

STATE OF MINNESOTA

IN SUPREME COURT

C4-97-1693

ORDER PROMULGATING JUVENILE PROTECTION RULES

WHEREAS, the Juvenile Protection Rules have not been amended since their promulgation on December 17, 1982;

WHEREAS, in September 1997 the Court established the Advisory Committee on the Amendment of the Juvenile Protection Rules for the purpose of making recommendations for amendments;

WHEREAS, on April 19, 1999, the Advisory Committee submitted its Final Report in which the Committee recommended adoption of the Proposed Juvenile Protection Rules;

WHEREAS, on August 25, 1999, the Court held a public hearing regarding the Proposed Juvenile Protection Rules; and

WHEREAS, the Supreme Court is fully advised in the premises;


NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The attached Juvenile Protection Rules be, and the same hereby are, prescribed and promulgated to be effective on January 1, 2000.
2. The attached Juvenile Protection Rules shall apply to all juvenile protection matters filed on or after the effective date.
3. The inclusion of Advisory Committee Comments is made for convenience and does not reflect court approval of the comments made therein.

DATED: December 20, 1999

BY THE COURT:

OFFICE OF
APPELLATE COURTS


Kathleen A. Blatz
Chief Justice

DEC 20 1999

FILED

JUVENILE PROTECTION RULES

A. SCOPE and PURPOSE

RULE 37. SCOPE and PURPOSE

Rule 37.01. Scope

These rules govern the procedure for juvenile protection matters in the juvenile courts in Minnesota. Juvenile protection matters include all matters defined in Rule 38.01(h).

Rule 37.02. Purpose

These rules establish uniform practice and procedure for juvenile protection matters in the juvenile courts of Minnesota. The purpose of these rules is to:

- (a) secure for each child under the jurisdiction of the court a home that is safe and permanent;
- (b) secure for each child under the jurisdiction of the court the care and guidance, preferably in the child's own home, that will best serve the physical, emotional, spiritual, and mental welfare of the child;
- (c) provide judicial procedures which protect and promote the safety and welfare of the child;
- (d) whenever possible and in the best interests of the child, preserve and strengthen the child's family ties, removing the child from the custody of the child's parent or legal custodian only when the child's safety and welfare cannot otherwise be adequately safeguarded;
- (e) secure for the child such custody, care, and discipline, as nearly as possible equivalent to that which should have been given by the child's parent or legal custodian, when removal from the child's parent or legal custodian is necessary and in the child's best interests;
- (f) provide a just, thorough, speedy, and efficient determination of each juvenile protection matter before the court and ensure due process for all persons involved in the proceedings;
- (g) establish a uniform system for judicial oversight of case planning and reasonable efforts, or active efforts in the case of an Indian child, aimed at preventing or eliminating the need for removal of the child from the care of the child's parent or legal custodian;
- (h) ensure a coordinated decision-making process;
- (i) reduce unnecessary delays in court proceedings; and
- (j) encourage the involvement of parents and children in the proceedings.

Advisory Committee Comment

The purpose statement is not intended to be a rule of construction. Rather, it is intended as a guide for judges, attorneys, social services personnel, families, and other judicial system stakeholders to articulate that the overall objective of juvenile court is to move expeditiously toward a resolution of the matter in such a way as to secure that which is in the best interests of the child while ensuring due process for all of the parties.

The purpose statement reflects the policy set forth in the federal Adoption and Safe Families Act of 1997, P.L. 105-89 (Nov. 19, 1997), which emphasizes that the overriding objective in any juvenile protection matter is to timely provide a safe, permanent home for the child. The purpose statement also reflects the policy set forth in Minnesota Statutes § 260C.001, subd. 2, which provides, in pertinent part, as follows:

The paramount consideration in all proceedings concerning a child alleged or found to be in need of protection or services is the health, safety, and best interests of the child. . . . The purpose of the laws relating to juvenile courts is to secure for each child alleged or adjudicated in need of protection or services and under the jurisdiction of the court, the care and guidance, preferably in the child's own home, as will best serve the spiritual, emotional, mental, and physical welfare of the child; to provide judicial procedures which protect the welfare of the child; to preserve and strengthen the child's family ties whenever possible and in the child's best interests, removing the child from the custody of parents only when the child's welfare or safety cannot be adequately safeguarded without removal; and, when removal from the child's own family is necessary and in the child's best interests, to secure for the child custody, care and discipline as nearly as possible equivalent to that which should have been given by the parents.

Rule 37.02(h) calls for coordinated decision-making in those cases where one family is involved in simultaneous juvenile, criminal, and family court matters. The parties and the court should coordinate the separate proceedings to assure a consistent outcome that is in the best interests of the child.

RULE 38. DEFINITIONS

Rule 38.01. Definitions

The terms used in these rules shall have the following meanings:

(a) **"Child placing agency"** means any agency licensed pursuant to Minnesota Statutes § 245A.02 to § 245A.16 or § 252.28, subd. 2.

(b) **"Emergency protective care"** means the placement status of a child when:

(1) taken into custody by a peace officer pursuant to Minnesota Statutes § 260C.151, subd. 6; § 260C.154; or § 260C.175;

(2) ordered into placement by the court pursuant to Minnesota Statutes § 260C.178 or § 260B.198 before a disposition; or

(3) returned home before a disposition with court ordered conditions of release.

(c) **"Foster care"** as defined in Minnesota Statutes § 260C.007, subd. 9, means the 24-hour-a-day care of a child in any facility which for gain or otherwise regularly provides one or more children, when unaccompanied by their parents, with a substitute for the care, food, lodging, training, education, supervision, or treatment they need but which for any reason cannot be furnished by their parent or legal custodian in their homes.

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

(e) **"Indian custodian"** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(1)(6), and Minnesota Statutes § 260.755, subd. 10, means any Indian person who has legal custody of an Indian child pursuant to tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

(f) **"Indian tribe"** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(1)(8), and Minnesota Statutes § 260.755, subd. 12, means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services

provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. § 1602(c), and exercising tribal governmental powers.

(g) **“Juvenile protection case records”** means all records of the juvenile court regarding a particular case or controversy, including all records filed with the court, all records maintained by the court, and all reporter’s notes and tapes, electronic recordings, and transcripts of hearings and trials. See also “records” defined in subdivision (p).

(h) **“Juvenile protection matter”** means any of the following types of matters:

(1) child in need of protection or services matters as defined in Minnesota Statutes § 260C.007, subd. 4, including habitual truant and runaway matters;

(2) neglected and in foster care matters as defined in Minnesota Statutes § 260C.007, subd. 18;

(3) review of foster care matters and review of out-of-home placement matters as defined in Minnesota Statutes § 257.071 and § 260C.141, subd. 2;

(4) termination of parental rights matters as defined in Minnesota Statutes § 260C.301 to § 260C.328; and

(5) permanent placement matters as defined in Minnesota Statutes § 260C.201, subd. 11, including transfer of permanent legal and physical custody to a relative matters and long-term foster care matters.

(i) **“Legal custodian”** means a person, including a guardian, who by court order or statute has sole or joint legal or physical custody of the child.

(j) **“Legal guardian”** means a person who is the court-appointed legal guardian of the child pursuant to Minnesota Statutes § 260C.325 or Minnesota Statutes Chapter 525 or an equivalent law in another jurisdiction.

(k) **“Parent”** as adapted from Minnesota Statutes § 260C.007, subd. 12, means the birth, legally adjudicated, or adoptive parent of a minor child. For an Indian child, parent also includes any Indian person who has legally adopted an Indian child including a person who has adopted a child by tribal law or custom as provided in Minnesota Statutes § 260.755, subd. 14, but it does not include an unmarried father whose paternity has not been acknowledged or established.

(l) **“Person”** as defined in Minnesota Statutes § 260C.007, subd. 13, means any individual, association, corporation, partnership, and the state or any of its political subdivisions, departments, or agencies.

(m) **“Protective care”** means the right of the local social services agency or child-placing agency to temporary physical custody and control of a child for purposes of foster care placement, and the right and duty of the local social services agency or child-placing agency to provide the care, food, lodging, training, education, supervision, and treatment the child needs.

(n) **“Protective supervision”** as referenced in Minnesota Statutes § 260C.201, subd. 1(a)(1), means the right and duty of the local social services agency or child-placing agency to monitor the conditions imposed by the court directed to the correction of the child’s need for protection or services while in the care of the child’s parent or legal custodian.

(o) **“Reasonable efforts”** as defined in Minnesota Statutes § 260.012(b) means the exercise of due diligence by the responsible social services agency to use appropriate and available services to meet the needs of the child and the child’s family to prevent removal of

the child from the child's parent or legal custodian or, upon removal, services to eliminate the need for removal and reunite the family. Reasonable efforts includes efforts by the local social services agency to secure for the child a legally permanent home in a timely fashion when reunification efforts are no longer applicable.

(p) **"Records"** means any recorded information that is collected, created, received, maintained, or disseminated by a court or court administrator, regardless of its physical form or method of storage, and specifically excludes judicial work product and drafts as defined in the Rules of Public Access to the Records of the Judicial Branch. See also "juvenile protection case records" defined in subdivision (g).

(q) **"Relative"** as adapted from Minnesota Statutes § 260C.007, subd. 14, and § 260C.193, subd. 3(c), means a parent, stepparent, grandparent, brother, sister, uncle or aunt of the minor, or an important friend with whom the child has resided or had significant contact. This relationship may be by blood, marriage, or adoption. For an Indian child, relative includes members of the extended family as defined by the law or custom of the Indian child's tribe or, in the absence of laws or custom, a person who has reached the age of 18 and who is the child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, or stepparent, as provided in the Indian Child Welfare Act, 25 U.S.C. § 1903(2).

(r) **"Removed from Home"** means the child has been taken out of the care of the parent or legal custodian, including a substitute caregiver, and placed in foster care or in a shelter care facility.

(s) **"Shelter care facility"** as adapted from Minnesota Statutes § 260C.007, subd. 17, means a physically unrestricting facility, including but not limited to, a hospital, a group home, or a facility licensed for foster care pursuant to Minnesota Statutes Chapter 245A, used for the temporary care of a child during the pendency of a juvenile protection matter.

RULE 39. APPLICABILITY OF OTHER RULES AND STATUTES

Rule 39.01. Rules of Civil Procedure

Except as otherwise provided by statute or these rules, the Minnesota Rules of Civil Procedure do not apply to juvenile protection matters.

Advisory Committee Comment

With respect to transfer of permanent legal and physical custody, Minnesota Statutes § 260C.201, subd. 11(e)(1), provides in pertinent part that "the juvenile court shall follow the standards and procedures applicable under [chapter 257, chapter 260], or chapter 518." The statute also provides that an order transferring permanent legal and physical custody to a relative must also be filed in the family court. Pursuant to Rule 301 of the Rules of General Practice for the District Court, the Rules of Civil Procedure apply in transfer of permanent legal and physical custody matters and in adoption matters.

Rule 39.02. Rules of Evidence

Subdivision 1. Generally. Except as otherwise provided by statute or these rules, in a juvenile protection matter the court shall only admit evidence that would be admissible in a civil trial pursuant to the Minnesota Rules of Evidence.

Subd. 2. Certain Out-of-Court Statements Admissible. An out-of-court statement not otherwise admissible by statute or rule of evidence is admissible as evidence in a juvenile protection matter if:

(a) the statement was made by a child under ten (10) years of age or by a child ten (10) years of age or older who is mentally impaired as defined in Minnesota Statutes § 609.341, subd. 6;

(b) the statement alleges, explains, denies, or describes:

(1) any act of sexual penetration or contact performed with or on the child;

(2) any act of sexual penetration or contact with or on another child observed by the child making the statement;

(3) any act of physical abuse or neglect of the child by another; or

(4) any act of physical abuse or neglect of another child observed by the child making the statement;

(c) the court finds that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability; and

(d) the proponent of the statement notifies all other parties of the particulars of the statement and the intent to offer the statement sufficiently in advance of the proceeding at which the proponent intends to offer the statement into evidence to provide the parties with a fair opportunity to respond to the statement.

For purposes of this subdivision, an out-of-court statement includes a video, audio, or other recorded statement.

Subd. 3. Judicial Notice. The court, upon its own motion or the motion of any party or the county attorney, may take judicial notice of any finding of fact or court order in any other proceeding in any other court involving the child or the child's parent or legal custodian.

Rule 39.03. Indian Child Welfare Act

Juvenile protection matters concerning an Indian child shall be governed by the Indian Child Welfare Act, 25 U.S.C. § 1901 to § 1963; the Minnesota Indian Family Preservation Act, Minnesota Statutes § 260.751 to § 260.835; and by these rules when these rules are not inconsistent with the Indian Child Welfare Act or the Minnesota Indian Family Preservation Act.

Rule 39.04. Rules of Guardian Ad Litem Procedure

The Rules of Guardian Ad Litem Procedure apply to juvenile protection matters.

Rule 39.05. Court Interpreter Statutes and Rules

The statutes and court rules regarding appointment of court interpreters apply to juvenile protection matters. The court may appoint an interpreter of its own selection and may fix reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and in the discretion of the court may be taxed ultimately as a cost.

B. GENERAL OPERATING RULES

RULE 40. TIME; TIMELINE

Rule 40.01. Computation of Time

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 in the computation of time. The last day of the period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. When a period of time prescribed or allowed is three (3) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in these rules, "legal holiday" includes New Year's Day, Martin Luther King's Birthday, Washington's Birthday (Presidents' Day), Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Day, and any other day designated as a holiday by the President, Congress of the United States, or by the State.

Rule 40.02. 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. If service is made by any means other than mail and accomplished after 5:00 p.m. local time on the day of service, one (1) additional day shall be added to the prescribed period.

Rule 40.03. Timeline

Subdivision 1. Child in Need of Protection or Services Matters.

(a) **Emergency Protective Care Hearing.** If a child has been removed from the home of the parent or legal custodian, the court shall hold an emergency protective care hearing within seventy-two (72) hours of the child's removal.

(b) **Admit/Deny Hearing.** When the child is removed from home by court order, an admit/deny hearing shall be held within ten (10) days of the date of the emergency protective care hearing. When the child is not removed from home by court order, an admit/deny hearing shall be held no sooner than five (5) days, and no later than twenty (20) days after the parties have been served with the petition. In the case of an Indian child, no foster care placement proceeding or termination of parental rights proceeding shall be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior, provided, however, that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty (20) additional days to prepare for such proceeding.

(c) **Pretrial Conference.** A pretrial conference may be held any time after the admit/deny hearing, but not later than ten (10) days before the date the trial is scheduled to commence.

(d) **Trial.** When the statutory grounds set forth in the petition are denied, a trial shall be commenced within sixty (60) days of the emergency protective care hearing or the admit/deny hearing, whichever is earlier.

(e) **Findings/Adjudication.** The court shall issue its findings and order concerning adjudication within fifteen (15) days of the date that the trial is completed. If written argument is to be submitted, such argument must be submitted within fifteen (15) days of the conclusion of testimony. The trial is not considered completed until written arguments, if any, are submitted.

(f) **Disposition.** Whenever practicable, the court may order disposition at the same time as the adjudication. In the event disposition is not ordered at the same time as the adjudication, the court shall include in the adjudication order a date for a disposition hearing which shall take place no later than ten (10) days from the date the court issues its adjudication order.

(g) **Review of Legal Custody.** When the disposition is an award of legal custody to the local social services agency, the court shall review the disposition in court at least every ninety (90) days. Any party or the county attorney may request a review hearing before ninety (90) days.

(h) **Review of Protective Supervision.** When the disposition is protective supervision, the court shall review the disposition in court at least every six (6) months from the date of the disposition.

Subd. 2. Permanent Placement Matters. When the child is in protective care, or legal or physical custody is transferred to the local social services agency, the court shall conduct a hearing to determine the permanent placement status of the child:

(a) within six (6) months of the date the child is removed from the home of the parent or legal custodian if the child is under eight (8) years of age at the time the petition is filed; or

(b) within twelve (12) months of the date the child is removed from the home of the parent or legal custodian if the child is eight (8) years of age or older at the time the petition is filed.

Subd. 3. Termination of Parental Rights Matters.

(a) **Admit/Deny Hearing.** An admit/deny hearing shall be held not less than ten (10) days after service of the petition.

(b) **Pretrial Conference.** A pretrial conference may be held any time after the date of the admit/deny hearing, but not later than ten (10) days before the date the trial is scheduled to commence.

(c) **Trial.** A trial shall be commenced within ninety (90) days of entry of the denial of the statutory grounds set forth in the petition.

(d) **Findings/Adjudication.** The court shall issue its findings and order concerning adjudication within fifteen (15) days of the date that the trial is completed. If written argument is to be submitted, such argument must be submitted within fifteen (15) days of the conclusion of testimony. The trial is not considered completed until written arguments, if any, are submitted.

(e) **Review.** When the court orders termination of parental rights and adoption as the permanency plan, the court shall conduct a hearing to review progress toward adoptive placement at least every ninety (90) days.

Advisory Committee Comment

The timeline set forth in Rule 40.03 is intended as an overall guide for juvenile protection matters and is based upon the requirements of Minnesota Statutes § 260C.176; § 260C.211, subds. 10 and 11; § 260C.178, subd. 6; the Indian Child Welfare Act, 25 U.S.C. § 1901 to § 1963; and the Adoption and Safe Families Act of 1997, P.L. 105-89. Specific time requirements are set forth in each individual rule.

Rule 40.03, subd. 1, sets forth the timeline for child in need of protection or services matters. The following timeline is an example of how a case would proceed if it related to a non-Indian child over eight years of age who has been removed from the child's home:

Day	Event
1	Child removed from home
3	Emergency Protective Care Hearing
3-13	Admit/Deny Hearing
14-53	Pretrial Conference
63	Trial
79	Findings/Adjudication
79-88	Disposition Hearing
168-178	Review Hearing
258-268	Review Hearing
348-358	Review Hearing
365	Permanent Placement Determination Hearing

Rule 40.03, subd. 2, complies with Minnesota Statutes § 260C.201, subd. 11, and provides that a permanent placement determination hearing must be held within six (6) months of a child's removal from the home if the child is under eight (8) years of age at the time the petition is filed.

Rule 40.04. Sanctions for Violation

The court may impose sanctions upon any county attorney, party, or counsel for a party who willfully fails to follow the timelines set forth in these rules.

Rule 40.05. Application of Timing Provisions

The timing provisions set forth in this rule are subject to the continuance provisions of Rule 41 and any other timing provisions set forth in each specific rule.

RULE 41. CONTINUANCES

Rule 41.01. Findings

Subdivision 1. Generally. Upon its own motion or motion of a party or the county attorney the court may continue a scheduled hearing or trial to a later date so long as the timelines for achieving permanency as set forth in these rules are not delayed. To grant a continuance, the court must make written findings or oral findings on the record that the continuance is necessary for the protection of the child, for accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown.

Subd. 2. Trials. Trials may not be continued or adjourned for more than one (1) week unless the court makes specific findings that the continuance or adjournment is in the best interests of the child.

Advisory Committee Comment

Although the court may grant a continuance in appropriate circumstances, the court should not grant a continuance that would defeat the federal and state statutory time requirements for permanency determinations.

Rule 41.02. Notice of Continuance

The court shall, either in writing or orally on the record, provide notice to the parties and the county attorney of the date and time of the continued hearing or trial.

Rule 41.03. Existing Orders; Interim Orders

Unless otherwise ordered, existing orders shall remain in full force and effect during a continuance. When a continuance is ordered, the court may make any interim orders it deems to be in the best interests of the child in accordance with the provisions of Minnesota Statutes § 260C.001 to § 260C.451.

RULE 42. SCHEDULING ORDER

Rule 42.01. Purpose

The purpose of this rule is to provide a uniform system for scheduling matters for trial and disposition and for achieving permanency within the timelines set forth in these rules.

Rule 42.02. Order

Subdivision 1. When Issued. The court shall issue a scheduling order at the admit/deny hearing held pursuant to Rule 71 or within five (5) days of the admit/deny hearing.

Subd. 2. Contents of Order. The scheduling order shall establish a deadline or specific date for:

- (a) completion of discovery and other pretrial preparation;
- (b) serving, filing, or hearing motions;
- (c) submission of the proposed case plan;
- (d) the pretrial conference;
- (e) the trial;
- (f) the disposition hearing;
- (g) the permanency placement determination hearing; and
- (h) any other events deemed necessary or appropriate.

Advisory Committee Comment

Rule 42.02 does not require the court to actually calendar time for any of the events described in the order. Rather, the court may simply set deadlines without establishing a date certain. For example, without setting a specific date the court may order that discovery must be completed at least ten days prior to trial.

Rule 42.03. Amendment

The court may amend a scheduling order as necessary, so long as the permanency timelines set forth in these rules are not delayed.

RULE 43. REFEREES AND JUDGES

Rule 43.01. Referee Authorization to Hear Matter

A referee may, as authorized by the chief judge of the judicial district, hear any juvenile protection matter under the jurisdiction of the juvenile court.

Rule 43.02. Objection to Referee Presiding Over Matter

A party or the county attorney may object to having a referee preside over a matter. The right to object shall be deemed waived unless the objection is in writing, filed with the court, and served upon all other parties and the county attorney within three (3) days after being informed that the matter is to be heard by a referee. Upon the filing of an objection, a judge shall hear any motion and shall preside at all further motions and proceedings involving the matter.

Rule 43.03. Removal of Particular Referee

Subdivision 1. Notice to Remove. A party or the county attorney may file with the court and serve upon all other parties a notice to remove a particular referee. The notice shall be served and filed within ten (10) days of the date the party or county attorney receives notice of the name of the referee who will preside at the hearing or trial, but not later than the commencement of the hearing or trial. A notice to remove may not be filed by a party or the county attorney against a referee who has presided at a motion or at any other proceeding in the matter of which the party or the county attorney had notice. A referee who has presided at a motion or other proceeding may not be removed except upon an affirmative showing of prejudice on the part of the referee. A judge shall rule on a motion to remove a referee who has already presided over the proceeding.

Subd. 2. Prejudice. If a party or the county attorney has once disqualified a referee as a matter of right, that party or the county attorney may disqualify the substitute referee, but only upon an affirmative showing of prejudice. A showing that the referee might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice. A judge shall rule on a motion to remove a substitute referee.

Subd. 3. Assignment of Another Referee. Upon the filing of a notice to remove a particular referee, or if a party or the county attorney makes an affirmative showing of prejudice against a substitute referee, the chief judge of the judicial district shall assign another juvenile court referee or a judge to hear the matter.

Subd. 4. Termination of Parental Rights Matters and Permanent Placement Matters. When a termination of parental rights matter or a permanent placement matter is filed in connection with a child who is the subject of a pending child in need of protection or services matter, the termination or permanency matter shall be considered a continuation of the protection matter. If the referee assigned to the protection matter is assigned to hear the termination or permanency matter, the parties and the county attorney shall not have the right to disqualify the assigned referee as a matter of right.

Advisory Committee Comment

A party may not remove a particular referee and then object to having the case heard by any referee. If a judge is assigned to hear a matter after a party has objected to a particular referee hearing the matter, the party may not seek removal of the judge as a matter of right but may only seek removal of a subsequent judge for cause.

Rule 43.04. Transmittal of Referee's Findings and Recommended Order

Subdivision 1. Transmittal. Upon the conclusion of a hearing, the referee shall transmit to a judge the written findings and recommended order. Notice of the findings and recommended order, along with notice of the right to review by a judge, shall be given either orally on the record or in writing to all parties, the county attorney, and to any other person as directed by the court.

Subd. 2. Effective Date. The recommended order is effective upon signing by the referee, unless stayed, reversed, or modified by a judge upon review.

Rule 43.05. Review of Referee's Findings and Recommended Order

Subdivision 1. Right to Review. A matter that has been decided by a referee may be reviewed in whole or in part by a judge. Review, if any is requested, shall be from the referee's written findings and recommended order. Upon request for review, the recommended order shall remain in effect unless stayed by a judge.

Subd. 2. Motion for Review. Any motion for review of the referee's findings and recommended order, together with a memorandum of law, shall be filed with the court and served on all parties and the county attorney within five (5) days of the filing of the referee's findings and recommended order. Upon the filing of a motion for review, the court administrator shall notify each party and the county attorney of the name of the judge to whom the review has been assigned.

Subd. 3. Response to Motion for Review. The parties and the county attorney shall file and serve any responsive motion and memorandum within three (3) days from the date of service of the motion for review.

Subd. 4. Timing. Failure to timely file and serve a submission may result in dismissal of the motion for review or disallowance of the submissions.

Subd. 5. Basis of Review. The review shall be based on the record before the referee and no additional evidence may be filed or considered. No personal appearances will be permitted, except upon order of the court for good cause shown.

Subd. 6. Transcripts. Any party or county attorney desiring to submit a transcript of the hearing held before the referee shall make arrangements with the court reporter at the earliest possible time. The court reporter shall advise the parties and the court of the day by which the transcript will be filed.

Advisory Committee Comment

If a party or the county attorney cannot obtain the transcript in time to file it with the motion for review, the motion should set forth the date the transcript will be submitted. The motion, recommended order, and memorandum of law must still be filed within the five day time period prescribed by the rule, but the decision of the court may be delayed until the court has the opportunity to review the transcript.

Rule 43.06. Order of the Court

When no review is requested, or when the right to review is waived, the findings and recommended order of the referee become the order of the court when confirmed by the judge as written or when modified by the judge sua sponte. The order shall be confirmed or modified by the court within ten (10) days of the transmittal of the findings and proposed order.

Rule 43.07. Removal of Judge

Subdivision 1. Disability of Judge. If by reason of death, sickness, or other disability a judge before whom a proceeding in the matter has been tried is unable to perform judicial duties after a decision is made or findings of fact and conclusions of law are filed, any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties; but if such other judge is satisfied that the duties cannot be performed because that judge did not preside at the trial, or for any other reason, that judge may exercise discretion to grant a new trial.

Subd. 2. Interest or Bias. No judge shall preside over any case if that judge is interested in its determination or if that judge might be excluded for bias from acting as a juror in the matter. If there is no other judge of the district who is qualified, or if there is only one (1) judge of the district, such judge shall immediately notify the chief justice of the supreme court of that judge's disqualification.

Subd. 3. Motion to Remove.

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

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

(c) **Showing of Prejudice.** After a party or the county attorney has once disqualified a presiding judge as a matter of right pursuant to Minnesota Statutes § 542.16, that party may disqualify the substitute judge, but only by making an affirmative showing of prejudice. A showing that the judge might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice. Upon the filing of a motion to remove, or if a litigant makes an affirmative showing of prejudice against a substitute judge, the chief judge of the judicial district shall assign any other judge of any court within the district to hear the matter.

Subd. 4. Termination of Parental Rights Matters and Permanent Placement Matters. When a termination of parental rights matter or a permanent placement matter is filed in connection with a child who is the subject of a pending child in need of protection or services matter, the termination or permanency matter shall be considered a continuation of the protection matter. If the judge assigned to the protection matter is assigned to hear the termination or permanency matter, the parties and the county attorney shall not have the right to disqualify the assigned judge as a matter of right.

RULE 44. ACCESSIBILITY OF JUVENILE PROTECTION CASE RECORDS

Rule 44.01. Availability of Juvenile Protection Case Records

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

Advisory Committee Comment

"Juvenile protection case records" is defined at Rule 38.01(g) and specifically excludes judicial work product and drafts.

On June 22, 1998, the Minnesota Supreme Court began a three-year, twelve-county Open Hearings Pilot Project under which juvenile protection hearings are presumed open to the public, the court may close or partially close a hearing only in exceptional circumstances, and juvenile protection case records, with limited exceptions, are presumed accessible to the public. *Amended Order Establishing Pilot Project on Open Hearings in Juvenile Protection Matters, File No. C2-95-1476 (Minn. S. Ct., filed Feb. 6, 1998)*, and *Order Promulgating Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings, File No. C2-95-1476 (Minn. S. Ct., filed May 29, 1998)*. The following twelve counties are participating in the pilot project: Chisago, Clay, Goodhue, Houston, Hennepin, LeSueur, Marshall, Pennington, Red Lake, St. Louis (Virginia court only), Stevens, and Watonwan. The pilot project is scheduled to continue until June 21, 2001. A copy of the pilot project rules regarding open juvenile court hearings and accessibility of records is available from the court administrator of each county participating in the pilot project. Rule 44 applies in counties that are not part of the Open Hearings Pilot Project.

Rule 44.02. No Order Required

Subdivision 1. Generally. Unless the court issues a protective order regarding a record or a portion of a record, juvenile protection case records shall be available for disclosure, inspection, copying, and release to the following without a court order:

- (a) the court and court personnel;
- (b) any party;
- (c) counsel for any party or the child; and
- (d) the county attorney.

Subd. 2. Parent's Rights Terminated. If a parent's rights to a child have been terminated, that parent shall not have access to records of further proceedings involving the child.

Subd. 3. Other Agencies. The court shall forward data to agencies and others as required by statute.

Subd. 4. Counsel Sharing Record with Client. Unless the court issues a protective order pursuant to Rule 44.05, counsel for a party may only share juvenile protection case records with that party consistent with state and federal access rules.

Advisory Committee Comment

Minnesota Statutes § 260C.171, subd. 1, mandates that “[u]nless otherwise provided by law, all court records shall be open at all reasonable times to the inspection of any child to whom the records relate, and to the child’s parent or guardian.” Rule 44.02 reflects the statutory language and provides that parties may have direct access to juvenile protection case records. The court may at any time issue a protective order regarding specific juvenile protection case records. If a party believes that certain documents are particularly sensitive, the party may ask the court to issue a protective order.

A parent whose rights to a child have been terminated is not a party to subsequent proceedings in juvenile court and does not have the right to access post-termination records.

Rule 44.03. Court Order Required

Subdivision 1. Person(s) with Custody or Supervision of the Child, and Others. The court may order juvenile protection case records, or portions of juvenile protection case records, to be made available for inspection, copying, disclosure, or release subject to such conditions as the court may direct, to:

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

Subd. 2. Public. A court order is required before any inspection, copying, disclosure, or release of a juvenile protection case record, or any portion of a juvenile protection case record, to the public. Before any court order is made, the court must find that inspection, copying, disclosure, or release is:

- (a) in the best interests of the child;
- (b) in the interests of public safety; or
- (c) necessary for the functioning of the juvenile court system.

Rule 44.04. Disclosure to Employer and Military Prohibited

Juvenile protection case records shall not be inspected, copied, disclosed, or released to any present or prospective employer of the child or the military services.

Rule 44.05. Protective Order

Upon motion pursuant to Rule 51, and for good cause shown, the court may at any time issue a protective order regarding any record or portion of a record. The court may require an ex parte showing that inspection, disclosure, copying, or release of the record is necessary and in the best interests of the child, public safety, or the functioning of the juvenile court system. Pursuant to Minnesota Statutes § 260C.171, subd. 3, the court may issue a protective order

prohibiting an attorney from sharing a record or portion of a record with a client other than a guardian ad litem.

Rule 44.06. Procedure for Requesting Access

The procedures for requesting access to case records are set forth in the Rules of Public Access to the Records of the Judicial Branch.

Advisory Committee Comment

Rule 44.06 refers to the Rules of Public Access to the Records of the Judicial Branch. Those rules set forth the procedures for requesting access to records and for determining fees when copies are requested.

RULE 45. EX PARTE COMMUNICATION

Rule 45.01. Ex Parte Communication Prohibited

Ex parte communication is prohibited, except as to procedural matters not affecting the merits of the case. All communications between the court and a party or participant shall be in the presence of all other parties or in writing with copies to the parties or, if represented, the party's attorney, except as otherwise permitted by statute or these rules. The court shall not consider any ex parte communication from anyone concerning a proceeding, including conditions of release, evidence, adjudication, disposition, or any other matter.

Advisory Committee Comment

Rule 45.01 reflects the prohibition against ex parte communication set forth in Rule 3.5(g) of the Rules of Professional Conduct and Cannon 3A(7) of the Code of Judicial Conduct.

Rule 45.02. Disclosure

The court shall fully disclose to all parties any attempted prohibited ex parte communication.

RULE 46. ORDERS

Rule 46.01. Written or Oral Orders

Court orders may be written or stated on the record. An order stated on the record shall also be reduced to writing by the court. An order shall remain in full force and effect until the first occurrence of one of the following:

- (a) issuance of an inconsistent order;
- (b) the order ends pursuant to the terms of the order; or
- (c) jurisdiction of the juvenile court is terminated.

Rule 46.02. Immediate Effect of Oral Order

Unless otherwise ordered by the court, an order stated on the record shall be effective immediately.

Rule 46.03. Delivery; Mailing

Court orders shall be delivered at the hearing or mailed by the court administrator to each party, the county attorney, and such other persons as the court may direct. If a party is represented by counsel, delivery or service shall be upon counsel. Filing and mailing of the

order by the court administrator must be accomplished within ten (10) days of the date the judicial officer delivers the order to the court administrator.

Rule 46.04. Notice of Filing of Order

Each order delivered or mailed to the parties and the county attorney shall be accompanied by a notice of filing which shall include notice of the right to appeal a final order pursuant to Rule 82. The State Court Administrator shall develop a "notice of filing" form which shall be used by court administrators.

RULE 47. RECORDING AND TRANSCRIPTS

Rule 47.01. 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 shall be assigned by the court to operate the device. Any required transcripts shall be prepared by personnel assigned by the court.

Rule 47.02. Availability of Transcripts

Transcripts shall be available only to the county attorney, parties, and participants for further use in the hearing or subsequent hearings, appeal, habeas corpus actions, or for other use as the court deems proper. Any request for a transcript shall be made to the court in writing or on the record.

RULE 48. USE OF TELEPHONE AND INTERACTIVE VIDEO

Rule 48.01. Motions and Conferences

The court may hear motions and conduct conferences with counsel by telephone or interactive video.

Advisory Committee Comment

Rule 48.01 authorizes the court to use telephone and interactive video to hear motions where testimony is not required and to resolve procedural matters with counsel for the parties.

Rule 48.02. Hearings and Taking Testimony

By agreement of the parties, or in exceptional circumstances upon motion of a party or the county attorney, the court may hold hearings and take testimony by telephone or interactive video.

Advisory Committee Comment

Rule 48.02 authorizes the court to hold hearings and take testimony by telephone or interactive video only upon agreement of the parties or in exceptional circumstances upon motion. The intent of this rule is to ensure that parties are permitted to fully participate in hearings and to be present when testimony is offered. The rule provides that the court has the opportunity, in all but the most exceptional cases, to personally observe witnesses in order to effectively weigh credibility. However, it also gives the court some flexibility in those exceptional cases.

Rule 48.03. In Court Appearance Not Precluded

This rule shall not preclude a party or the county attorney from being present in person before the court at a hearing.

RULE 49. SUBPOENAS

Rule 49.01. Subpoena for a Hearing or Trial

At the request of any party or the county attorney, the court administrator shall issue a subpoena for a witness in a matter pending before the court.

Rule 49.02. Form; Issuance; Notice

Subdivision 1. Form. Every subpoena shall be issued by the court administrator under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a specified time and place or to produce books, papers, documents, or other tangible things designated in the subpoena. The court administrator shall issue a subpoena, or a subpoena for the production of documentary evidence or tangible things, signed and sealed, but otherwise in blank, to a party or county attorney requesting it, who shall fill it in before service.

Subd. 2. Issuance. A subpoena shall be issued only for appearance at a hearing, a deposition pursuant to Rule 53, a trial pursuant to Rule 74, or to produce books, papers, documents, or other tangible things designated in the subpoena.

Subd. 3. Notice. Every subpoena shall contain a notice to the person to whom it is directed advising the person of the right to reimbursement for certain expenses pursuant to Rule 49.08.

Rule 49.03. Service

A subpoena may be served by the sheriff, a deputy sheriff, or any other person over the age of 18 who is not a party to the proceeding. Service of a subpoena upon a person named in the subpoena shall be made by delivering a copy of the subpoena to the named person or by leaving a copy at the person's usual place of abode with some person of suitable age and discretion residing at such abode.

Rule 49.04. Motion to Quash a Subpoena

Upon motion pursuant to Rule 51, a person served with a subpoena may move to quash or modify the subpoena. Upon hearing a motion to quash a subpoena, the court may:

- (a) direct compliance with the subpoena;
- (b) modify the subpoena if it is unreasonable or oppressive;
- (c) deny the motion to quash the subpoena on the condition that the person requesting the subpoena prepay the reasonable cost of producing the books, papers, documents, or tangible things; or
- (d) quash the subpoena.

Rule 49.05. Objection

The person to whom the subpoena is directed may, within five (5) days after service of the subpoena or on or before the time specified in the subpoena for compliance if such time is less than five (5) days after service, serve upon the party serving the subpoena a written objection to the taking of the deposition or the production, inspection, or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be

entitled to inspect or copy the materials, except pursuant to an order of the court from which the subpoena was issued. If objection is made, the party serving the subpoena may, at any time before or during the taking of the deposition, and upon notice and motion to the deponent, request an order requiring compliance with the subpoena.

Rule 49.06. Production of Documentary Evidence

A subpoena may also command the person to whom it is directed to produce books, papers, documents, or tangible things designated in the subpoena.

Rule 49.07. Subpoena for Taking Depositions; Place of Examination

Subdivision 1. Proof of Service. Proof of service of notice to take a deposition, as provided in Rule 53, constitutes a sufficient authorization for the issuance of a subpoena for the person named or described in the subpoena.

Subd. 2. Location. A resident of the state may be required to attend an examination only in the county in which the resident resides or is employed or transacts business in person, or at such other convenient place as is fixed by order of the court. A nonresident of the state may be required to attend in any county of the state.

Rule 49.08. Expenses

Subdivision 1. Witnesses. If the subpoena is issued at the request of the State of Minnesota, a political subdivision of the State, or an officer or agency of the State, witness fees and mileage shall be paid by public funds. If the subpoena is issued at the request of a party who is unable to pay witness fees and mileage, these costs shall upon order of the court be paid in whole or in part at public expense, depending upon the ability of the party to pay. All other fees and mileage shall be paid by the requesting party, unless otherwise ordered by the court upon motion.

Subd. 2. Expenses of Experts. Subject to the provisions of Rule 53, a witness who is not a party to the action or an employee of a party and who is required to give testimony or produce documents relating to a profession, business, or trade, or relating to knowledge, information, or facts obtained as a result of activities in such profession, business, or trade, is entitled to reasonable compensation for the time and expense involved in preparing for and giving such testimony or producing such documents. The party serving the subpoena shall make arrangements for such reasonable compensation prior to the time of the taking of the testimony. If such arrangements are not made, the person subpoenaed may proceed pursuant to Rule 49.04 or Rule 49.05. If the deponent has moved to quash or otherwise objected to the subpoena, the party serving the subpoena may, upon notice and motion to the deponent and all parties and the county attorney, move for an order directing the amount of such compensation at any time before the taking of the deposition.

Rule 49.09. Failure to Appear

If any person personally served with a subpoena fails, without reasonable cause, to appear or bring the child if ordered to do so, or if the court has reason to believe the person is avoiding personal service, the court may sua sponte or upon the motion of a party or the

county attorney pursuant to Rule 51 proceed against the person for civil contempt of court pursuant to Rule 50 or the court may issue a warrant for the person's arrest, or both. When it appears to the court that service will be ineffectual, or that the welfare of the child requires that the child be immediately brought into the custody of the court, the court may issue a warrant for immediate custody of the child.

RULE 50. CONTEMPT

Rule 50.01. Initiation

Contempt proceedings shall be initiated by personal service upon the alleged contemnor of an order to show cause together with a motion for contempt and an affidavit supporting the motion. The order to show cause shall direct the alleged contemnor to appear and show cause why he or she should not be held in contempt of court and why the moving party should not be granted the relief requested in the motion. The order to show cause shall contain at least the following:

- (a) a reference to the specific order of the court alleged to have been violated and date of filing of the order;
 - (b) a quotation of the specific applicable provisions ordered;
 - (c) a statement identifying the alleged contemnor's ability to comply with the order;
- and
- (d) a statement identifying the alleged contemnor's failure to comply with the order.

Rule 50.02. Supporting and Responsive Affidavits

The supporting affidavit of the moving party shall set forth with particularity the facts constituting each alleged violation of the order. Any responsive affidavit shall set forth with particularity any defenses the alleged contemnor will present to the court. The supporting affidavit and the responsive affidavit shall contain paragraphs which shall be numbered to correspond to the paragraphs of the motion where possible.

Rule 50.03. Hearing

The alleged contemnor must appear in person before the court to be afforded the opportunity to oppose the motion for contempt by sworn testimony. The court shall not act upon affidavit alone, absent express waiver by the alleged contemnor of the right to offer sworn testimony.

Rule 50.04. Sentencing

Subdivision 1. Default of Conditions for Stay. Where the court has entered an order for contempt with a stay of sentence and there has been a default in the performance of the condition(s) for the stay, before a writ of attachment or bench warrant may be issued, an affidavit of non-compliance and request for writ of attachment must be served upon the defaulting party, unless the person is shown to be avoiding service.

Subd. 2. Writ of Attachment. The writ of attachment shall direct law enforcement officers to bring the defaulting party before the court for a hearing to show cause why the stay of sentence should not be revoked. The moving party shall submit a proposed order for writ of attachment to the court.

Subd. 3. Sanctions. Upon evidence taken, the court shall determine the guilt or innocence of the alleged contemnor. If the court determines that the alleged contemnor is guilty, the court shall order punishment by fine or imprisonment for not more than six (6) months, or both.

Subd. 4. Authority of Court. Nothing in these rules shall be interpreted to limit the inherent authority of the court to enforce its own orders.

RULE 51. MOTIONS

Rule 51.01. Form

Subdivision 1. Generally. An application to the court for an order shall be by motion.

Subd. 2. Motions to Be in Writing. Except as permitted by subdivision 3, a motion shall be in writing and shall:

- (a) set forth the relief or order sought;
- (b) state with particularity the grounds for the relief or order sought;
- (c) be signed by the person making the motion;
- (d) be filed with the court, unless it is made orally in court on the record; and
- (e) be accompanied by a supporting affidavit or other supporting documentation or a memorandum of law, unless it is made orally in court on the record.

The requirement of writing is fulfilled if the motion is stated in a written notice of motion. The parties may agree to written submission to the court for decision without oral argument unless the court directs otherwise.

Subd. 3. Exception. Unless another party or the county attorney objects, a party or the county attorney may make an oral motion during a hearing. All oral motions and objections to oral motions shall be made on the record. When an objection is made, the court shall determine whether there is good cause to permit the oral motion and, before issuing an order, shall allow the objecting party reasonable time to respond.

Rule 51.02. Service and Notice of Motions

Subdivision 1. Upon Whom. The moving party shall serve the notice of motion and motion, along with any supporting affidavit or other supporting documentation or a memorandum of law, on all parties, the county attorney, and any other persons designated by the court. The moving party shall serve notice of the hearing on all participants, except a child under age 12 who is not represented by counsel.

Subd. 2. How Made. Service of a motion may be made by personal service, by mail, or by transmitting a copy by facsimile transmission pursuant to Rule 68.

Subd. 3. Time. Any written motion, along with any supporting affidavit or other supporting documentation or memorandum of law, 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. The filing and service of a motion shall not extend the permanency timelines set forth in these rules.

Rule 51.03. Ex Parte Motion and Hearing

Subdivision 1. Motion. A motion may be made ex parte when permitted by statute or these rules. Every ex parte motion shall be accompanied by an explanation of the efforts made to notify all parties and the county attorney of the motion or an explanation of why such notice would place the child in danger of imminent harm or could result in the child being hidden or removed from the court's jurisdiction.

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

Rule 51.04. Motion to Dismiss Petition

Any party or the county attorney may bring a motion to dismiss the petition upon any of the following grounds:

- (a) lack of jurisdiction over the subject matter;
- (b) lack of jurisdiction over the child; or
- (c) at or prior to the admit/deny hearing, failure of the petition to state facts which, if proven, establish a prima facie case to support the statutory grounds set forth in the petition.

Rule 51.05. Motion to Strike Pleadings

Any party or the county attorney may bring a motion to strike pleadings or portions of pleadings. If a motion to strike a pleading is granted, the pleading shall be physically removed from the court file. If a motion to strike a portion of a pleading is granted, that portion of the pleading shall be redacted from the court file.

Advisory Committee Comment

When the court grants a motion to strike pleadings or portions of pleadings, the objectionable matter should be physically removed from the court file and should not be considered by any fact finder with jurisdiction over the case.

RULE 52. SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS; SANCTIONS

Rule 52.01. Signing of Pleadings, Motions and Other Papers

Subdivision 1. Party Represented by an Attorney. When a party is represented by an attorney, every pleading, motion, and other paper filed with the court shall be personally signed by at least one attorney of record in the attorney's individual name and shall state the attorney's address, telephone number, and attorney registration number.

Subd. 2. Party Not Represented by an Attorney. A party who is not represented by an attorney shall personally sign the pleading, motion, or other paper filed with the court and

shall state the party's address and telephone number. If providing the address and telephone number would endanger the party, the address and telephone number may be provided to the court in a separate information statement and shall not be accessible to the public or to the parties. Upon notice and motion, the court may disclose the address and telephone number as it deems appropriate.

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

- (a) the pleading, motion, or other paper has been read;
- (b) to the best of the signer's knowledge, information, and belief formed after reasonable inquiry that the pleading, motion or other paper is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and
- (c) it is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

Rule 52.02. Sanctions

If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including reasonable attorney fees.

RULE 53. DISCOVERY

Rule 53.01. Disclosure by Petitioner Without Court Order

Upon the request of any party, the petitioner shall without court order make the following disclosures:

(a) **Documents and Tangible Items.** The petitioner shall allow access at any reasonable time to all information, material, and items within the petitioner's possession or control which relate to the case. The petitioner shall permit inspection and copying of any relevant documents, recorded statements, or other tangible items which relate to the case within the possession or control of the petitioner and shall provide any party with the substance of any oral statements which relate to the case. The copying of a videotaped statement of a child abuse victim or alleged victim shall be governed by Minnesota Statutes § 611A.90. The petitioner shall not disclose the name of or any identifying information regarding a reporter of maltreatment except as provided in Minnesota Statutes § 626.556, subd. 11.

(b) **Witnesses.** The petitioner shall disclose to all other parties and the county attorney the names and addresses of the persons intended to be called as witnesses at trial. The county attorney or petitioner shall permit all other parties to inspect and copy such witnesses' written or recorded statements that relate to the case within the petitioner's knowledge.

(c) **Expert Witnesses.** Petitioner shall disclose to all other parties and the county attorney:

- (1) the names and addresses of all persons intended to be called as expert witnesses at trial;
 - (2) the subject matter about which each expert witness is expected to testify;
- and
- (3) a summary of the grounds for each opinion to be offered.

Rule 53.02. Disclosure by Other Parties Without Court Order

Upon the request of a party or the county attorney, any party who is not the petitioner shall without court order make the following disclosures:

(a) **Documents and Tangible Objects.** The party shall disclose and permit the county attorney, attorney for petitioner, or any other party to inspect and copy any book, paper, report, exam, scientific test, comparison, document, photograph, or tangible object which the party intends to introduce in evidence at the trial or concerning which the party intends to offer evidence at the trial.

(b) **Witnesses.** Each party shall disclose to every other party and the county attorney the names and addresses of the persons the party intends to call as witnesses at trial. Each party shall permit every other party and the county attorney to inspect and copy such witnesses' written or recorded statements within the party's knowledge as relates to the case.

(c) **Expert Witnesses.** Each party shall disclose to all other parties and the county attorney:

- (1) the names and addresses of all persons intended to be called as expert witnesses at trial;
 - (2) the subject matter about which each expert witness is expected to testify;
- and
- (3) a summary of the grounds for each opinion to be offered.

Rule 53.03. Information Not Discoverable

The following information shall not be discoverable by any party or the county attorney without a court order:

(a) documents containing privileged information between an attorney and client, legal research, records, correspondence, reports, or memoranda to the extent they contain the opinions, theories, or conclusions of the attorney for a party or other staff of an attorney for a party; and

(b) except as otherwise required by this rule, reports, memoranda, or internal documents made by an attorney for a party or staff of an attorney for a party.

Rule 53.04. Discovery Upon Court Order

Upon written motion of any party or the county attorney, the court may authorize other discovery methods, including, but not limited to, the following:

Subdivision 1. Physical and Mental Examinations.

(a) **Examination by Licensed Professional.** If the physical or mental condition of a party is in controversy, the court may order the party to submit to a physical or mental examination by a licensed professional of the moving party's choice. The examination shall be at the moving party's expense. The order shall specify the time, place, manner, conditions, and the scope of the examination.

(b) **Copy of Report.** The examiner shall prepare a detailed report of the findings and conclusions of the examination and shall provide the report to the moving party who shall forward it to all other parties and the county attorney unless otherwise ordered by the court.

Subd. 2. Depositions.

(a) **Agreement of Parties.** A deposition may be taken upon agreement of the parties.

(b) **Order of Court.** Following the initial appearance, any party or the county attorney may move the court to order the testimony of any other person or party be taken by deposition upon oral examination, if:

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

(2) the party taking the deposition cannot procure the attendance of the witness at a hearing or trial by a subpoena, order of the court, or other reasonable means: or

(3) upon a showing that the information sought cannot be obtained by other means.

(c) **Subpoena.** Attendance of witnesses at oral deposition may be compelled by subpoena as provided by Rule 49. Attendance of parties at oral deposition shall be ordered by the court when the court grants a motion pursuant to subdivision 2(b) and shall be procured through service of the order and a notice of the time and place of the taking of the deposition on the party.

(d) **Notice.** A party or the county attorney taking a deposition shall give reasonable notice of the deposition. The 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. The parties shall agree on or the court shall order the manner of recording of the deposition. A stenographic transcription may be made at a party's request. Examination and cross-examination of witnesses shall be as permitted at trial. However, the deponent shall answer any otherwise objectionable question, except that which would reveal privileged material unless the privilege does not apply pursuant to Minnesota Statutes § 626.556, subd. 8, so long as it leads to or is reasonably calculated to lead to the discovery of any relevant data.

Subd. 3. Reports or Examinations and Tests. Upon motion and order of the court, any party shall disclose and permit the county attorney, attorney for petitioner, and other parties to inspect and copy any results or reports of physical or mental examinations, chemical dependency assessments and treatment records, scientific tests, experiments, and comparisons relating to the particular case. 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. Privileged communications are discoverable in accordance with Minnesota Statutes § 626.556, subd. 8.

Subd. 4. Experts. Discovery of facts known and opinions held by experts, otherwise discoverable pursuant to these rules and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(a) Upon motion, the court may order further discovery by means other than as provided in Rules 53.01 and 53.02, subject to such restrictions as to scope and such provisions concerning fees and expenses as the court may deem appropriate.

(b) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(c) Unless manifest injustice would result, (1) the court shall require the party seeking discovery to pay the expert a reasonable fee for time spent in responding to discovery pursuant to this rule, and (2) with respect to discovery obtained pursuant to this rule, the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

Rule 53.05. Time, Place, and Manner of Discovery

An order of the court granting discovery shall specify the time, place, and manner of discovery and inspection permitted and may prescribe such terms and conditions as are just.

Rule 53.06. Regulation of Discovery

Subdivision 1. Continuing Duty to Disclose. Whenever a party or the county attorney discovers additional material, information, or witnesses subject to disclosure, that party or the county attorney shall promptly notify the other parties and the county attorney of the existence of the additional material or information and the identify of the witnesses.

Subd. 2. Protective Orders. The trial court may order that specified disclosures be restricted or deferred, or make such other order as is appropriate to protect the child.

Subd. 3. Timely Discovery. Unless a court order otherwise provides, all material and information to which a party or the county attorney is entitled must be disclosed within fourteen (14) days of a request for disclosure.

Subd. 4. Sanctions. If, at any time, it is brought to the attention of the court that a party or the county attorney has failed to comply with an applicable discovery rule or order, or has failed to appear pursuant to a notice of taking of deposition, be sworn, or answer questions, the court may, upon motion, order such party or the county attorney to permit the discovery or inspection, grant a continuance, or enter such order as it deems just under the circumstances including:

(a) an order that the matters regarding which the order was made, or the other designated facts, shall be taken to be established for purposes of the proceedings, in accordance with the claim of the party who obtained the order;

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

(c) an order striking the petition or parts of the petition, answer, or parts of an answer, dismissing the proceeding, or entering a finding that the petition is proved or that certain facts alleged in the petition are proved;

(d) in lieu of any of the foregoing, an order treating as a contempt of court the failure to obey any order; or

(e) the court shall require the party or county attorney failing to act or the party's counsel, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds the failure was substantially justified or that other circumstances make an award of expenses unjust.

Subd. 5. Failure to Act. Failure to act as described in this rule may not be excused on the ground that the discovery sought is objectionable unless the party or county attorney failing to act has applied for a protective order as provided in subdivision 2.

RULE 54. DEFAULT

Rule 54.01. Procedure

If a party fails to appear after being properly served with a summons and notice that failure to appear may result in (a) a finding that the statutory grounds set forth in the petition have been proved and (b) an order granting the relief requested, the court shall take testimony in support of the petition. If the petition is proved by the applicable burden of proof, the court shall enter an order granting the relief sought in the petition. The court shall not grant a default if a party was not served with a summons within the time period set forth in Rule 69.02, subd. 5.

RULE 55. SETTLEMENT

Rule 55.01. Generally

Settlement discussions may be utilized to achieve one or more of the purposes set forth in Rule 37.02.

Rule 55.02. Content of Settlement Agreement

Any settlement agreement shall include a statement of:

- (a) the statutory grounds to be admitted;
- (b) the statutory grounds to be dismissed, if any;
- (c) the factual allegations to be admitted;
- (d) the factual allegations asserted by the petitioner but not admitted;
- (e) whether the court will enter or withhold adjudication; and
- (f) the issues to be addressed at the disposition hearing or the agreed upon disposition and case plan.

Rule 55.03. Procedure

Every settlement agreement shall be filed with the court or stated and agreed to on the record by the settling parties. Before approving a settlement agreement, the court shall determine that the agreement is in the best interests of the child and that each party to the agreement understands the content and consequences of the admission or settlement agreement and voluntarily consents to the agreement. When a party makes an admission, the court may

accept or reject the admission based upon the terms of the settlement agreement or may conditionally accept or reject the admission pending receipt of a predisposition report prepared for the disposition hearing. The court may accept a settlement agreement that resolves the issues with respect to the petitioner and one or more but not all parties, and proceed with the matter with respect to the non-settling parties. If the court approves the settlement agreement, it shall proceed pursuant to Rule 75. If the court rejects the settlement agreement, it shall advise the parties and the county attorney of this decision in writing or on the record and shall call upon the parties to either affirm or withdraw the admission. If the admission is withdrawn, the court shall make a finding that the admission is not accepted and proceed pursuant to Rule 74.

Rule 55.04. Objection to Settlement Agreement – Termination of Parental Rights Matters and Permanent Placement Matters

If a party objects to a settlement agreement in a termination of parental rights matter or a permanent placement matter, that party shall, within five (5) days of service of notice of the proposed settlement agreement, adopt the existing pleadings and assume the burden of proof or file pleadings in support of an alternative. The matter shall be set for trial within the timelines set forth in Rule 74.

RULE 56. ALTERNATIVE DISPUTE RESOLUTION

[Reserved for future use.]

Advisory Committee Comment

The Committee recommends the appointment of a separate advisory committee to research, draft, and recommend rules for alternative dispute resolution in juvenile protection matters. In the meantime, the absence of a rule is not intended to imply that parties may not use mediation or other alternative dispute resolution to achieve results in the best interests of the child.

C. PARTIES AND PARTICIPANTS

RULE 57. PARTIES

Rule 57.01. Party Status

Subdivision 1. Parties Generally. Parties to a juvenile protection matter shall include:

- (a) the child's guardian ad litem;
- (b) the child's legal custodian;
- (c) the petitioner;
- (d) any person who intervenes as a party pursuant to Rule 59;
- (e) any person who is joined as a party pursuant to Rule 60; and
- (f) any other person, including a child, who is deemed by the court to be important to a resolution that is in the best interests of the child.

Subd. 2. Habitual Truant, Runaway, and Prostitution Matters. In addition to the parties identified in subdivision 1, in any matter alleging a child to be a habitual truant, a runaway, or engaged in prostitution, the child, regardless of age, shall also be a party. In any

matter alleging a child to be a habitual truant, the child's school district may be joined as a party pursuant to Rule 60.

Subd. 3. Termination of Parental Rights Matters and Permanent Placement Matters. In addition to the parties identified in subdivision 1, in any termination of parental rights matter or permanent placement matter, the parties shall also include:

- (a) the child's parents, including any noncustodial parent and any adjudicated or presumed father;
- (b) any person entitled to notice of any adoption proceeding involving the child; and
- (c) any other person who is deemed by the court to be important to a resolution that is in the best interests of the child.

Rule 57.02. Rights of Parties

A party shall have the right to:

- (a) receive notice pursuant to Rule 69;
- (b) legal representation pursuant to Rule 61;
- (c) be present at all hearings unless excluded pursuant to Rule 63;
- (d) conduct discovery pursuant to Rule 53;
- (e) bring motions before the court pursuant to Rule 51;
- (f) participate in settlement agreements pursuant to Rule 55;
- (g) subpoena witnesses pursuant to Rule 49;
- (h) make argument in support of or against the petition;
- (i) present evidence;
- (j) cross-examine witnesses;
- (k) request review of the referee's findings and recommended order pursuant to Rule 43;
- (l) request review of the court's disposition upon a showing of a substantial change of circumstances or that the previous disposition was inappropriate;
- (m) bring post-trial motions pursuant to Rule 80;
- (n) appeal from orders of the court pursuant to Rule 82; and
- (o) any other rights as set forth in statute or these rules.

Advisory Committee Comment

The former rules did not distinguish between parties and participants. Rule 57 delineates the status and rights of parties, and Rule 58 delineates the status and rights of participants. There may be many individuals concerned about the best interests of a child who do not have the immediate connection to the child that justifies treating them as parties. The intent of this rule is to assure that such individuals are aware of the proceedings and are available to provide information useful to the court in making decisions concerning that child. A person with participant status may intervene as a party pursuant to Rule 59 or may be joined as a party pursuant to Rule 60.

Rule 57.03. Parties' Addresses

It shall be the responsibility of the petitioner to set forth in the petition the names and addresses of all parties if known to the petitioner after reasonable inquiry. It shall be the responsibility of each party to inform the court administrator of any change of address.

RULE 58. PARTICIPANTS

Rule 58.01. Participant Status

Unless already a party pursuant to Rule 57, or unless otherwise specified, participants to a juvenile protection matter shall include:

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

Advisory Committee Comment

The former rules did not distinguish between parties and participants. Rule 57 delineates the status and rights of parties, and Rule 58 delineates the status and rights of participants. There may be many individuals concerned about the best interests of a child who do not have the immediate connection to the child that justifies treating them as parties. The intent of this rule is to assure that such individuals are aware of the proceedings and are available to provide information useful to the court in making decisions concerning that child. A person with participant status may intervene as a party pursuant to Rule 59 or may be joined as a party pursuant to Rule 60.

Rule 58.02. Rights of Participants

Subdivision 1. Generally. Unless a participant intervenes as a party pursuant to Rule 59, or is joined as a party pursuant to Rule 60, the rights of a participant shall be limited to:

- (a) receiving notice pursuant to Rule 69;
- (b) attending hearings pursuant to Rule 63; and
- (c) offering information at the discretion of the court.

Subd. 2. Foster Parents and Relatives. Notwithstanding subdivision 1, any foster parent, pre-adoptive parent, relative providing care for the child, or relative to whom the local social services agency recommends transfer of permanent legal and physical custody of the child, shall 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 or relative.

Rule 58.03. Participants' Addresses

It shall be the responsibility of the petitioner to set forth in the petition the names and addresses of all participants if known to the petitioner after reasonable inquiry. It shall be the responsibility of each participant to inform the court administrator of any change of address.

RULE 59. INTERVENTION

Rule 59.01. Intervention of Right

Subdivision 1. Child. The child who is the subject of the juvenile protection matter shall have the right to intervene as a party.

Subd. 2. Indian Custodian and Indian Tribe. In any proceeding for the foster care placement of, or the termination of parental rights to, an Indian child, the child's Indian custodian and the child's tribe shall have a right to intervene as a party at any point in the proceeding. An Indian tribe and an Indian custodian shall file with the court and serve on all parties and the county attorney a notice of intervention in order to exercise party status in proceedings involving an Indian child.

Subd. 3. Grandparents. Any grandparent of the child shall have the right to intervene as a party if the child has lived with the grandparent within the two (2) years preceding the filing of the petition.

Subd. 4. Parent. Any parent who is not a legal custodian of the child shall have the right to intervene as a party.

Subd. 5. Social Services Agency. The local social services agency shall have the right to intervene as a party in a case where the local social services agency is not the petitioner.

Rule 59.02. Permissive Intervention

Any person, including the county attorney, may be permitted to intervene as a party if the court finds that such intervention is in the best interests of the child.

Rule 59.03. Procedure

Subdivision 1. Intervention of Right. A person with a right to intervene pursuant to Rule 59.01 shall file with the court and serve upon all parties and the county attorney a notice of intervention, which shall include the basis for a claim to intervene. The notice of intervention as a matter of right form shall be available from the court administrator. The intervention shall be deemed accomplished upon service of the notice of intervention, unless a party or the county attorney files and serves a written objection within ten (10) days of the date of service. If a written objection is timely filed and served, the court shall schedule a hearing for the next available date.

Subd. 2. Permissive Intervention. A person, including the county attorney in a case where the local social services agency is not the petitioner, seeking permissive intervention pursuant to Rule 59.02 shall file with the court and serve upon all parties and the county

attorney a notice of motion and motion to intervene pursuant to Rule 51. The notice shall state the nature and extent of the person's interest in the child and the reason(s) that the person's intervention would be in the best interests of the child. A hearing on a motion to intervene shall be held within ten (10) days of the filing of the motion to intervene.

Rule 59.04. Effect of Intervention

The court may conduct hearings, make findings, and issue orders at any time prior to intervention being accomplished or denied. The intervention shall be effective as of the date granted and prior proceedings and decisions of the court shall not be affected.

RULE 60. JOINDER

Rule 60.01. Procedure

The court, upon its own motion or motion of a party or the county attorney pursuant to Rule 51, may join a person or entity as a party if the court finds that joinder is:

- (a) necessary for a just and complete resolution of the matter; and
- (b) in the best interests of the child.

The moving party shall serve the motion upon all parties, the county attorney, and the person proposed to be joined.

Advisory Committee Comment

In *In Re the Welfare of Q.T.B.*, Nos. C7-97-2093 and C9-97-2094, (Minn. Ct. App. May 26, 1998), *rev. denied* (Minn. July 16, 1998), an unpublished decision of the Court of Appeals, the court considered the appellant's claim that she should have been joined as a party to a child in need of protection or services proceeding because she was at risk of losing her visitation rights with the infant who was the subject of the petition. The court cited Minn. R. Civ. P. 19.01 and determined that the rights of the appellant did not rise to the level of requiring joinder under Rule 19.01. While *In Re the Welfare of Q.T.B.* denies joinder under the specific facts of that case, it implies that joinder is permissible thus authorizing joinder in juvenile protection matters.

RULE 61. RIGHT TO REPRESENTATION; APPOINTMENT OF COUNSEL

Rule 61.01. Right to Representation

Every party and participant has the right to be represented by counsel in every juvenile protection matter. This right attaches no later than when the party or participant first appears in court.

Advisory Committee Comment

Rule 61.01 sets forth the basic principle that each person appearing in court has the right to be represented by counsel. Each person, however, does not necessarily have the right to appointment of counsel as provided in Rule 61.02.

Rule 61.02. Appointment of Counsel

Subdivision 1. Child.

(a) **Juvenile Protection Matters.** If the child desires counsel but is financially unable to employ it, the court shall appoint counsel to represent the child in any juvenile protection matter in which the court determines that such appointment is appropriate.

(b) **Truancy, Runaway, and Prostitution Matters.** The court shall appoint counsel for a child who cannot afford to retain counsel if the child, regardless of age, is the subject of a petition based on the statutory grounds that the child is a habitual truant, a runaway, or engaged in prostitution.

(c) **Indian Child.** In any juvenile protection matter involving an Indian child, the court may, in its discretion, appoint counsel for an Indian child upon a finding that such appointment is in the best interests of the child.

Subd. 2. Parent or Legal Custodian.

(a) **Juvenile Protection Matters.** If the child's parent or legal custodian desires counsel but is financially unable to employ it, the court shall appoint counsel to represent the parent or legal custodian in any juvenile protection matter in which the court determines that such appointment is appropriate.

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

Subd. 3. Guardian Ad Litem. The court may appoint separate counsel for the guardian ad litem if necessary.

Subd. 4. Child's Preference. In any matter where the child is not represented by counsel, the court shall determine the child's preferences regarding the proceedings, if the child is of suitable age to express a preference.

Rule 61.03. Reimbursement

When counsel is appointed for a child or a child's parent or legal custodian, the court may order, after giving the parent or legal custodian reasonable opportunity to be heard, that the fees and expenses of court appointed counsel shall be reimbursed in whole or in part by the parent or legal custodian depending upon the ability of the person to pay.

Rule 61.04. Notice of Right to Representation

Any child, parent, or legal custodian who appears in court and is not represented by counsel shall be advised by the court on the record of the right to representation pursuant to Rule 61.

Rule 61.05. Certificate of Representation

An attorney representing a client in a juvenile protection matter, other than a public defender or county attorney, shall on or before the attorney's first appearance file with the court a certificate of representation.

Rule 61.06. Withdrawal of Counsel

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

- (a) all proceedings in the matter have been completed;
- (b) the attorney has been discharged by the client in writing or on the record;

- (c) the court grants the attorney's ex parte motion for withdrawal; or
- (d) the court approves the attorney's ex parte written substitution of counsel.

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

RULE 62. GUARDIAN AD LITEM

Rule 62.01. Mandatory Appointment for Child

Subdivision 1. Generally. The court shall appoint a guardian ad litem to advocate for the best interests of each child who is the subject of a juvenile protection matter. The court may appoint a person to serve as guardian ad litem for more than one child in a proceeding. The appointment of a guardian ad litem shall be made pursuant to Rule 904 of the Rules of Guardian ad Litem Procedure. The guardian ad litem shall carry out the responsibilities set forth in Rule 908 of the Rules of Guardian ad Litem Procedure. The guardian ad litem shall have the rights and powers set forth in Rule 909 of the Rules of Guardian Ad Litem Procedure.

Subd. 2. Guardian Ad Litem Not Also Attorney for Child. Counsel for the child shall not also serve as the child's guardian ad litem or as legal counsel for the guardian ad litem.

Advisory Committee Comment

Rule 62.01 is consistent with Minnesota Statutes § 260C.163, subd. 5, which provides as follows:

The court shall appoint a guardian ad litem to protect the interests of the minor when it appears, at any stage of the proceedings, that the minor is without a parent or guardian, or that the minor's parent is a minor or incompetent, or that the parent or guardian is indifferent or hostile to the minor's interests, and in every proceeding alleging a child's need for protection or services under Minnesota Statutes § 260C.007, subd. 4.

With respect to the appointment of guardians ad litem, Minnesota Statutes § 260C.163, subd. 5, complies with the federal Child Abuse Prevention and Treatment Act (CAPTA), 42 U.S.C. § 5106a(b)(2)(A)(ix). CAPTA mandates that for a state to qualify to receive federal grants for child protection prevention and treatment services, the state must have in place:

[P]rovisions and procedures requiring that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who may be an attorney or a court appointed special advocate (or both), shall be appointed to represent the child in such proceedings -

(I) to obtain first-hand, a clear understanding of the situation and needs of the child; and

(II) to make recommendations to the court concerning the best interests of the child. . . .

42 U.S.C. § 5106a(b)(2)(A)(ix) (1999).

The types of cases to which guardians ad litem must be appointed are much more expansive under Minnesota's statutes than under federal statutes. Minnesota requires the appointment of a guardian ad litem not only in cases where the act of an adult places the child in need of protection or services, but also in cases where the child's act or status places the child in need of protection or services. See Minn. Stat. § 260C.163, subd. 5.

Rule 62.02. Discretionary Appointment for Child’s Parent or Legal Custodian

The court may sua sponte or upon the written or on-the-record request of a party or participant appoint a guardian ad litem for a parent who is a party or the legal custodian if the court determines that the parent or legal custodian:

- (a) is incompetent to assist counsel in the matter or understand the nature of the proceedings; or
- (b) it appears at any stage of the proceedings that the parent is under eighteen (18) years of age and is without a parent or legal custodian, or that considered in the context of the matter the minor parent’s parent or legal custodian is unavailable, incompetent, indifferent to, hostile to, or has interests in conflict with the interests of the minor parent.

Appointment of a guardian ad litem for a parent shall not result in discharge of counsel for the parent.

Rule 62.03. Term of Service of Guardian Ad Litem

Unless otherwise ordered by the court, upon appointment to a juvenile protection matter the guardian ad litem shall serve as follows:

- (a) When the permanency plan for the child is to return the child home, the court shall issue an order dismissing the guardian ad litem from the case upon issuance of an order returning the child to the child’s home and terminating the juvenile protection matter.
- (b) When the permanency plan for the child is transfer of permanent legal and physical custody to a relative, the court shall issue an order dismissing the guardian ad litem from the case upon issuance of the order transferring custody and terminating the juvenile protection matter.
- (c) When the permanency plan for the child is termination of parental rights leading to adoption, the guardian ad litem shall continue to serve for the purpose of monitoring progress toward adoption, and shall provide the foster parent and child, if of suitable age, with the address and phone number of the guardian ad litem so that they may contact the guardian ad litem if necessary.
- (d) When the permanency plan for the child is long-term foster care, the guardian ad litem shall continue to serve for the purpose of monitoring the child’s welfare, and shall provide the foster parent and child, if of suitable age, with the address and phone number of the guardian ad litem so that they may contact the guardian ad litem if necessary.

RULE 63. PRESENCE AT PROCEEDINGS

Rule 63.01. Right to Attend Hearing

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

Advisory Committee Comment

Pursuant to Rule 57, a party has the right to be present in person at any hearing. For a child who is a party, the person with physical custody of the child should generally be responsible for assuring the child’s attendance at hearings. When a child is in emergency protective care or protective care, the local social services agency is responsible for ensuring the child’s presence in court. If the child is in the custody of the county in out-of-home placement, the social

services agency should transport the child to the hearing. If the agency fails to make arrangements for the child to attend the hearing, the child's attorney or guardian ad litem may need to ask for a continuance and for an order requiring the child to be brought to the next hearing.

Rule 63.02. Absence Does Not Bar Hearing

The absence from a hearing of any party shall not prevent the hearing from proceeding provided appropriate notice has been served.

Rule 63.03. 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 interests of the child to do so. If a person other than counsel or guardian ad litem engages in conduct that 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.

Rule 63.04. 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 64. CLOSED PROCEEDINGS

Rule 64.01. Attendance at Hearings

Only the following may attend hearings:

- (a) parties pursuant to Rule 57;
- (b) participants pursuant to Rule 58;
- (c) the county attorney;
- (d) persons requested by a party or by the county attorney who are approved by the court; and
- (e) persons authorized by the court under such conditions as the court may approve.

Advisory Committee Comment

On June 22, 1998, the Minnesota Supreme Court began a three-year, twelve-county Open Hearings Pilot Project under which juvenile protection hearings are presumed open to the public, the court may close or partially close a hearing only in exceptional circumstances, and juvenile protection case records, with limited exceptions, are presumed accessible to the public. *Amended Order Establishing Pilot Project on Open Hearings in Juvenile Protection Matters, File No. C2-95-1476 (Minn. S. Ct., filed Feb. 6, 1998)*, and *Order Promulgating Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings, File No. C2-95-1476 (Minn. S. Ct., filed May 29, 1998)*. The following twelve counties are participating in the pilot project: Chisago, Clay, Goodhue, Houston, Hennepin, LeSueur, Marshall, Pennington, Red Lake, St. Louis (Virginia court only), Stevens, and Watonwan. The pilot project is scheduled to continue until June 21, 2001. A copy of the pilot project rules regarding open juvenile court hearings and accessibility of records is available from the court administrator of each county participating in the Open Hearings Pilot Project.

D. COURSE OF CASE

RULE 65. EMERGENCY PROTECTIVE CARE ORDER AND NOTICE

Rule 65.01. Emergency Protective Care Defined

A child is in "emergency protective care" when:

- (a) taken into custody by a peace officer pursuant to Minnesota Statutes § 260C.151, subd. 6; § 260C.154; or § 260C.175;
- (b) ordered into placement pursuant to Minnesota Statutes § 260C.178 or § 260B.198 before a disposition; or
- (c) returned home before a disposition with court-ordered conditions of release.

Advisory Committee Comment

A child taken into emergency protective care should never be held in secure detention.

Rule 65.02. Ex Parte Order for Emergency Protective Care

Subdivision 1. Generally. The court may issue an ex parte order for emergency protective care if it finds from the facts set forth in the petition or any supporting affidavits or sworn testimony that:

- (a) the child has left or been removed from a court-ordered placement; or
- (b) there is a prima facie showing that the child is in surroundings or conditions that endanger the child's health, safety, or welfare and that require that the child's custody and care be immediately assumed by the court.

Subd. 2. Habitual Truant, Runaway, and Prostitution Matters. In addition to the provisions of subdivision 1, the court may issue an ex parte order for emergency protective care if it finds from the facts set forth in the petition or any supporting affidavits or sworn testimony that:

- (a) there is a prima facie showing that the child has engaged in prostitution pursuant to Minnesota Statutes § 260C.007, subd. 4(11); is a habitual truant pursuant to Minnesota Statutes § 260C.007, subd. 4(14); or is a runaway pursuant to Minnesota Statutes § 260C.007, subd. 4(13); and
- (b) the child failed to appear after having been personally served with a summons or subpoena, reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons.

Rule 65.03. Contents of Order

An order for emergency protective care shall be signed by a judge and shall:

- (a) order the child to be taken to an appropriate relative, a designated caregiver pursuant to Minnesota Statutes Chapter 257A, or a shelter care facility designated by the court pending an emergency protective care hearing pursuant to Rule 67;
- (b) state the name and address of the child, unless such information would endanger the child, or, if unknown, designate the child by any name or description by which the child can be identified with reasonable certainty;
- (c) state the age and gender of the child or, 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;

- (d) state the reasons why the child is being taken into emergency protective care;
- (e) state the reasons for any limitation on the time or location of the execution of the emergency protective care order;
- (f) state the date when issued and the county and court where issued; and
- (g) state the date, time, and location of the emergency protective care hearing.

Rule 65.04. Execution of Order

An order for emergency protective care:

- (a) may only be executed by a peace officer authorized by law to execute a warrant;
- (b) shall be executed by taking the child into custody;
- (c) may be executed at any place in the state except where prohibited by law or unless otherwise ordered by the court;
- (d) may be executed at any time unless otherwise ordered by the court; and
- (e) need not be in the peace officer's possession at the time the child is taken into emergency protective care.

Rule 65.05. Notice

When an order for emergency protective care is executed, the peace officer shall notify the child and the child's parent or legal custodian:

- (a) of the existence of the order for emergency protective care;
 - (b) of the reasons why the child is being taken into emergency protective care;
 - (c) of the time and place of the emergency protective care hearing;
 - (d) of the name, address, and telephone number of the local social services agency;
- and
- (e) that the parent or legal custodian or child may request that the court place the child with a relative or a designated caregiver rather than in a shelter care facility.

The notice shall be delivered in written form and, when possible, the content of the notice shall also be orally summarized and explained. If the parent or legal custodian is not present when the child is removed from the premises, the notice shall be left with an adult on the premises. If no adult is present at the time the child is removed, the notice shall be left in a conspicuous place on the premises.

Rule 65.06. Enforcement of Order

An emergency protective care order shall be enforceable by any peace officer in any jurisdiction.

**RULE 66. PROCEDURES DURING PERIOD OF
EMERGENCY PROTECTIVE CARE**

Rule 66.01. Release from Emergency Protective Care

Subdivision 1. Child Taken Into Emergency Protective Care Pursuant to Court Order.

- (a) **Release Prohibited.** A child taken into emergency protective care pursuant to a court order shall be held for seventy-two (72) hours unless the court issues an order authorizing release.

(b) **Release Required.** A child taken into emergency protective care pursuant to a court order shall not be held in emergency protective care for more than seventy-two (72) hours unless an emergency protective care hearing has commenced pursuant to Rule 67 and the court has ordered continued protective care.

Subd. 2. Child Taken Into Emergency Protective Care Without Court Order.

(a) **Release Required.** A child taken into emergency protective care without a court order shall be released unless an emergency protective care hearing pursuant to Rule 67 has commenced within seventy-two (72) hours of the time the child was removed from home and the court has ordered continued protective care.

(b) **Discretionary Release by Peace Officer or County Attorney.** When a peace officer has taken a child into emergency protective care without a court order, the peace officer, peace officer's supervisor, or the county attorney may release the child any time prior to an emergency protective care hearing. The peace officer, the peace officer's supervisor, or the county attorney who releases the child may not place any conditions of release on the child.

Rule 66.02. Discretionary Release by Court; Custodial Conditions

The court at any time before an emergency protective care hearing may release a child and may:

(a) place restrictions on the child's travel, associations, or place of abode during the period of the child's release; and

(b) impose any other conditions upon the child or the child's parent or legal custodian deemed reasonably necessary and consistent with criteria for protecting the child.

Any conditions terminate after seventy-two (72) hours unless a hearing has commenced pursuant to Rule 67 and the court has ordered continuation of the condition.

Rule 66.03. Release to Custody of Parent or Other Suitable Person

A child released from emergency protective care shall be released to the custody of the child's parent, legal custodian, or other suitable person.

Rule 66.04. Reports

Subdivision 1. Report by Peace Officer. Any report required by Minnesota Statutes § 260C.176, subd. 4, shall be filed with the court on or before the first court day following placement of the child and the report shall include at least:

(a) the time the child was taken into emergency protective care;

(b) the time the child was delivered for transportation to the shelter care facility;

(c) the reasons why the child was taken into emergency protective care;

(d) the reasons why the child has been placed;

(e) a statement that the child and the child's parent or legal custodian have received the advisory required by Minnesota Statutes § 260C.176, subd. 3, or the reasons why the advisory has not been made; and

(f) reasons to support the non-disclosure, 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.

Subd. 2. Report by Supervisor of Shelter Care Facility. Any report required by Minnesota Statutes § 260C.176, subd. 6, shall be filed with the court on or before the first 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 shelter care facility.

RULE 67. EMERGENCY PROTECTIVE CARE HEARING

Rule 67.01. Timing

Subdivision 1. Generally. The court shall hold an emergency protective care hearing within seventy-two (72) hours of the child being taken into emergency protective care unless the child is released pursuant to Rule 66. The purpose of the hearing shall be to determine whether the child shall be returned home or placed in protective care.

Subd. 2. Continuance. When witnesses are to be called, the court may, upon written or oral motion of a party made at the emergency protective care hearing, continue the emergency protective care hearing for a period not to exceed eight (8) days. A continuance may be granted:

- (a) upon a determination by the court that there is a prima facie showing that the child should be held in emergency protective care pursuant to Rule 65; and
- (b) if the court finds that a continuance is necessary for the protection of the child, for the accumulation or presentation of necessary evidence or witnesses, to protect the rights of a party, or for other good cause shown.

Advisory Committee Comment

Subdivision 2 requires that the court make certain findings before permitting a continuance. This provision recognizes that parties may need time to prepare for the hearing, but assures that a child will not be held unnecessarily during the continuance.

Rule 67.02. Notice of Hearing

The court shall inform the county attorney, the child, and the child's counsel, guardian ad litem, parent, legal custodian, spouse, and school district of residence as required by Minnesota Statutes § 127A.47, subd. 6, of the time and place of the emergency protective care hearing.

Rule 67.03. Inspection of Reports

Prior to the emergency protective care hearing, the parties shall be permitted to inspect reports or other written information or records that any party intends to present at the hearing.

Advisory Committee Comment

Rule 67.03 places upon each party the burden of providing to opposing parties all documentation the party intends to introduce at the hearing. The rule is intended to ensure that the parties have the relevant information before the hearing so they are prepared to respond. This rule is not intended to limit discovery allowed by Rule 53.

Rule 67.04. Determination Regarding Notice

During the hearing, the court shall determine whether notice has been provided in compliance with Rule 69 and what further efforts, if any, must be taken to notify all parties

and participants as rapidly as possible of the pendency of the matter and the date and time of the next hearing.

Rule 67.05. Advisory

At the beginning of the emergency protective care hearing the court shall on the record advise all parties and participants present of:

- (a) the reasons why the child was taken into emergency protective care;
- (b) the substance of the statutory grounds and supporting factual allegations set forth in the petition;
- (c) the purpose and scope of the hearing;
- (d) the possible consequences of the proceedings;
- (e) the right of the child and the child's parent or legal custodian to representation pursuant to Rule 61;
- (f) the right of the parties to present evidence and to cross-examine witnesses regarding whether the child should return home with or without conditions or whether the child should be placed in protective care; and
- (g) that failure to appear at future hearings could result in a finding that the petition has been proved, issuance of an order adjudicating the child in need of protection or services, and an order transferring permanent legal and physical custody of the child to another.

Rule 67.06. Evidence

The court may admit any evidence, including reliable hearsay and opinion evidence, that is relevant to the decision of whether to continue protective care of the child or return the child home. Privileged communications may be admitted in accordance with Minnesota Statutes § 626.556, subd. 8.

Rule 67.07. Filing and Service of Petition

A petition shall be filed with the court and may be served at or before the emergency protective care hearing.

Rule 67.08. Protective Care Determinations

Subdivision 1. Initial Finding. 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.

Subd. 2. Endangerment.

(a) **Findings.** If the court finds that the petition establishes a prima facie showing that a juvenile protection matter exists and that the child is the subject of that matter, the court shall then determine whether the petition also makes a prima facie showing that:

- (1) the child or others would be immediately endangered by the child's actions if the child were released to the care of the parent or legal custodian; or
- (2) the child's health, safety, or welfare would be immediately endangered if the child were released to the care of the parent or legal custodian.

(b) **Determination.** If the court finds that endangerment exists pursuant to this subdivision, the court shall continue protective care or release the child to the child's parent or

legal custodian and impose conditions to assure the safety of the child or others. If the court finds that endangerment does not exist, the court shall release the child to the child's parent or legal custodian subject to reasonable conditions of release.

Advisory Committee Comment

Rule 67.08 is consistent with Minnesota Statutes § 260C.178, subd. 1(b), which provides:

Unless there is reason to believe that the child would endanger self or others, not return for a court hearing, run away from the child's parent, guardian, or custodian or otherwise not remain in the care or control of the person to whose lawful custody the child is released, or that the child's health or welfare would be immediately endangered, the child shall be released to the custody of a parent, guardian, custodian, or other suitable person, subject to reasonable conditions of release including, but not limited to, a requirement that the child undergo a chemical use assessment as provided in [Minnesota Statutes §] 260C.157, subd. 1.

Rule 67.09. Factors

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

- (a) whether the local social services agency made reasonable efforts, or active efforts in the case of an Indian child, to prevent or eliminate the need for removal of the child from the home;
- (b) whether there are services the court could order that would allow the child to safely return home;
- (c) whether responsible relatives or other responsible adults are available to provide services or to serve as placement options if licensed;
- (d) whether the placement proposed by the agency is the least restrictive and most home-like setting that meets the needs of the child;
- (e) whether restraining orders, or orders expelling an allegedly abusive parent from the home, are appropriate;
- (f) whether orders are needed for examinations, evaluations, or immediate services;
- (g) the terms and conditions for parental visitation; and
- (h) what consideration has been given for financial support of the child.

Subd. 2. Egregious Harm. 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 make the following determinations:

- (a) whether a termination of parental rights petition as been filed stating that (1) the parent has subjected a child to egregious harm as defined in Minnesota Statutes § 260C.007, subd. 26; (2) the parental rights of the parent to another child have been involuntarily terminated; or (3) the child is an abandoned infant under Minnesota Statutes § 260C.301, subd. 2;
- (b) that the county attorney has determined not to proceed with a termination of parental rights petition under Minnesota Statutes § 260C.307; or

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

Rule 67.10. Protective Care Findings and Order

At the conclusion of the emergency protective care hearing the court shall issue a written order which shall include findings pursuant to Rules 67.08 and 67.09 and which shall order:

- (a) that the child:
 - (1) continue in protective care;
 - (2) return home with conditions in place to assure the safety of the child or others;
 - (3) return home with reasonable conditions of release; or
 - (4) return home with no conditions;
- (b) conditions pursuant to subdivision (a), if any, to be imposed upon the parent, legal custodian, or a party;
- (c) services, if any, to be provided to the child and the child's family;
- (d) where the child shall be placed;
- (e) terms of visitation pending further proceedings; and
- (f) the parent's responsibility for costs of care pursuant to Minnesota Statutes § 260C.331, subd. 1.

Advisory Committee Comment

Minnesota Statutes § 260C.178, subd. 1(b), provides as follows:

In a proceeding regarding a child in need of protection or services, the court, before determining whether a child should continue in custody, shall also make a determination, consistent with [Minnesota Statutes §] 260.012 as to whether reasonable efforts, or in the case of an Indian child, active efforts, according to the Indian Child Welfare Act of 1978, United States Code, title 25, section 1912(d), were made to prevent placement or to reunite the child with the child's family, or that reasonable efforts were not possible. The court shall also determine whether there are available services that would prevent the need for further detention.

In compliance with the statutory mandate of Minnesota Statutes § 260C.178, Rules 67.08 and 67.09 require the court to elicit relevant evidence from the petitioner and make findings as to whether the child is in imminent danger, whether the county made reasonable efforts to prevent removal or eliminate the need for removal, and whether there are services the court could order to allow the child to safely return home. Rule 67.10 requires that the court issue a written order that includes specific findings in support of the order.

Rule 67.11. Protective Care Review

Subdivision 1. Consent for Continued Protective Care. The court may, with the consent of the parties and the county attorney, order that the child continue in protective care even if the circumstances of the parent, legal custodian, or child have changed.

Subd. 2. Release from Protective Care on Consent of Parties and the County Attorney. The court may, with the consent of the parties and the county attorney, order that a child be released from protective care. If the child has no guardian ad litem, the court may not release the child from protective care without a court hearing.

Subd. 3. Formal Review.

(a) **On Motion of Court.** The court may on its own motion schedule a formal review hearing at any time.

(b) **On Request of a Party or the County Attorney.** A party or the county attorney may request a formal hearing concerning continued protective care by filing a motion with the court. The court shall schedule a hearing and provide notice pursuant to Rule 69 if the motion states:

(1) that the moving party has new evidence concerning whether the child should be continued in protective care; or

(2) that the party has an alternate arrangement to provide for the safety and protection of the child.

(c) **Evidence.** The court may admit any evidence, including reliable hearsay and opinion evidence, which is relevant to the decision whether to continue protective care of the child or return the child home. Privileged communications may be admitted in accordance with Minnesota Statutes § 626.556, subd. 8.

(d) **Findings and Order.** At the conclusion of the formal review hearing the court shall:

(1) return the child to the care of the parent or legal custodian with or without reasonable conditions of release if the court does not make findings pursuant to subdivision 3(d)(2);

(2) continue the child in protective care or release the child with conditions to assure the safety of the child or others if the court finds that the petition states a prima facie case to believe that a child protection matter exists and that the child is the subject of that matter, and (a) the child or others would be immediately endangered by the child's actions if the child were released to the care of the parent or legal custodian or (b) the child's health, safety or welfare would be immediately endangered if the child were released to the care of the parent or legal custodian; or

(3) modify the conditions of release.

RULE 68. METHODS OF FILING AND SERVICE

Rule 68.01. Filing by Facsimile Transmission

Subdivision 1. Generally. Any paper may be filed with the court by facsimile transmission. Filing shall be deemed complete at the time that the facsimile transmission is received by the court. The facsimile shall have the same force and effect as the original. Only facsimile transmission equipment that satisfies the published criteria of the supreme court shall be used for filing in accordance with this rule.

Subd. 2. Fees; Original Document. Within five (5) days after the court has received the transmission, the party filing the document shall forward the following to the court:

- (a) a \$5 transmission fee, unless otherwise provided by statute or rule or otherwise ordered by the court;
- (b) the original signed document; and
- (c) the applicable filing fee, if any.

Subd. 3. Noncompliance. Upon failure to comply with the requirements of this rule, the court may make such orders as are just including, but not limited to, an order striking pleadings or parts thereof, staying further proceedings until compliance is complete, or dismissing the action, proceeding, or any part thereof.

Rule 68.02. Types of Service

Subdivision 1. Personal Service. Personal service means personally delivering the original document to the person to be served or leaving it at the person's home or usual place of abode with a person of suitable age and discretion residing therein, unless the court authorizes service by publication.

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

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

Subd. 4. Facsimile Service. Service by facsimile means transmission by facsimile equipment that satisfies the published criteria of the supreme court, addressed to the person to be served.

Rule 68.03. Service by Facsimile Transmission

Unless these rules require personal service, by agreement of the parties any document may be served by facsimile transmission. The facsimile shall have the same force and effect as the original.

Rule 68.04. Service Upon Counsel; Social Services Agency

Unless personal service upon a party is required, service upon counsel for a party or counsel for a participant shall be deemed service upon the party or participant. Service upon the county attorney shall be deemed to be service upon the social services agency.

Rule 68.05. Service of Subpoena

A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the state.

Rule 68.06. Completion of Service

Service by mail is complete upon mailing to the last known address of the person to be served. Service by facsimile is complete upon completion of the facsimile transmission.

Rule 68.07. Proof of Service

On or before the date set for appearance, the person serving the document shall file with the court an affidavit of service stating:

- (a) whether the document was served;
- (b) how the document was served;
- (c) the person on whom the document was served; and
- (d) the date and place of service.

If the court administrator served the document, the court administrator may file a written statement in lieu of an affidavit.

RULE 69. SUMMONS AND NOTICE

Rule 69.01. Commencement

A juvenile protection matter is commenced by filing a petition with the court.

Rule 69.02. Summons

Subdivision 1. Definition. A summons is a document issued by the court that orders the initial appearance in court of the person to whom it is directed.

Subd. 2. Upon Whom.

(a) **Generally.** The court shall serve a summons upon each party, the person with physical custody of the child, and any other person whose presence the court deems necessary to a determination concerning the best interests of the child.

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

Subd. 3. Service.

(a) **Personal Service Generally Required.** The summons shall be personally served in all juvenile protection matters unless the court orders service by publication pursuant to Rule 68.02, subd. 3.

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

(1) **Generally.** When the sole allegation is that the child is a habitual truant, a runaway, or engaged in prostitution, initial service may be made as follows:

(i) the court may send notice and a copy of the petition or notice to appear by U.S. mail to the legal custodian, the person with custody or control of the child, and each party and participant, or

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

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

Subd. 4. Content.

- (a) **Generally.** A summons shall contain or have attached:
- (1) a copy of the petition, court order, motion, affidavit or other legal documents not previously provided (however, these documents shall not be contained in or attached to the summons and complaint if the court has authorized service of the summons by publication pursuant to Rule 69.02, subd. 3(a));
 - (2) a statement of the time and place of the hearing;
 - (3) a statement describing the purpose of the hearing;
 - (4) a statement that failure to appear may result in a finding of contempt of the court's order to appear or the issuance of a warrant for the arrest of the person summoned or both; and
 - (5) a statement explaining the right to representation pursuant to Rule 61.
- (b) **Child in Need of Protection or Services Matters.** In addition to the content requirements set forth in subdivision 4(a), in any child in need of protection or services matter the summons shall also contain or have attached a statement that:
- (1) if the person summoned fails to appear, the court may conduct the hearing in the person's absence; and
 - (2) a possible consequence of the hearing is that the child may be removed from the home of the parent or legal custodian and placed in foster care, and such removal may lead to other proceedings for permanent out-of-home placement of the child or termination of parental rights.
- (c) **Termination of Parental Rights Matters.** In addition to the content requirements set forth in subdivision 4(a), in any termination of parental rights matter the summons shall also contain or have attached a statement that if the person summoned fails to appear the court may conduct the hearing in the person's absence and the hearing may result in termination of the person's parental rights.
- (d) **Permanent Placement Matters.** In addition to the content requirements set forth in subdivision 4(a), in any permanent placement matter the summons shall also contain or have attached a statement that if the person summoned fails to appear the court may conduct the hearing in the person's absence and the hearing may result in an order granting the relief requested in the petition.

Subd. 5. Timing of Service.

(a) **Generally.** The summons shall be served either at or before the emergency protective care hearing held pursuant to Rule 67, or at least three (3) days prior to the admit/deny hearing, whichever is earlier. At the request of a party, the hearing shall not be held at the scheduled time if the summons has been served less than three (3) days before the hearing. If service is made outside the state or by publication, the summons shall be personally served, mailed, or last published at least twenty (20) days before the hearing.

(b) **Termination of Parental Rights Matters and Permanent Placement Matters.** In any termination of parental rights matter or permanent placement matter the summons shall

be served upon all parties in a manner that will allow for completion of service at least ten (10) days prior to the date set for the admit/deny hearing. In cases where publication under Minnesota Statutes § 645.11 is required, published notice shall be made for three (3) weeks with the last publication at least ten (10) days before the date of the hearing.

Subd. 6. Waiver. Service is waived by voluntary appearance in court or by a written waiver of service filed with the court.

Subd. 7. Failure to Appear. If any person personally served with a summons or subpoena fails, without reasonable cause, to appear or bring the child if ordered to do so, or if the court has reason to believe the person is avoiding personal service, the court may sua sponte or upon the motion of a party or the county attorney pursuant to Rule 51 proceed against the person for contempt of court or the court may issue a warrant for the person's arrest, or both. When it appears to the court that service will be ineffectual, or that the welfare of the child requires that the child be immediately brought into the custody of the court, the court may issue a warrant for immediate custody of the child.

Advisory Committee Comment

Rule 69.02 specifies the procedure for summoning a party to his or her first appearance in a case. Rule 69.03 specifies the procedure for providing initial notice to a participant. While failure to notify a noncustodial parent does not create a jurisdictional defect, the best practice is to invite that parent to participate in the proceedings as failure to do so may create substantial barriers to permanency.

Rule 69.03. Notice of Hearing

Subdivision 1. Definition. A notice is a document issued by the court notifying the person to whom it is addressed of the specific time and place of a hearing.

Subd. 2. Upon Whom. The court shall serve notice upon all participants identified in Rule 58.

Subd. 3. Content. A notice shall contain or have attached a statement:

- (a) setting forth the time and place of the hearing;
- (b) describing the purpose of the hearing;
- (c) explaining the right to representation pursuant to Rule 61;
- (d) explaining intervention as of right and permissive intervention pursuant to Rule 59;
- (e) that if the person fails to appear at the hearing the court may still conduct the hearing and grant appropriate relief; and
- (f) that it is the responsibility of the individual to notify the court administrator of any change of address.

Subd. 4. Service by Mail or Delivery at Hearing. Notice shall be served by U.S. Mail or may be delivered at a hearing. The court may order service of notice to be by personal service.

Subd. 5. Timing of Service. A copy of the notice shall be mailed at least five (5) days before the date of the hearing or fifteen (15) days before the hearing if mailed to an address outside the state.

Advisory Committee Comment

Rule 69.02 specifies the procedure for summoning a party to his or her first appearance in a case. Rule 69.03 specifies the procedure for providing initial notice to a participant. While failure to notify a noncustodial parent does not create a jurisdictional defect, the best practice is to invite that parent to participate in the proceedings as failure to do so may create substantial barriers to permanency.

Rule 69.04. Orders on the Record

An oral order stated on the record directed to the parties which either separately or with written supplementation contains the information required by this rule is sufficient to provide notice and compel the presence of the parties at a stated time and place. Such an order shall be reduced to writing pursuant to Rule 46.

Rule 69.05. Indian Child

In any juvenile protection proceeding where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of the Indian child shall notify the parent or Indian custodian and the Indian child's tribe of the pending proceedings and of the right of intervention pursuant to Rule 59. Such notice shall be by registered mail with return receipt requested, unless personal service has been accomplished. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary of the Interior in like manner, who shall have fifteen (15) days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement proceeding shall be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior, provided that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty (20) additional days to prepare for such proceeding.

RULE 70. PETITION

Rule 70.01. Drafting and Filing

Subdivision 1. Generally. A petition may be drafted and filed by the county attorney or any responsible person.

Subd. 2. Habitual Truant and Runaway Matters. A matter based solely on grounds that a child is a habitual truant or a runaway may be initiated by citation issued by a peace officer or school attendance officer. A citation shall contain:

- (a) the name, address, date of birth, and race of the child;
- (b) the name and address of the parent or legal custodian of the child;
- (c) the offense alleged and a reference to the statute which is the basis for the charge; and
- (d) the time and place the alleged offense was committed. In the event the child is alleged to be a runaway, the place where the offense was committed may be stated in the notice as either the child's parent's residence or lawful placement or where the child was found

by the officer. In the event the child is alleged to be a habitual truant, the place where the offense was committed may be stated as the school or the place where the child was found by the officer.

Subd. 3. Termination of Parental Rights Matters.

(a) **Generally.** Any termination of parental rights petition shall be filed in the child in need of protection or services file, if one exists.

(b) **Egregious Harm or Abandonment of an Infant.** The county attorney shall file a termination of parental rights petition within thirty (30) days of the local social services agency determining that a child:

(1) has been subjected to egregious harm as defined in Minnesota Statutes § 260C.007, subd. 26;

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

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

The county attorney need not file a termination of parental rights petition if the county attorney determines and files with the court an affidavit that a transfer of permanent legal and physical custody to a relative is in the best interests of the child or there is a compelling reason documented by the local social services agency that filing a termination of parental rights petition is not in the best interests of the child.

Subd. 4. Permanent Placement Matters.

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

(b) **Filing by Whom.** The county attorney shall file a permanent placement petition in juvenile court to determine the permanent placement of a child. Any party may also file a petition to establish the basis for a permanent placement order. A party, including a guardian ad litem for the child, shall file a permanent placement petition if the party disagrees with the permanent placement determination set forth in the petitions filed by other parties.

Advisory Committee Comment

If a child in need of protection or services matter is pending at the time a termination of parental rights matter is filed regarding the same child, the termination petition should be filed in the same file as the child in need of protection or services matter.

Rule 70.02. Content

Subdivision 1. Generally. Every petition filed with the court in a juvenile protection matter, or a sworn affidavit accompanying such petition, shall contain:

(a) a statement of facts that, if proven, would support the relief requested in the petition;

(b) the child's name, date of birth, race, gender, and current address unless stating the address would endanger the child or seriously risk disruption of the current placement;

(c) the names, race, date of birth, residence, and post office addresses of the child's parents when known;

- (d) the name, residence, and post office address of the child's legal custodian, the person having custody or control of the child, or the nearest known relative if no parent or legal custodian can be found;
- (e) the name, residence, and post office address of the spouse of the child;
- (f) the statutory grounds on which the petition is based, together with a recitation of the relevant portion of the subdivision(s);
- (g) a statement regarding the applicability of the Indian Child Welfare Act; and
- (h) the names and addresses of the participants identified in Rule 58.

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

(a) **Petitions Drafted and Filed by County Attorney.** A child in need of protection or services matter is defined in Minnesota Statutes § 260C.007, subd. 4. All child in need of protection or services petitions shall be drafted and filed under the supervision of the county attorney, except as provided in Minnesota Statutes § 260C.141, subd. 1, and subdivision 2(b) of this rule.

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

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

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

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

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

(iii) a statement regarding the relationship of the petitioner to the child and to any other parties.

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

(4) **Court Review.** Within three (3) days of the date a petition is filed by a person who is not a county attorney or an agent of the commissioner of human services, the court shall review the petition. If the court determines that the petition and attachments establish a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter, the court shall set the matter for an admit/deny hearing pursuant to Rule 71 and shall direct notice pursuant to Rule 69. The court shall not allow a petition to proceed if it appears that the sole purpose of the petition is to modify custody

between the parents or if it fails to set forth the information required in subdivisions 1 and 2(b) of this rule.

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

(1) **When Required.** In addition to the content requirements of subdivisions 1 and 2(b), a petition establishing a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter shall be filed with the court:

(i) before the court may issue an ex parte order for emergency protective care pursuant to Rule 65; or

(ii) before an emergency protective care hearing is held pursuant to Rule 67 for a child taken into emergency protective care without a court order.

(2) **Manner.** The facts establishing a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter may be set forth in writing in or with the petition, or in supporting affidavits, and may be supplemented by sworn testimony of witnesses taken before the court. If such testimony is taken, a note stating this fact shall be made by the court on the petition. The testimony shall be recorded pursuant to Rule 47.

Subd. 3. Termination of Parental Rights Matters.

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

(b) **Petitions Seeking Alternative Permanent Placement Relief.** In addition to the content requirements set forth in subdivision 1, any termination of parental rights petition may seek alternative permanent placement relief, including transfer of permanent legal and physical custody to a relative or placement of the child in long-term foster care. A petition seeking alternative permanent placement relief shall identify which permanent placement option the petitioner believes is in the best interests of the child. A petition may seek separate permanent placement relief for each child named as a subject of the petition as long as the petition identifies which option(s) is sought for each child and why that option(s) is in the best interests of the child. At the admit/deny hearing on a petition that seeks alternative relief, each party shall identify on the record the permanent placement option that is in the best interests of the child.

Subd. 4. Permanent Placement Matters.

(a) **Generally.** Every petition in a permanent placement matter, or a sworn affidavit accompanying such petition, shall contain a title denoting the permanency relief sought:

(1) A transfer of permanent legal and physical custody matter shall be entitled "Juvenile Protection Petition to Transfer Permanent Legal and Physical Custody" and shall conform to the requirements of Minnesota Statutes § 518.156 and, in cases where the local social services agency is the petitioner, the petition shall identify:

(i) the local social services agency as petitioner; and

(ii) the proposed relative custodian as co-petitioner when the local social services agency petitions on behalf of the proposed relative custodian.

(2) A request for long-term foster care shall be entitled "Juvenile Protection Petition for Long-term Foster Care."

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

(b) **Petitions Seeking Alternative Permanent Placement Relief.** Any permanent placement petition may seek alternative permanent placement relief, including termination of parental rights, transfer of permanent legal and physical custody to a relative, or placement of the child in long-term foster care. A petition seeking alternative permanent placement relief shall identify which permanent placement option the petitioner believes is in the best interests of the child. A petition may seek separate permanent placement relief for each child named as a subject of the petition as long as the petition identifies which option(s) is sought for each child and why that option is in the best interests of the child. At the admit/deny hearing on a petition that seeks alternative relief, each party shall identify on the record the permanent placement option that is in the best interests of the child.

Subd. 5. Out of State Party. If a party resides out of state, or if there is likelihood of interstate litigation, the petition or an attached affidavit shall include a statement regarding the whereabouts of the party and any other information required by the Uniform Child Custody Jurisdiction and Enforcement Act, Minnesota Statutes § 518D.101 to § 518D.317.

Subd. 6. Disclosure of Address - Endangerment. If there is reason to believe that an individual may be endangered by disclosure of an address required to be provided pursuant to this rule, that address may be provided to the court in a separate informational statement and shall not be accessible to the public or to the parties. Upon notice and motion, the court may disclose the address as it deems appropriate.

Rule 70.03. Verification

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

Rule 70.04. Amendment

Subdivision 1. Prior to Trial. The petition may be amended at any time prior to the commencement of the trial, including, in a child in need of protection or services matter, adding a child as the subject matter of the petition. The petitioner shall provide notice of the amendment to all parties and participants. When the petition is amended, the court shall grant all other parties sufficient time to respond to the amendment.

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

Rule 70.05. Timing

If a child is in emergency protective care pursuant to Rule 65, the petition shall be filed at or prior to the time of the emergency protective care hearing held pursuant to Rule 67.

Advisory Committee Comment

Minnesota Statutes § 260C.143 provides that a peace officer or school attendance officer may issue a notice to a child to appear in court and file the notice with the juvenile court.

RULE 71. ADMIT/DENY HEARING

Rule 71.01. Generally

An admit/deny hearing is a hearing at which the statutory grounds set forth in the petition are admitted or denied pursuant to Rule 72.

Rule 71.02. Timing

Subdivision 1. Child in Placement.

(a) **Generally.** When the child is placed out of the child's home by court order, an admit/deny hearing shall be held within ten (10) days of the date of the emergency protective care hearing. Upon agreement of the parties, an admit/deny hearing may be combined with an emergency protective care hearing held pursuant to Rule 67.

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

(c) **Permanent Placement Matters.** In a permanent placement matter the admit/deny hearing shall be held at least twenty (20) days prior to the date set for the permanent placement hearing held pursuant to Rule 77.

Subd. 2. Child Not in Placement.

(a) **Generally.** When the child is not placed outside the child's home by court order, an admit/deny hearing shall be held no sooner than five (5) days and no later than twenty (20) days after the parties have been served with the petition.

(b) **Habitual Truant, Runaway, and Prostitution Matters.** In matters where the sole allegation is that the child is a habitual truant, runaway, or engaged in prostitution and the child is not in placement, an admit/deny hearing shall be commenced within a reasonable time after service upon the child.

Subd. 3. Possession of Petition. The parties have the right to have a copy of the petition at least three (3) days before the admit/deny hearing.

Rule 71.03. Hearing Procedure

Subdivision 1. Initial Procedure. At the commencement of the hearing the court shall on the record:

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

(b) inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe has been notified;

- (c) determine whether all parties are present and identify those present for the record;
- (d) advise any child and the child's parent or legal custodian who appears in court and is not represented by counsel of the right to representation pursuant to Rule 61;
- (e) determine whether notice requirements have been met and, if not, whether the affected person waives notice;
- (f) if the child who is a party or the child's parent or legal custodian appears without counsel, explain basic trial rights;
- (g) determine whether the child and the child's parent or legal custodian understand the statutory grounds and the factual allegations set forth in the petition and, if not, provide an explanation; and
- (h) explain the purpose of the hearing and the possible transfer of custody of the child from the parent or legal custodian to another, when such transfer is permitted by law and the permanency requirements of Minnesota Statutes § 260C.201, subd. 11.

Subd. 2. Child in Need of Protection or Services Matters. In addition to the initial procedures set forth in subdivision 1, in each child in need of protection or services matter the court shall also advise all persons present that if the petition is proven and the child is not returned home, a hearing to determine the permanent placement of the child will be held:

- (a) within six (6) months of the date of the child's out-of-home placement if the child was under eight (8) years of age at the time of the filing of the petition; or
- (b) within twelve (12) months of the date of the child's out-of-home placement if the child was eight (8) years of age or older at the time of the filing of the petition.

Subd. 3. Termination of Parental Rights Matters. 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 termination of parental rights under the statutory grounds stated in the petition. If the court determines that the petition states a prima facie case in support of termination of parental rights, the court shall proceed pursuant to Rule 72. If the court determines that the petition fails to state a prima facie case in support of termination of parental rights, the court shall:

- (a) return the child to the care of the parent or legal custodian;
- (b) give the petitioner ten (10) days to file an amended petition or supplementary information if the petitioner represents there are additional facts which, if presented to the court, would establish a prima facie case in support of termination of parental rights;
- (c) give the petitioner ten (10) days to file a child in need of protection or services petition; or
- (d) dismiss the petition.

Subd. 4. Permanent Placement Matters. In each permanent placement matter, after completing the initial inquiries set forth in subdivision 1, the court shall review the facts set forth in the petition, consider such argument as the parties may make, and determine whether the petition states a prima facie case in support of one or more of the permanent placement options. If the court determines that the petition states a prima facie case, the court shall

proceed pursuant to Rule 72. If the court determines that the petition fails to state a prima facie case, the court may:

- (a) return the child to the care of the parent;
- (b) give the petitioner ten (10) days to file an amended petition or supplementary information if the petitioner represents there are additional facts which, if presented to the court, would establish a prima facie case; or
- (c) dismiss the petition.

Subd. 5 Motions. The court shall hear any motions, made pursuant to Rule 51, addressed to the sufficiency of the petition or jurisdiction of the court without requiring any person to admit or deny the statutory grounds set forth in the petition prior to making a finding on the motion.

Advisory Committee Comment

Rule 71.03, subd. 2, is consistent with Minnesota Statutes § 260C.201, subd. 11, which provides that a permanent placement determination hearing must be held within six (6) months of a child's removal from the home if the child is under eight (8) years of age at the time the petition is filed.

RULE 72. ADMISSION OR DENIAL

Rule 72.01. Generally

Subdivision 1. Parent or Legal Custodian.

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

(b) **Termination of Parental Rights Matters.** In a termination of parental rights matter, only the parents of the child are required to admit or deny the petition. A party who is not required to admit or deny the petition may object to the admission if that party has filed a petition pursuant to Rule 70.

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

(1) only the legal custodian of the child is required to admit or deny the petition. A party who is not required to admit or deny the petition may object to the entry of the proposed permanent placement order if that party has filed a petition pursuant to Rule 70.

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

- (i) the legal consequences of a transfer of permanent legal and physical custody;
- (ii) the nature and amount of financial support and services that will be available to help care for the child;
- (iii) how the custody order can be modified; and
- (iv) any other permanent placement options available for the subject child.

Subd. 2. Child.

- (a) **Generally.** The child shall not admit or deny the petition.
- (b) **Habitual Truant, Runaway, and Prostitution Matters.** In cases where the child is alleged to be a habitual truant, a runaway, or engaged in prostitution, the child shall admit or deny the statutory grounds set forth in the petition or remain silent.

Subd. 3. Contested Petition. Any party has the right to contest the basis of a petition filed by an individual who is not a county attorney or an agent of the commissioner of human services.

Rule 72.02. Denial

Subdivision 1. Denial Without Appearance. A written denial or a denial on the record of the statutory grounds set forth in 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 by any party is entered, the court shall schedule further proceedings pursuant to Rule 73 or Rule 74.

Rule 72.03. Admission

Subdivision 1. Admission Under Oath. Any admission must be made under oath.

Subd. 2. Admission Without Appearance. Upon approval of the court, a written admission of the statutory grounds set forth in the petition, made under oath, may be entered by counsel without personal appearance of the person represented by counsel.

Subd. 3. Questioning of Person Making Admission.

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

- (1) the person admitting acknowledges an understanding of:
 - (i) the nature of the statutory grounds set forth in the petition;
 - (ii) if unrepresented, the right to representation pursuant to Rule 61;
 - (iii) the right to a trial;
 - (iv) the right to testify; and
 - (v) the right to subpoena witnesses; and
- (2) the person admitting acknowledges an understanding that the facts being admitted establish the statutory grounds set forth in the petition.

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

(1) whether the person admitting acknowledges an understanding that a possible effect of a finding that the statutory grounds are proved may be the transfer of legal custody of the child to another or termination of parental rights to the child; and

(2) whether the person admitting acknowledges an understanding that, if the child is not returned home, a hearing to determine the permanent placement of the child will be held within six (6) months of the date of the child's out-of-home placement if the child was under eight (8) years of age at the time of the filing of the petition, or within twelve (12) months of the date of the child's out-of-home placement if the child was eight (8) years or older at the time of the filing of the petition.

Subd. 4. Basis for Admission. The court shall refuse to accept an admission unless there is a factual basis for the admission.

(a) **Full Admission.** A party may admit all of the statutory grounds set forth in the petition.

(b) **Partial Admission.** Pursuant to a Rule 55 settlement agreement, a person may admit some, but not all, of the statutory grounds set forth in the petition.

Subd. 5. 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. 6. Acceptance or Non-Acceptance of Admission. At the time of the admission, the court shall make a finding that:

(a) the admission has been accepted and the statutory grounds admitted have been proved;

(b) the admission has been conditionally accepted pending the court's approval of a settlement agreement pursuant to Rule 55; or

(c) the admission has not been accepted.

Subd. 7. Future Proceedings. If the court makes a finding that the admission is accepted and the statutory grounds admitted are proved, or that the admission is conditionally accepted pending the court's approval of a settlement agreement pursuant to Rule 55, the court shall enter an order with respect to adjudication pursuant to Rule 75 and proceed to disposition. If the court makes a finding that the admission has not been accepted, the court shall schedule further proceedings pursuant to Rule 73 or Rule 74.

RULE 73. PRETRIAL CONFERENCE

Rule 73.01. Timing

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

Rule 73.02. Purpose

The purposes of a pretrial conference shall be to:

- (a) determine whether a settlement of any or all of the issues has occurred or is possible;
- (b) determine whether all parties have been served and, if not, review the efforts that have taken place to date to serve all parties;
- (c) advise any child or the child's parent or legal custodian who appears in court and is unrepresented of the right to representation pursuant to Rule 61. If counsel is appointed at the pretrial conference, the conference shall be reconvened at a later date;
- (d) determine whether the child shall be present and testify at trial and, if so, under what circumstances;
- (e) identify any unresolved discovery matters;
- (f) resolve any pending pretrial motions;
- (g) identify and narrow issues of law and fact for trial, including identification of:
 - (1) the factual allegations admitted or denied;
 - (2) the statutory grounds admitted or denied;
 - (3) any stipulations to foundation and relevance of documents; and
 - (4) any other stipulations, admissions, or denials;
- (h) exchange witness lists and a brief summary of each witness' testimony;
- (i) exchange exhibit lists;
- (j) confirm the trial date and estimate the length of trial; and
- (k) determine any other relevant issues.

The pretrial order shall specify all factual allegations and statutory grounds admitted and denied. From the date of the pretrial conference through the date of trial, the parties shall have a continuing obligation to update information provided during the pretrial conference.

Advisory Committee Comment

Rule 73.02(d) addresses the need to determine whether the child will testify. The intent of the rule is to provide that an order protecting the child from testifying or placing conditions on the child's testimony can only be made after notice of motion and a hearing. The Committee intends that any such motion be heard and resolved at the pretrial conference.

RULE 74. TRIAL

Rule 74.01. Generally

A trial is a hearing to determine whether the statutory grounds set forth in the petition are or are not proved.

Rule 74.02. Timing

Subdivision 1. Commencement of Trial.

(a) **Child in Need of Protection or Services Matters.** A trial regarding a child in need of protection or services matter shall commence within sixty (60) days from the date of the emergency protective care hearing or the date of the admit/deny hearing, whichever is earlier.

(b) **Permanent Placement Matters.** A trial regarding a permanent placement matter not involving a termination of parental rights matter shall commence on or before the three hundred and sixty-fifth (365th) day after the child is ordered out of the care of the parent. In the case of a child under eight (8) years of age at the time the child in need of protection or services petition is filed, a permanent placement determination hearing shall commence on or

before the one hundred and eightieth (180th) day after the child is ordered out of the care of the parent. If the local social services agency demonstrates at this hearing that the parent is not complying with the case plan or visiting the child and that the permanency plan for the child is transfer of permanent legal and physical custody to a relative or termination of parental rights, a petition supporting the plan shall be filed in juvenile court within thirty (30) days of the hearing under this paragraph and a trial on the petition shall be held within thirty (30) days of the filing of a petition in the case of a transfer of legal custody or within ninety (90) days in the case of a petition for termination of parental rights.

(c) **Termination of Parental Rights Matters.** A trial regarding a termination of parental rights matter shall commence within ninety (90) days from the date of the admit/deny hearing.

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

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

Subd. 2. Continuance.

(a) **Generally.** The court may, either on its own motion or upon motion of a party or the county attorney, continue a trial to a later date upon written findings or oral findings made on the record that a continuance is necessary for the protection of the child, for accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown, so long as the permanency time requirements set forth in these rules are not delayed.

(b) **Child in Need of Protection or Services Matters and Termination of Parental Rights Matters.** In child in need of protection or services matters and termination of parental rights matters, a trial may not be continued or adjourned for more than one (1) week unless the court makes specific findings that the continuance or adjournment is in the best interests of the child. In any event, the trial shall be commenced and completed within ninety (90) days of the denial of the statutory grounds.

Subd. 3. Effect of Mistrial; Order for 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 thirty (30) days of the order.

Rule 74.03. Procedure

Subdivision 1. Initial Procedure. At the beginning of the trial the court shall on the record:

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

(b) inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe has been notified;

- (c) determine whether all parties are present and identify those present for the record;
- (d) determine whether any child or the child's parent or legal custodian is present without counsel and, if so, explain the right to representation pursuant to Rule 61;
- (e) determine whether notice requirements have been met and, if not, whether the affected person waives notice;
- (f) if the child who is a party or the child's parent or legal custodian appears without counsel, explain basic trial rights;
- (g) determine whether the child and the child's parent or legal custodian understand the statutory grounds and the factual allegations set forth in the petition and, if not, provide an explanation; and
- (h) explain the purpose of the hearing and the possible transfer of custody of the child from the parent or legal custodian to another when such transfer is permitted by law and the permanency requirements of Minnesota Statutes § 260C.201, subd. 11.

Subd. 2. Conduct and Procedure.

- (a) **Trial Rights.** The parties and the county attorney shall have the right to:
 - (1) present evidence;
 - (2) present witnesses;
 - (3) cross-examine witnesses;
 - (4) present arguments in support of or against the statutory grounds set forth in the petition; and
 - (v) ask the court to order that witnesses be sequestered.
- (b) **Trial Procedure.** The trial shall proceed as follows:
 - (1) the party that drafted and filed the petition pursuant to Rule 70 may make an opening statement confining the statement to the facts expected to be proved;
 - (2) the other parties, in order determined by the court, may make an opening statement or may make a statement immediately before offering evidence, and the statement shall be confined to the facts expected to be proved;
 - (3) the party that drafted and filed the petition pursuant to Rule 70 shall offer evidence in support of the petition;
 - (4) the other parties, in order determined by the court, may offer evidence;
 - (5) the party that drafted and filed the petition pursuant to Rule 70 may offer evidence in rebuttal;
 - (6) the other parties, in order determined by the court, may offer evidence in rebuttal;
 - (7) when evidence is presented, other parties may, in order determined by the court, cross-examine witnesses;
 - (8) at the conclusion of the evidence the parties, other than the party that drafted and filed the petition pursuant to Rule 70, in order determined by the court, may make a closing statement;
 - (9) the party that drafted and filed the petition pursuant to Rule 70 may make a closing statement; and

(10) if written argument is to be submitted, it shall be submitted within fifteen (15) days of the conclusion of testimony, and the trial is not considered completed until the time for written arguments to be submitted has expired.

Rule 74.04. Standard of Proof

Subdivision 1. Generally. To be proved at trial, the statutory grounds set forth in the petition must be proved by clear and convincing evidence.

Subd. 2. Indian Child.

(a) **Foster Care Placement.** In the case of an Indian child, no foster care placement may be ordered in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, as defined in Minnesota Rules parts 9560.0221 and 9560.0500 to 9560.0670, that the continued custody of the child by the parent or legal custodian or Indian custodian is likely to result in serious emotional or physical damage to the child.

(b) **Termination of Parental Rights.** In the case of an Indian child, no termination of parental rights may be ordered in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, as defined in Minnesota Rules parts 9560.0221 and 9560.0500 to 9560.0670, that the continued custody of the child by the parent or legal custodian or Indian custodian is likely to result in serious emotional or physical damage to the child.

Advisory Committee Comment

In *In Re the Matter of M.S.S.*, 465 N.W.2d 412 (Minn. Ct. App. 1991), the court held that the parental rights to an Indian child may not be terminated unless the county proves beyond a reasonable doubt that it has complied with section 1912(f) of the Indian Child Welfare Act, 25 U.S.C. § 1901 *et. seq.*, requiring the county to make active efforts to prevent or avoid placement.

Rule 74.05. Decision

Subdivision 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. For good cause, the court may extend this period for an additional fifteen (15) days. The court shall dismiss the petition if the statutory grounds have not been proved.

Subd. 2. Child in Need of Protection or Services Matters and Habitual Truant, Runaway, and Prostitution Matters. The court shall issue its findings and order concerning adjudication within fifteen (15) days of the date that the trial is completed. If written argument is to be submitted, such argument must be submitted within fifteen (15) days of the conclusion of testimony. The trial is not considered completed until written arguments, if any, are submitted or the time for submission of written arguments has expired. If the court makes a finding that the statutory grounds set forth in the petition have been proved, the court shall schedule the matter for further proceedings pursuant to Rule 75. The findings and order shall be filed with the court administrator who shall proceed pursuant to Rule 46.

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. 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 75. If the court finds that the statutory grounds set forth in the petition are proved, the court shall terminate parental rights. The findings and order shall be filed with the court administrator who shall proceed pursuant to Rule 46.

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

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

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

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

(iii) reasonable efforts at reunification are not required as provided under Minnesota Statutes § 260.012.

(2) **Active Efforts – Indian Child.** In any termination of parental rights proceeding involving an Indian child, the court shall make specific findings that the petitioner has proven beyond a reasonable doubt that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

Subd. 4. Permanent Placement Matters. The court shall issue its decision regarding permanency consistent with Rule 77.

RULE 75. ADJUDICATION

Rule 75.01. Adjudication

If the court makes a finding that the statutory grounds set forth in a petition alleging a child to be in need of protection or services are proved, the court shall:

(a) adjudicate the child as in need of protection or services and proceed to disposition pursuant to Rule 76; or

(b) withhold adjudication of the child pursuant to Rule 75.02.

Rule 75.02. Withholding Adjudication

Subdivision 1. Generally. When it is in the best interests of the child to do so, the court may withhold an adjudication that the child is in need of protection or services. The court may withhold adjudication for a period not to exceed ninety (90) days from the finding that the statutory grounds set forth in the petition have been proved. During the withholding of an adjudication, the court may enter a disposition order pursuant to Rule 76.

Subd. 2. Further Proceedings. At a hearing, which shall be held within ninety (90) days following the court's withholding of adjudication, the court shall either:

(a) dismiss the matter without an adjudication if both the child and the child's legal custodian have complied with the terms of the continuance; or

(b) adjudicate the child in need of protection or services if either the child or the child's legal custodian has not complied with the terms of the continuance. If the court enters an adjudication, the court shall proceed to disposition pursuant to Rule 76.

RULE 76. DISPOSITION

Rule 76.01. Disposition

After an adjudication that a child is in need of protection or services pursuant to Rule 75, the court shall conduct a hearing to determine disposition. Dispositions in regard to review of out-of-home placement matters shall be pursuant to Minnesota Statutes § 260C.205 and § 127A.47.

Rule 76.02. Timing

To the extent practicable, the court shall conduct a disposition hearing and enter a disposition order the same day it makes a finding that the statutory grounds set forth in the petition have been proved. The disposition order must be issued within ten (10) days of the date the court finds that the statutory grounds set forth in the petition have been proved.

Rule 76.03. Pre-Disposition Reports

Subdivision 1. Investigations and Evaluations. At any time after the court accepts or conditionally accepts an admission pursuant to Rule 72 or finds that the statutory grounds set forth in the petition have been proved, the court may, upon its own motion or the motion of a party or the county attorney, order a pre-disposition report which may include:

- (a) an investigation of the personal and family history and environment of the child;
- (b) medical, psychological, or chemical dependency evaluations of the child and any parent who is a party; and
- (c) information regarding the factors set forth in Rule 76.05.

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, the date when the reports resulting from the investigation are to be filed with the court, and the right of each party to present opposing evidence and reports.

Subd. 3. Filing and Inspection of Pre-Disposition Reports. The person who intends to offer the pre-disposition report shall file the report with the court and serve the report on all parties at least forty-eight (48) hours prior to the time scheduled for the hearing. When the child or the child's parent or legal custodian is not represented by counsel, the court may limit the inspection of reports by the child or the child's parent and legal custodian if the court determines it is in the best interests of the child. Any party or the person making the pre-disposition report may by motion request a protective order limiting the release of confidential or sensitive information contained in the report.

Subd. 4. Discussion of Contents of Reports. The person making the pre-disposition report may discuss the contents of the report with all parties and the county attorney.

Subd. 5. Discussion of Content of Report - Limitation by Court. The court may upon a showing of good cause limit the extent of the discussion of the contents of the pre-disposition report with the parties 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 written or on-the-record motion of a party, the county attorney, or the person making the pre-disposition report.

Rule 76.04. Procedure; Evidence

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

The court may admit any evidence, including reliable hearsay and opinion evidence, which is relevant to the disposition of the matter. Privileged communications may be admitted in accordance with Minnesota Statutes § 626.556, subd. 8.

Rule 76.05. Disposition Order

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

- (a) a statement explaining how the disposition serves the best interests of the child;
- (b) a statement of all alternative dispositions considered by the court and why such dispositions are not appropriate for the child;

(c) if the disposition is out-of-home placement, how the court's disposition will serve the child's needs in placement. Among the factors to be considered in determining the needs of the child are:

- (1) the child's current functioning and behaviors;
- (2) the medical, educational, and developmental needs of the child;
- (3) the child's history and past experience;
- (4) the child's religious and cultural needs;
- (5) the child's connection with a community, school, and faith community;
- (6) the child's interests and talents;
- (7) the child's relationship to current caretakers, parents, siblings, and relatives;

(8) the reasonable preference of the child, if the court deems the child to be of sufficient age to express a preference; and

(9) a brief description of the efforts made to prevent or eliminate the need for removal of the child from home and to reunify the family after removal, and why further efforts could not have prevented or eliminated the necessity of removal.

The court may authorize or continue an award of legal custody to the local social services agency despite a finding that the agency's preventive or reunification efforts have not

been reasonable if the court finds that further preventive or reunification efforts could not permit the child to safely remain at home.

Subd. 2. Content.

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

(1) place the child under the protective supervision of the local social services agency or child-placing agency in the child's own home under conditions directed to correction of the child's need for protection or services;

(2) transfer legal custody to a child-placing agency or the local social services agency for placement in foster care;

(3) in the case of a child who needs special treatment and care for reasons of physical or mental health when the child's parent or legal custodian is unable to provide the treatment or care, order that the treatment and care be provided; or

(4) allow a child 16 years old or older to live independently under appropriate supervision, if the court determines that the child has sufficient maturity and judgment, and the local social services agency after consultation with the court has specifically authorized this alternative.

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

(1) set reasonable rules for supervised or unsupervised visitation for the child's parent or legal custodian and for an individual who is related to the child by blood, marriage or adoption or is an important friend with whom the child has resided or had significant contact;

(2) review the case plan, make modifications supported by the evidence, and incorporate the plan into the disposition order; and

(3) set the date and time for the permanency placement determination hearing pursuant to Rule 77.

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

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

(2) place the child under the supervision of a probation officer or other suitable person in the child's own home under conditions prescribed by the court, including reasonable rules for the child's conduct and the conduct of the parent or legal custodian designed for the physical, mental, and moral well-being and behavior of the child;

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

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

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

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

- (5) require the child to pay a fine of up to \$100, to be paid in a manner that will not impose undue financial hardship upon the child;
- (6) require the child to participate in a community service project;
- (7) order the child to undergo a chemical dependency evaluation and, if warranted by the evaluation, order participation by the child in a drug awareness program or an inpatient or outpatient chemical dependency treatment program;
- (8) order the commissioner of public safety to cancel the child's driver's license or permit or, for a child who does not have a driver's license or permit, order a denial of driving privileges for any period up to the child's 18th birthday; or
- (9) order the child's parent or legal custodian to deliver the child to school at the beginning of each school day for a period of time specified by the court.

Rule 76.06. Hearings

Subdivision 1. Timing. When disposition is an award of legal custody to the local social services agency, the court shall review the disposition in court at least every ninety (90) days. Any party or the county attorney may request a review hearing before ninety (90) days. When the disposition is protective supervision, the court shall review the disposition in court at least every six (6) months from the date of disposition.

Subd. 2. Procedure. Any party or the county attorney may seek modification of a disposition order by motion made pursuant to Rule 51. The motion may be heard at the scheduled review hearing or at an earlier date or may be considered by the court without hearing if no party objects.

Subd. 3. Modification of Disposition. The court, on its own motion or that of any party, may modify the disposition when all parties agree the modification is in the best interests of the child and:

- (a) a change of circumstances requires a change in the disposition; or
- (b) the original disposition is inappropriate.

If a party objects to a proposed modification, or if the child does not have a guardian ad litem at the time the motion is made, the court shall schedule a hearing for the next available date.

Subd. 4. Notice. Notice of the review hearing shall be given to all parties and participants.

Subd. 5. Procedure. Review hearings shall be conducted pursuant to Rule 76.04.

Subd. 6. Findings and Order. In the event the disposition is modified, the court shall issue a disposition order in accordance with Rule 76.05.

RULE 77. PERMANENT PLACEMENT MATTERS

Rule 77.01. Timing and Purpose

Subdivision 1. Timing. The court in its disposition order shall set the date or deadline for the permanent placement determination hearing. Not later than when the court sets the date or deadline for the permanent placement determination hearing, the court shall notify the parties and participants of the following requirements of Minnesota Statutes § 260C.201, subd. 11:

(a) **Requirement of Six (6) Month Hearing for Child Under Eight (8) Years of Age.** For a child under eight (8) years of age at the time a petition is filed alleging the child to be in need of protection or services, unless a termination of parental rights petition has been filed, the court shall conduct a hearing to determine the permanent status of a child not later than six (6) months after the child is placed out of the home of the parent.

(b) **Requirement of Twelve (12) Month Hearing for Child Eight (8) Years of Age or Older.** For a child eight (8) years of age or older at the time a petition is filed alleging the child to be in need of protection or services, unless a termination of parental rights petition has been filed, the court shall conduct a hearing to determine the permanent status of a child not later than twelve (12) months after the child is placed out of the home of the parent.

Subd. 2. Purpose.

(a) **Child Eight (8) Years of Age and Older.** The purpose of the permanent placement determination hearing is to review the progress of the case and the case plan, including the services provided by the local social services agency. The court shall determine whether the child shall be returned home or, if not, order permanent placement consistent with the child's best interests.

(b) **Child Under Eight (8) Years of Age.** The court shall determine whether the child shall be returned home or, if not, determine whether

(1) the parents or legal custodian have maintained regular contact with the child, the parents are complying with the court-ordered case plan, and the child would benefit from continuing this relationship;

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

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

Advisory Committee Comment

Rule 77.01 is consistent with Minnesota Statutes § 260C.201, subd. 11, which became effective July 1, 1999. The statute provides that a permanent placement determination hearing must be held within six months of a child's removal from the home if the child is under eight (8) years of age at the time the petition is filed or within twelve (12) months of the child's removal if the child is eight (8) years of age or older at the time the petition is filed.

Rule 77.02. Calculating Time Period

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

(a) the date the child's placement out of the care of the parent was ordered by the court; or

(b) sixty (60) days after the date on which the child has been voluntarily placed out of the home as a result of a voluntary placement agreement between the parents and the local social services agency.

Rule 77.03. Cumulation of Out-of-Home Placement Time

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

(a) during the pendency of a petition alleging a child to be in need of protection or services, all time periods when a child is placed out of the home of the parent are cumulated; and

(b) if a child has been placed out of the home of the parent within the previous five years, the lengths of all prior time periods when the child was placed out of the home within the previous five years. If a child under this clause has been out of the home for twelve (12) months or more, the court, if it is in the best interests of the child and for compelling reasons, may extend the total time the child may continue out of the home under the current petition up to an additional six (6) months before making a permanency determination.

Rule 77.04. Procedures for Permanent Placement Hearing

Subdivision 1. Child Under Eight (8) Years of Age. The following procedures govern a permanent placement determination hearing for a child under the age of eight (8) at the time the petition was filed alleging the child to be in need of protection or services:

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

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

(1) **Order to Show Cause.** The court may order the local social services agency to show cause why it should not file a termination of parental rights petition. If the court determines that the local social services agency has not shown cause why it should not file a termination of parental rights petition, the court may order the agency to file such a petition within thirty (30) days of the date of the hearing pursuant to Rule 70.01.

(2) **Agency Determination.** If the permanent placement plan is to terminate parental rights, unless the social services agency has already filed a petition to terminate parental rights, a petition supporting such a plan shall be filed within thirty (30) days of the hearing and the case will proceed according to Rule 70.01.

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

(d) **Extension of Time.** If the court determines that the parent is making sufficient progress on the case plan and is visiting the child, or if the court determines the local social

services agency has not provided appropriate services to the parent, the court may extend the time for a permanency determination for up to a total of six (6) additional months.

Subd. 2. Child Eight (8) Years of Age or Older or a Child Under Age Eight (8) for Whom Permanency Has Not Been Ordered. Unless the local social services agency recommends return of the child to the custodial parent or parents, not later than thirty (30) days prior to this hearing, the local social services agency shall file pleadings to establish the basis of the juvenile court to order permanent placement of the child according to Rule 77.05.

Rule 77.05. Permanent Placement Order

Subdivision 1. Timing. Within fifteen (15) days of the close of the permanent placement hearing the court shall issue a permanent placement order. 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. The order shall be filed with the court administrator who shall proceed pursuant to Rule 46.

Subd. 2. Order.

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

(b) **Transfer of Permanent Legal and Physical Custody.** If the court transfers permanent legal and physical custody to a relative, juvenile court jurisdiction is terminated unless specifically retained by the court in its order. The court shall include an order directing the juvenile court administrator to file the order with the family court. Any further proceedings shall be brought in the family court pursuant to Minnesota Statutes § 518.18. Notice of any family court proceedings shall be provided to the local social services agency.

(c) **Termination of Parental Rights.** Unless the local social services agency has already filed a termination of parental rights petition, the court may order such a petition be filed pursuant to Rule 70.01.

(d) **Long-term Foster Care.** If the court orders long-term foster care, the court shall order such further review as it determines appropriate or in the best interests of the child. If the long-term foster care placement disrupts, the local social services agency shall return to court within ten (10) days for further review of the permanent status of the child. An order for long-term foster care is reviewable upon motion and a showing by the parent of a substantial change in circumstances such that the parent could provide appropriate care of the child and that removal of the child from the child's permanent placement and return to the parent's care would be in the best interests of the child.

(e) **Foster Care for a Specified Period of Time.** If the court orders foster care for a specified period of time, the court shall order review hearings at such time and manner as will serve the child's best interests.

RULE 78. TERMINATION OF PARENTAL RIGHTS MATTERS

Rule 78.01. Birth Certificate

Upon entry of an order terminating parental rights of any person who is identified on the original birth certificate of the child, the court shall serve upon that person at the person's last known address written notice setting forth a statement regarding:

- (a) the right of the person at any time to file with the state registrar of vital statistics a consent to disclosure, as defined in Minnesota Statutes § 144.212, subd. 11;
- (b) the right of the person at any time to file with the state registrar of vital statistics an affidavit stating that the information on the original birth certificate shall not be disclosed as provided in Minnesota Statutes § 144.1761,
- (c) the effect of failure to file either document; and
- (d) the right of the parent to file an appeal pursuant to Rule 82.

Rule 78.02. Order for Guardianship

Upon entry of an order terminating parental rights, the court shall order the guardianship and legal and physical custody of the minor child transferred to:

- (a) the commissioner of human services;
- (b) a licensed child placing agency; or
- (c) an individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

Rule 78.03. Further Proceedings

If the court terminates parental rights, the court shall schedule a review hearing ninety (90) days from the date the termination order is filed with the court, and every ninety (90) days thereafter, for the purpose of reviewing progress of the child towards adoption. The court shall notify the county welfare board, the child's guardian ad litem, the child's attorney, and the child's foster parent or other relative who has asked for notice of the date and time of the hearing.

Rule 78.04. Voluntary Termination of Parental Rights Matters

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

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

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

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

- (a) executed in writing;
- (b) recorded before the judge; and
- (c) accompanied by the presiding judge's certificate that the terms and consequences of the consent were explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, the birth of the Indian child shall not be valid.

RULE 79. REVIEW OF VOLUNTARY PLACEMENT MATTERS

Rule 79.01. Generally

Subdivision 1. Scope of Review. This rule governs review of all placements made pursuant to Minnesota Statutes § 260C.212, subds. 8 or 9.

Subd. 2. Jurisdiction. The court assumes jurisdiction to review a voluntary placement of a child pursuant to Minnesota Statutes § 260C.212, subd. 8 or 9, upon the filing of a petition alleging the child to be in need of protection or services pursuant to the requirements of Minnesota Statutes § 260C.141.

Advisory Committee Comment

The practitioner should note the application of the Indian Child Welfare Act, 25 U.S.C. § 1913(a).

Rule 79.02. Petition and Hearing

Subdivision 1. Child in Placement Due to Child's Status as Developmentally Delayed or Emotionally Handicapped.

(a) **Petition.** In the case of a child in voluntary placement pursuant to Minnesota Statutes § 260C.212, subd. 9, the petition shall be filed within six (6) months of the date of the voluntary placement agreement. The petition shall state the date of the voluntary placement agreement, the nature of the child's developmental delay or emotional handicap, the plan for the ongoing care of the child and the parent's participation in that plan, and the statutory basis for the petition.

(b) **Decision.** Based upon the contents of the petition, and the agreement of all parties, including the child where appropriate, the court may find the voluntary arrangement in the best interests of the child, approve the voluntary arrangement, and dismiss the matter from further jurisdiction of the court.

(c) **Further Proceedings.**

(1) The court shall give notice to the local social services agency that the matter must be returned to court for further review if the child remains in placement after twelve (12) months.

(2) If any party, including the child, disagrees with the voluntary arrangement or the sufficiency of the services offered by the local social services agency, the court shall direct the parties to answer the petition and set the matter for further hearing pursuant to Rule 71.

(d) In the case of a voluntary placement agreement pursuant to Minnesota Statutes § 260C.212, subd. 9, the provisions of Minnesota Statutes § 260C.212, subd. 11, do not apply unless custody of the child is transferred to the local social services agency pursuant to Minnesota Statutes § 260C.201, subd. 1.

Subd. 2. Other Voluntary Placements.

(a) **Petition.** In the case of a child in voluntary placement pursuant to Minnesota Statutes § 260C.212, subd. 8, the petition shall be filed within ninety (90) days of the date of the voluntary placement agreement and shall state the reasons why the child is in placement, the progress on the case plan required pursuant to Minnesota Statutes § 260C.212, subd. 1, and the statutory basis for the petition pursuant to Minnesota Statutes § 260C.007, subd. 4.

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

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

(1) the child's needs are being met;

(2) the placement of the child in foster care is in the best interests of the child; and

(3) the child will be returned home in the next ninety (90) days.

(d) **Approval of Placement.** If the court makes findings required pursuant to subdivision 2(c), the court shall approve the voluntary placement arrangement and continue the matter for ninety (90) days to assure the child returns to the parent's home.

(e) **Further Proceedings.**

(1) The local social services agency shall report to the court when the child returns home and the progress made by the parent on the case plan required pursuant to Minnesota Statutes § 260C.212, subd. 1. If the child does not return home within the ninety (90) days approved by the court, the matter shall be returned to court for further proceedings pursuant to Rule 71.

(2) If the court or any party, including the child, disagrees with the voluntary placement or the sufficiency of the services offered by the local social services agency, or if the court finds that the placement or case plan is not in the best interests of the child, the court shall direct the parties to admit or deny the petition and set the matter for further proceedings pursuant to Rule 73 or 74. If the court makes required findings pursuant to Rule 67, the court may order the child in protective care.

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

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

(a) **Further Proceedings After Adjudication.** Pursuant to subdivision 1(c)(2) or 2(e), after the parties admit the petition or the petition is proven at trial, the court may

determine that the child is in need of protection or services or withhold adjudication pursuant to Rule 75.

(b) If the court determines that the child is in need of protection or services or withholds adjudication, and the court issues an order pursuant to Minnesota Statutes § 260C.201, subd. 1(a)(3), the provisions of Minnesota Statutes § 260C.201, subd. 11, shall not apply.

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

(d) When the court determines the child is in need of protection or services or withholds such a determination, further proceedings shall be pursuant to Rule 76.

RULE 80. POST-TRIAL MOTIONS

Rule 80.01. Procedure and Timing

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

Subd. 2. Timing. All non-dispositional post-trial motions shall be filed within fifteen (15) days of the filing of the court's order finding that the statutory grounds set forth in the petition are or are not proved.

Subd. 3. Basis of Motion. A post-trial motion shall be made and decided 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 in deciding the motion.

Subd. 4. Time for Serving Affidavits. When a post-trial motion is based upon affidavits, such affidavits shall be served with the notice of motion. The parties and the county attorney shall have ten (10) days after such service in which to serve opposing affidavits pursuant to Rule 51. 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.

Rule 80.02. New Trial on Court's Own Motion

Not later than fifteen (15) days after finding that the statutory grounds set forth in the petition are or are not proved, the court may upon its own initiative order a new trial for any reason for which it might have granted a new trial on a motion. After giving appropriate notice and an opportunity to be heard, the court may grant a motion for a new trial, timely served, for reasons not stated in the motion. In either case, the court shall specify in the order the basis for ordering a new trial.

Rule 80.03. Grounds for New Trial

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

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

- (b) misconduct of counsel;
- (c) fraud, misrepresentation, or other misconduct of the county attorney, any party, their counsel, or their guardian ad litem;
- (d) accident or surprise that could not have been prevented by ordinary prudence;
- (e) material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the trial;
- (f) errors of law occurring at the trial and objected to at the time, or if no objection need have been made, then plainly assigned in the motion;
- (g) a finding that the statutory grounds set forth in the petition are proved is not justified by the evidence or is contrary to law; or
- (h) if required in the interests of justice.

Rule 80.04. Decision

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

Rule 80.05. Relief

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

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

RULE 81. RELIEF FROM ORDER

Rule 81.01. Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time upon its own initiative or upon motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected with leave of the appellate court.

Rule 81.02. Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud

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

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

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

RULE 82. APPEAL

Rule 82.01. Applicability of Rules of Civil Appellate Procedure

Except as provided in Rule 82.02, appeals of juvenile protection matters shall be in accordance with the Rules of Civil Appellate Procedure.

Rule 82.02. Procedure

Subdivision 1. Appealable Order. An appeal may be taken by the aggrieved person from a final order of the juvenile court affecting a substantial right of the aggrieved person, including but not limited to an order adjudging a child to be in need of protection or services, neglected and in foster care.

Subd. 2. Timing. Any appeal shall be taken within thirty (30) days of the filing of the appealable order. In the event of the filing and service of a proper post-trial motion under Rule 80, the provisions of Minnesota Rules of Civil Appellate Procedure Rule 104.01, subdivisions 2 and 3, apply.

Subd. 3. Service and Filing of Notice of Appeal. Within the time allowed for an appeal from an appealable order, the person appealing shall:

(a) serve a notice of appeal upon the county attorney and all parties or their counsel if represented; and

(b) file a notice of appeal, together with proof of service upon all parties, with the clerk of appellate courts and the court administrator.

Subd. 4. Failure to File Proof of Service. Failure to file proof of service does not deprive the court of appeals of jurisdiction over the appeal, but is grounds only for such action as the court of appeals deems appropriate, including a dismissal of the appeal.

Subd. 5. Notice to Legal Custodian. The court administrator shall notify the child's legal custodian of the appeal. Failure to notify the legal custodian does not affect the jurisdiction of the court of appeals.

Rule 82.03. 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 reviewing court may in its discretion and upon application stay the order.

Rule 82.04. Right to Additional Review

Upon an appeal, any party or the county attorney may obtain review of an order entered in the same case which may adversely affect that person by filing a notice of review with the clerk of appellate courts. The notice of review shall specify the order to be reviewed, shall be served and filed within fifteen (15) days after service of the notice of appeal, and shall contain proof of service.

Rule 82.05. Transcript of Proceedings

The requirements regarding preparation of a transcript shall be governed by Rule 110.02 of the Rules of Civil Appellate Procedure, except that the estimated completion date contained in the certificate of transcript shall not exceed thirty (30) days.

Rule 82.06. Time for Rendering Decisions

All decisions regarding juvenile protection matters shall be issued by the appellate court within sixty (60) days of the date the case is deemed submitted pursuant to the Rules of Civil Appellate Procedure.