a party to the matter. Each party and the county attorney shall be provided an opportunity to respond to any presentation by a foster parent, pre-adoptive parent, or relative.

## **RULE 26. APPOINTMENT OF GUARDIAN AD LITEM**

Rule 26.01 is intended to provide for the appointment of guardians ad litem in juvenile protection proceedings. That Rule, however, also refers to the appointment of guardians ad litem in adoption matters. The guardian ad litem appointment process for adoptions is fully described in the Adoption Rules. The Committee recommends, as proposed below, that reference to adoption matters be deleted from these juvenile protection rules.

### ***Rule 26.01. Appointment for Child***

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

## II. PROPOSED AMENDMENTS – JUVENILE PROTECTION RULES

### **RULE 30: EMERGENCY PROTECTIVE CARE HEARING**

Consistent with Minnesota Statutes § 260C.178, subd. 1(e)(5), the committee recommends a technical amendment to Rule 30.09, subd. 3(a)(5), to change “future service” to “further service” as set forth below.

***Rule 30.09. Cases Permitting By-Pass of Child In Need of Protection or Services Proceedings.***

\* \* \* \* \*

***Subd. 3. Cases Permitting By-Pass of Child In Need of Protection or Services Proceedings.***

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

\* \* \* \* \*

***(5) the provision of services or ~~future~~ further services for the purpose of rehabilitation and reunification is futile and therefore unreasonable under the circumstances.***

### **RULE 33: PETITION**

Minnesota Statutes § 260C.212, subd. 1, requires that a case plan or out-of-home placement plan be submitted to the court when a Child In Need of Protection or Services (CHIPS) petition is filed. Pursuant to § 260C.301, subd. 3(b), in cases that “bypass” the child protection phase and going directly to the permanency phase, a case plan or out-of-home placement plan is not required when a petition for transfer of permanent legal and physical custody is filed.

Consistent with the statutes, the Committee recommends a technical amendment to Rule 33.01, subd. 3(e), as set forth below, to delete the requirement of a case plan or out-of-home placement plan upon the filing of a petition for transfer of permanent legal and physical custody and to reflect that such plans are only required in CHIPS proceedings.

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

\* \* \* \* \*

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

***(e) Termination of Parental Rights or Other Permanency Petition.*** *The county attorney need not file a termination of parental rights petition if the county attorney files with the court:*

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

***(2) a petition alleging the child and, where appropriate, the child’s siblings, to be in need of protection or services. ~~Such petition shall be~~***



## II. PROPOSED AMENDMENTS – JUVENILE PROTECTION RULES

~~accompanied by~~ and a case plan or out-of-home placement plan prepared by the responsible social services agency documenting a compelling reason why filing a termination of parental rights petition is not in the best interests of the child.

### **RULE 34: ADMIT/DENY HEARING**

Rule 34.03 relates to the procedures for Admit/Deny Hearings in Child in Need of Protection or Services (CHIPS), Termination of Parental Rights (TPR), and Other Permanent Placement matters. The subdivision dealing with the procedures for CHIPS matters provides that at the beginning of the hearing the court “shall determine whether the petition establishes a prima facie showing that a juvenile protection matter exists and that the child is the subject of the matter.” Minnesota Statutes § 260C.301, subd. 3, provides that in certain circumstances (e.g., the child is the subject of egregious harm or there has been a prior involuntary TPR for a sibling) the county attorney is required to “bypass” the CHIPS phase and go directly to the permanency phase by filing a TPR or other permanency petition.

While Rule 30.09, subd. 3, provides for the filing of a petition that bypasses the CHIPS phase, the rules do not provide that the court should make the same prima facie determination as in the CHIPS proceeding when a TPR or other permanency petition is the first petition filed in the matter. For that reason, the Committee recommends a proposed amendment to Rule 34.03, subd. 3, as set forth below, to require that the court must make the same prima facie finding in a “bypass” case as when a CHIPS petition is the first document filed.

#### *Rule 34.03. Hearing Procedure*

\* \* \* \* \*

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

*(a) In each termination of parental rights matter, after completing the initial inquiries set forth in subdivision 1, the court shall determine whether the petition states a prima facie case in support of one or more statutory grounds set forth in the Petition to Terminate Parental Rights and a prima facie showing that a juvenile protection matter exists and that the child is the subject of the matter. The court shall dismiss the petition if it finds that the petition fails to establish a prima facie showing that a juvenile protection matter exists and that the child is the subject of that matter.*

### **RULE 39: TRIAL**

Rule 39 relates to the procedures for trials in Child In Need of Protection or Services (CHIPS), Termination of Parental Rights (TPR), and other permanency proceedings. Minnesota Statutes § 260C.201, subd. 11(k), provides that the court shall issue its order within 15 days of the close of the hearing and that “the court may extend issuing the order for an additional 15 days when necessary in the interests of justice and the best interests of the child.” While Rule 39.05 provides that trial court’s decision must be made within 15 days of the conclusion of the trial or

## II. PROPOSED AMENDMENTS – JUVENILE PROTECTION RULES

hearing, it does not provide for an extension of 15 days as permitted under the statute. Instead, Rule 39.05 provides for an extension upon the showing of good cause.

Consistent with Minnesota Statutes § 260C.201, subd. 11(k), the Committee recommends that Rule 39.05 be amended as set forth below to delete the “good cause” exception and instead provide for “an additional 15 days if the court finds that an extension of time is required in the interests of justice and the best interests of the child.”

### ***Rule 39.05. Decision***

***Subd. 1. Generally.*** *Within fifteen (15) days of the conclusion of the trial, the court shall make a finding and issue an order regarding whether the statutory grounds set forth in the petition have or have not been proved. The court may extend this period for an additional fifteen (15) days if the court finds that an extension of time is required in the interests of justice and the best interests of the child. For good cause, the court may extend this period for an additional fifteen (15) days. The trial is not considered completed until written arguments, if any, are submitted or the time for submission of written arguments has expired. The court shall dismiss the petition if the statutory grounds have not been proved.*

\* \* \* \* \*

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

***(a) Generally.*** *Within fifteen (15) days of the conclusion of the trial, the court shall make a finding that the statutory grounds set forth in the petition have or have not been proved. The court may extend this period for an additional fifteen (15) days if the court finds that an extension of time is required in the interests of justice and the best interests of the child. If the court finds that the statutory grounds set forth in the petition are not proved, the court shall dismiss the petition or determine that the child is in need of protection or services and schedule further proceedings pursuant to Rule 40. If the court finds that the statutory grounds set forth in the petition are proved, the court may terminate parental rights. The findings and order shall be filed with the court administrator who shall proceed pursuant to Rule 10.*

## **RULE 47: APPEAL**

Rule 47.03 establishes procedures for staying the trial court’s decision pending appeal. As written, the rule provides that the reviewing court (i.e., court of appeals) may in its discretion stay the order of the trial court. Under Rule 108 of the Rules of Civil Appellate Procedure, a stay of adjudication is granted by the trial court and the court of appeals will not rule on a request for a stay until the trial court has first ruled.

Consistent with the Rules of Civil Appellate Procedure, the Committee recommends that Rule 47.03 be amended to provide that the trial court must first rule on a request for a stay of adjudication.

## II. PROPOSED AMENDMENTS – JUVENILE PROTECTION RULES

### *Rule 47.03. Application for Stay of Trial Court Order*

*The service and filing of a notice of appeal does not stay the order of the trial court. The order of the juvenile court shall stand pending the determination of the appeal, but the trial reviewing-court may in its discretion and upon application stay the order.*

## II. PROPOSED AMENDMENTS – ADOPTION RULES

### RULES OF ADOPTION PROCEDURE

Following is a summary of proposed amendments to the Rules of Adoption Procedure.

#### RULE 35: PETITION

Minnesota's statutes and Rules of Adoption Procedure are silent about captions for adoptions proceedings. As a result, the case caption practice varies from county to county and is impacting filing and data entry procedures. In some counties, the caption is in the name of the child or person to be adopted, in other counties it is in the name of the adoptive parent. There is also varying practice and confusion regarding case captions for pre-adoptive proceedings.

To establish statewide uniformity in practice, the Committee recommends that Rule 35.05 regarding the content of adoption petitions be amended as noted below to establish a standard caption.

##### *Rule 35.05. Content*

*Subd. 1. Case Caption. In all adoption proceedings, except as otherwise stated in this subdivision, the case caption shall be "In Re the Petition of \_\_\_\_\_ and \_\_\_\_\_ (petitioners) to adopt \_\_\_\_\_ (child's birth name). In preadoptive proceedings, the case caption shall be "In Re the Petition of \_\_\_\_\_ and \_\_\_\_\_ (petitioners) to adopt \_\_\_\_\_ (unborn child of \_\_\_\_\_)."*

*Subd. 2-4. Allegations. An adoption petition may be filed regarding one or more children, shall be verified by the petitioner upon information and belief, and shall allege:*

- (a) the full name, age, and place of residence of the petitioner, except as provided in Rule 7;*
- (b) if married, the date and place of marriage, and the name of any parent who will retain legal rights;*
- (c) the date the petitioner acquired physical custody of the child and from what person or agency or, in the case of a stepparent adoption or adoption by an individual related to the child as defined in Rule 2.01(o), the date the petitioner began residing with the child;*
- (d) the date of birth of the child, if known, and the county, state, and country where born;*
- (e) the name of the child's parents, if known, and the legal custodian or legal guardian if there be one;*
- (f) the actual name of the child, if known, and any known aliases;*
- (g) the name to be given the child, if a change of name is desired;*
- (h) the description and value of any real or personal property owned by the child;*
- (i) the relationship of the petitioner to the child, if any;*
- (j) whether the Indian Child Welfare Act does or does not apply;*
- (k) the name and address of the parties identified in Rule 20;*

## II. PROPOSED AMENDMENTS – ADOPTION RULES

(l) whether the child has been placed with petitioner for adoption by an agency and, if so, the date of the adoptive placement; and

(m) that the petitioner desires that the relationship of parent and child be established between petitioner and the child, and that it is in the best interests of the child to be adopted by the petitioner.

**Subd. 3~~2~~.** *Exception to Content.* In agency placements, the information required in subdivision ~~2-1~~(e) and (f) shall not be required to be alleged in the petition but shall be provided to the court by the Commissioner of Human Services. In the case of an adoption by a stepparent, the parent who is the stepparent's spouse shall not be required to join the petition.

**Subd. 4~~3~~.** *Attachments.* The following shall be filed with the petition:

- (a) the adoption study report required under Rule 37;
- (b) any biological parent history required under Minnesota Statutes § 259.43, except if the petitioner is the child's stepparent;
- (c) the request, if any, under Rule 38.04 to waive the post-placement assessment report and background check; and
- (d) proof of service.

**Subd. 5~~4~~.** *Other Documents to be Filed.* The following shall be filed with the court prior to finalization of the adoption:

- (a) a certified copy of the child's birth record;
- (b) a certified copy of the findings and order for termination of parental rights, if any;
- (c) a copy of the communication or contact agreement, if any;
- (d) certification that the Minnesota Fathers' Adoption Registry has been searched as required under Rule 32;
- (e) the original of each consent to adoption required under Rule 33; and
- (f) the post-placement assessment report required under Rule 38.

**Subd. 6~~5~~.** *Missing Information.* If any information required by subdivision ~~2-1~~ or ~~3-2~~ is unknown at the time of the filing of the petition, as soon as such information becomes known to the petitioner it shall be provided to the court and parties either orally on the record, by sworn affidavit, or by amended petition. If presented orally on the record, the court shall annotate the petition to reflect the updated information.

**Subd. 7~~6~~.** *Acceptance Despite Missing Information.* The court administrator shall accept a petition for filing even if, on its face, the petition appears to be incomplete or does not include all information specified in subdivision ~~2-1~~ and ~~3-2~~. The presiding judge shall determine whether the petition complies with the requirements of these rules.

C1-01-927  
STATE OF MINNESOTA  
IN SUPREME COURT

OFFICE OF  
APPELLATE COURTS

JUN 7 2007

FILED

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In The Matter Of The April 11, 2007

Report Of The Advisory Committee On

**COMMENT CONCERNING  
PROPOSED RULE 47.03**

The Rules Of Juvenile Protection Procedure

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TO: THE SUPREME COURT OF THE STATE OF MINNESOTA

This is a brief proposal concerning the Advisory Committee's recommendation to amend Rule 47.03.

I was a member of the Advisory Committee from September, 2001 until November, 2006, and I participated in the discussions which produced three Advisory Committee reports to the Court. I was present at the meeting of November 13, 2006, at which this proposed amendment was considered. This was not a controversial proposal—I was one of three members who spoke on it, the other two being a member of the Court of Appeals and the staff counsel. It was agreed to by consensus.

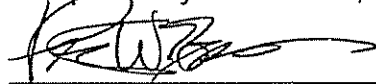
Although I agreed to the proposal to amend Rule 47.03 in November, 2006, I believe the Court should make a small change. The change I am suggesting would make clear that the Court of Appeals retains the authority to grant a stay pending appeal if the juvenile court denies an application for a

stay. The proposal now before the Court suggests that a stay pending appeal can only be granted by the juvenile court. This is inconsistent with the Court of Appeals' practice. While that Court will usually not consider an application for a stay which has not been first addressed to the trial court, it does retain the discretion to grant a stay. Welfare of R.L.A., 431 N.W.2d 152 (Minn. Ct. App. 1988).

This proposed change would be consistent with the juvenile delinquency rule—Minn. R. Juv. Del. P. 21.03, subd. 3 states: "Pending an appeal, a stay may be granted by the juvenile court or the court of appeals." In fact, the trial judge who, in the fall of 2006, originally suggested that the Advisory Committee amend Rule 47.03, recommended that we do so in order to harmonize the two rules, delinquency and protection.

I do not believe that Minn. R. Civ. App. P. 108 has anything to do with the proposal to amend Rule 47.03, and I do not recall any reference to Rule 108 in our discussion. In any event, the juvenile protection rules control over the appellate rules. Welfare of J.R., 655 N.W.2d 1, 3 n.1 (Minn. 2003).

Respectfully submitted,



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Peter W. Gorman, Lic. 3633X  
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Former Member of Advisory Committee  
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June 6, 2007