

**PROPOSED AMENDMENTS TO
RULES OF JUVENILE PROTECTION PROCEDURE**

Proposed amendments to the Rules of Juvenile Protection Procedure are denoted below by underline and strikeout.

GLOBAL REVISION

Citations will be added to all rules thus allowing the reader to readily identify the underlying authority of each rule as being either federal or state statute.

RULE 2. DEFINITIONS

Rule 2.01. Definitions

(e) **“Foster care”** ~~as defined in Minnesota Statutes § 260C.007, subd. 18,~~ means the 24-hour-a-day substitute care for a child placed away from the child’s parents or guardian and for whom a responsible social services agency has placement and care responsibilities under Minnesota Statutes § 260C.007, subd. 18 ~~care of a child in any facility which for gain or otherwise regularly provides one or more children, when unaccompanied by their parents, with a substitute for the care, food, lodging, training, education, supervision, or treatment they need but which for any reason cannot be furnished by their parent or legal custodian in their homes.~~

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

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services agency to secure for the child a legally permanent home in a timely fashion ~~when reunification efforts are no longer applicable.~~

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

RULE 4. TIME; TIMELINE

Rule 4.03. Timeline

Subd. 2. Permanent Placement Matters. Pursuant to Rule 42.01, when the child is in protective care, or legal or physical custody is transferred to the responsible social services agency; ~~the court shall conduct~~

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

4 (b) a permanent placement determination hearing will be held within twelve (12)
5 months of the date of the child's placement in foster care or the home of a noncustodial parent.

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

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

13
14 **1999 Advisory Committee Comment (amended 2003)**

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

19
20
21 **RULE 7. REFEREES AND JUDGES**

22 **Rule 7.07. Removal of Judge**

23 **Subd. 3. Motion to Remove.**

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

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

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

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

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

2 **Rule 8.04. Records Not Accessible to the Public or Parties**

3 The following records (a) – (m) in the court file are not accessible to the public. Unless
4 otherwise ordered by the court, parties shall have access for inspection and copying to all records in
5 the court file, except records (b), (d), and (e) listed below.

6 (d) portions of juvenile protection case records that identify reporters of abuse or
7 neglect;

8 (j) records or portions of records that specifically identify a minor victim of an alleged
9 or adjudicated sexual assault;

10 **2005 Advisory Committee Comment**

11 Under Rule 8.04, the child’s name or other identifying information is not
12 to be redacted from records accessible to the public, except when the child is the
13 victim of an alleged or adjudicated sexual assault. The child’s name should also
14 be redacted in those instances where the child’s name is identified as the reporter
15 of the abuse or neglect under Rule 8.04(d).

16
17
18 **RULE 10. ORDERS**

19 **Rule 10.03. Delivery; Mailing**

20 Court orders, except for those issued as a result of a Termination of Parental Rights
21 proceeding, shall be delivered at the hearing or mailed by the court administrator to each party,
22 the party’s attorney, the county attorney, each participant, and such other persons as the court
23 may direct. If a party is represented by counsel, delivery or service shall be upon counsel. Court
24 orders issued as a result of a Termination of Parental Rights proceeding shall be served upon the
25 attorney representing the party, if any, who shall provide a copy to the party. Except for children
26 who are parties, children under age ten (10) shall not be served with copies of orders. For
27 children not represented by counsel, the content of court orders shall be reviewed with the child
28 by the child’s social worker and guardian ad litem. If service of the summons was by publication
29 and the person has not appeared either personally or through counsel, service of court orders
30 upon the person is not required. Filing and mailing of the order by the court administrator must
31 be accomplished within five (5) ten (10) days of the date the judicial officer delivers the order to
32 the court administrator.

33
34
35 **RULE 15. MOTIONS**

36 **Rule 15.01. Form**

37 **Subd. 1. Generally.** An application to the court for an order shall be by motion.

38
39 **Subd. 2. Motions to Be in Writing.** Except as permitted by subdivision 3, a motion
40 shall be in writing and shall:

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

1 The requirement of writing is fulfilled if the motion is stated in a written notice of
2 motion. The parties may agree to written submission to the court for decision without oral
3 argument unless the court directs otherwise.
4

5 **Subd. 3. Exception.** Unless another party or the county attorney objects, a party or the
6 county attorney may make an oral motion during a hearing. All oral motions and objections to
7 oral motions shall be made on the record. When an objection is made, the court shall determine
8 whether there is good cause to permit the oral motion and, before issuing an order, shall allow
9 the objecting party reasonable time to respond.
10

11 **Rule 15.02. Summary Adjudication Motion Not Permitted**

12 Summary adjudication motions are not permitted in juvenile protection matters.
13

14 **Rule 15.03-15.02. Service and Notice of Motions**

15 **Subd. 1. Upon Whom.** The moving party shall serve the notice of motion and motion,
16 along with any supporting affidavit or other supporting documentation or a memorandum of law,
17 upon all parties, the county attorney, and any other persons designated by the court. The moving
18 party shall serve notice of the hearing upon all participants.
19

20 **Subd. 2. How Made.** Service of a motion may be made by personal service, by mail, or
21 by transmitting a copy by facsimile transmission pursuant to Rule 31.
22

23 **Rule 15.03. Ex Parte Motion and Hearing**

24 **Subd. 1. Motion.** A motion may be made ex parte when permitted by statute or these
25 rules. Every ex parte motion shall be accompanied by an explanation of the efforts made to
26 notify all parties and the county attorney of the motion or an explanation of why such notice
27 would place the child in danger of imminent harm or could result in the child being hidden or
28 removed from the court's jurisdiction.
29

30 **Subd. 2. Hearing.** When the court issues an ex parte order removing a child from the
31 care of a parent or legal custodian, the court shall schedule a hearing to review the order within
32 seventy-two (72) hours of the child's removal. Upon issuance of an ex parte order in cases of
33 domestic child abuse, the court shall schedule a hearing pursuant to the requirements of
34 Minnesota Statutes § 260C.148. Upon issuance of any other ex parte order, a hearing shall be
35 scheduled on the request of a party or the county attorney at the earliest possible date.
36

37 **Subd. 3. Time.** Any written motion, along with any supporting affidavit or other
38 supporting documentation or memorandum of law, shall be served at least five (5) days before it
39 is to be heard, unless the court for good cause shown permits a motion to be made and served
40 less than five (5) days before it is to be heard. The filing and service of a motion shall not extend
41 the permanency timelines set forth in these rules.
42

43 **Rule 15.04-15.03. Ex Parte Motion and Hearing**

44 **Subd. 1. Motion.** A motion may be made ex parte when permitted by statute or these
45 rules. Every ex parte motion shall be accompanied by an explanation of the efforts made to
46 notify all parties and the county attorney of the motion or an explanation of why such notice

1 would place the child in danger of imminent harm or could result in the child being hidden or
2 removed from the court's jurisdiction.

3
4 **Subd. 2. Hearing.** When the court issues an ex parte order removing a child from the
5 care of a parent, the court shall schedule a hearing to review the order within seventy-two (72)
6 hours of the child's removal. Upon issuance of an ex parte order in cases of domestic child
7 abuse, the court shall schedule a hearing pursuant to the requirements of Minnesota Statutes §
8 260C.148. Upon issuance of any other ex parte order, a hearing shall be scheduled on the
9 request of a party or the county attorney at the earliest possible date.

10
11 **Rule 15.04. Motion to Dismiss Petition**

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

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

18
19 **Rule 15.05. Motion to Strike Document**

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

24
25 **Rule 15.06. Timing of Decision**

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

29
30
31 **RULE 16. SIGNING OF PLEADINGS, MOTIONS AND OTHER PAPERS**

32 **Rule 16.01. Signature**

33 Subd. 1. Generally. Except as otherwise provided in these rules, every pleading,
34 written motion, and other paper shall be signed by at least one attorney of record in the attorney's
35 individual name, or, if the party is not represented by an attorney, shall be signed by the party.
36 Each paper shall state the signer's address and telephone number, if any, and attorney
37 registration number if signed by an attorney. If providing a party's address and telephone
38 number would endanger the party, the address and telephone number may be provided to the
39 court in a separate information statement and shall not be accessible to the public or to the
40 parties. Upon notice and motion, the court may disclose the address and telephone number as it
41 deems appropriate. Except when otherwise specifically provided by rule or statute, pleadings
42 need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless
43 omission of the signature is corrected promptly after being called to the attention of the attorney
44 or party.

1 **Subd. 2. Exception – Social Worker and Guardian Ad Litem Reports.** Reports filed
2 by social workers and guardians ad litem under Rule 38 need not be signed.
3

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

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

9
10 ~~**Subd. 2. Party Not Represented by an Attorney.** A party who is not represented by an
11 attorney shall personally sign the pleading, motion, or other paper filed with the court and shall
12 state the party’s address and telephone number. If providing the address and telephone number
13 would endanger the party, the address and telephone number may be provided to the court in a
14 separate information statement and shall not be accessible to the public or to the parties. Upon
15 notice and motion, the court may disclose the address and telephone number as it deems
16 appropriate.~~

17
18 ~~**Subd. 3. Signing Constitutes Certification.** Except when otherwise specifically
19 provided by rule or statute, pleadings need not be verified by affidavit or accompanied by
20 affidavit. The signature of an attorney or party constitutes a certification that:~~

21 (a) — the pleading, motion, or other paper has been read;

22 (b) — to the best of the signer’s knowledge, information, and belief formed after
23 reasonable inquiry that the pleading, motion or other paper is well grounded in fact and is
24 warranted by existing law or a good faith argument for the extension, modification, or reversal of
25 existing law; and

26 (c) — it is not interposed for any improper purpose, such as to harass or cause
27 unnecessary delay or needless increase in the cost of litigation.
28

29 **Rule 16.02. Representations to Court**

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

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

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

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

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

1 **RULE 18. DEFAULT**

2 **Rule 18.02. Default Order**

3 If the petition is proved by the applicable ~~standard~~ burden of proof, the court may enter an
4 order granting the relief sought in the petition as to that parent, legal custodian, or Indian
5 custodian.
6

7
8 **RULE 21. PARTIES**

9 **Rule 21.01. Party Status**

10 **Subd. 1. Parties Generally.** Parties to a juvenile protection matter shall include:

- 11 (a) the child, if age ten (10) or older;
- 12 (b-a) the child’s guardian ad litem;
- 13 (c) the child’s parent if the parent has sole or joint legal or physical custody of the
14 child, including the child’s adjudicated or presumed father but excluding an alleged father;
- 15 (d-b) the child’s legal custodian;
- 16 (e-e) in the case of an Indian child, the child’s Indian custodian and Indian tribe
17 through the tribal representative;
- 18 (f-d) the petitioner;
- 19 (g-e) any person who intervenes as a party pursuant to Rule 23;
- 20 (h-f) any person who is joined as a party pursuant to Rule 24; and
- 21 (i) persons proposed as permanent legal and physical custodians; and
22 (j-g) any other person who is deemed by the court to be important to a resolution that is
23 in the best interests of the child.

24
25 **Subd. 2. Habitual Truant, Runaway, and Child Prostitution Matters.** In addition to
26 the parties identified in subdivision 1, in any matter alleging a child to be a habitual truant, a
27 runaway, or engaged in prostitution, the child, regardless of age, shall also be a party. In any
28 matter alleging a child to be a habitual truant, the child’s school district may be joined as a party
29 pursuant to Rule 24.
30

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

- 34 (a) the child’s parents, including any noncustodial parent, but not an alleged father
35 and any adjudicated or presumed father;
- 36 (b) foster parents or relatives proposed as permanent legal and physical custodians for
37 the child;
- 38 (c-b) any person entitled to notice of any adoption proceeding involving the child; and
- 39 (d-e) any other person who is deemed by the court to be important to a resolution that is
40 in the best interests of the child.

41
42 **Rule 21.02. Rights of Parties**

43 **Subd. 1. Generally.** Except as provided in subdivision 2, a party shall have the right
44 to:

- 45 (a) notice pursuant to Rule 32;
- 46 (b) legal representation pursuant to Rule 25;

- 1 (c) be present at all hearings unless excluded pursuant to Rule 27;
- 2 (d) conduct discovery pursuant to Rule 17;
- 3 (e) bring motions before the court pursuant to Rule 15;
- 4 (f) participate in settlement agreements pursuant to Rule 19;
- 5 (g) subpoena witnesses pursuant to Rule 13;
- 6 (h) make argument in support of or against the petition;
- 7 (i) present evidence;
- 8 (j) cross-examine witnesses;
- 9 (k) request review of the referee's findings and recommended order pursuant to Rule
- 10 7;
- 11 (l) request review of the court's disposition upon a showing of a substantial change
- 12 of circumstances or that the previous disposition was inappropriate;
- 13 (m) bring post-trial motions pursuant to Rule 45;
- 14 (n) appeal from orders of the court pursuant to Rule 47; and
- 15 (o) any other rights as set forth in statute or these rules.

16
 17 **Subd. 2. Children Under Age 10.** Except for children who are parties, children under
 18 age ten (10) shall not be served with petitions, pleadings, summonses, notices of hearings,
 19 motions, orders, case plans, reports of social workers and guardians ad litem, or other
 20 documents. For children not represented by counsel, the content of such documents shall be
 21 reviewed with the child by the child's social worker and guardian ad litem.
 22

23
 24 **RULE 22. PARTICIPANTS**

25 **Rule 22.01. Participant Status**

26 **Subd. 1. Child in Need of Protection or Services Matters.** Unless already a party
 27 pursuant to Rule 21, or unless otherwise specified, participants to a juvenile protection matter
 28 shall include:

- 29 (a) the child, if not already a party under Rule 21.01;
- 30 (b) any parent who is not a legal or physical custodian and any alleged, ~~adjudicated,~~
 31 ~~or presumed~~ father;
- 32 (c) the responsible social services agency, when the responsible social services
 33 agency is not the petitioner;
- 34 (d) any guardian ad litem for the child's legal custodian;
- 35 (e) grandparents with whom the child has lived within the two (2) years preceding the
 36 filing of the petition;
- 37 (f) relatives or other persons providing care for the child and other relatives who
 38 request notice;
- 39 (g) current foster parents and persons proposed as long-term foster care parents;
- 40 (h) foster parents or relatives proposed as permanent legal and physical custodians for
 41 the child, unless already parties under Rule 21.02;
- 42 (i-h) the spouse of the child, if any; and
- 43 (j-i) any other person who is deemed by the court to be important to a resolution that is
 44 in the best interests of the child.

1 **Subd. 2. Termination of Parental Rights and Other Permanent Placement Matters.**
2 Participants in Termination of Parental Rights and Permanent Placement matters shall include
3 those identified in subdivision 1, but shall not include an alleged father.
4

5 **Rule 22.02. Rights of Participants**

6 **Subd. 1. Generally.** Unless a participant intervenes as a party pursuant to Rule 23, or is
7 joined as a party pursuant to Rule 24, and except as provided in subdivisions 2 and 3, the rights
8 of a participant shall be limited to:

- 9 (a) notice and a copy of the petition pursuant to Rule 32;
10 (b) attending hearings pursuant to Rule 27; and
11 (c) offering information at the discretion of the court.
12

13 **Subd. 2. Foster Parents and Relatives.** Notwithstanding subdivision 1, any foster
14 parent, pre-adoptive parent, relative providing care for the child, or relative to whom the
15 responsible social services agency recommends transfer of permanent legal and physical custody
16 of the child, shall be provided an opportunity to be heard in any hearing regarding the child. Any
17 other relative may request an opportunity to be heard. This subdivision does not require that a
18 foster parent, pre-adoptive parent, or relative providing care for the child be made a party to the
19 matter, unless a petition has been filed by the responsible social services agency pursuant to Rule
20 42 asking that the court order transfer of permanent legal and physical custody of the child to the
21 relative. Each party and the county attorney shall be provided an opportunity to respond to any
22 presentation by a foster parent or relative.
23

24 **Subd. 3. Children Under Age 10.** Except for children who are parties, children under
25 age ten (10) shall not be served with petitions, pleadings, summonses, notices of hearings,
26 motions, orders, case plans, reports of social workers and guardians ad litem, or other
27 documents. For children not represented by counsel, the content of such documents shall be
28 reviewed with the child by the child's social worker and guardian ad litem.
29
30

31 **RULE 25. RIGHT TO REPRESENTATION; APPOINTMENT OF COUNSEL**

32 **Rule 25.02. Appointment of Counsel**

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

35 (a) **Juvenile Protection Matters.** Except in proceedings where the sole basis for the
36 petition is habitual truancy, if the child's parent or legal custodian desires counsel but is
37 financially unable to employ it, the court shall appoint counsel to represent the parent or legal
38 custodian in any juvenile protection matter in which the court determines that such appointment
39 is appropriate.

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

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

4 (d) **Timing.** The appointment of counsel for the parent, legal custodian, or Indian
5 custodian shall occur as soon as practicable after the request is made.
6

7 **Rule 25.03. Reimbursement**

8 When counsel is appointed for a child ~~or a child's parent or legal custodian~~, the court
9 may inquire into the ability of the parent or legal custodian to pay for the attorney's services and,
10 after giving the parent or legal custodian a reasonable opportunity to be heard, may order the
11 parent or legal custodian to pay the attorney's fees. The parent or legal custodian shall have an
12 ongoing duty to disclose any change in the person's financial circumstances.
13

14
15 **RULE 26. GUARDIAN AD LITEM**

16 **Rule 26.01. Appointment for Child**

17 **Subd. 1. Mandatory Appointment Generally Required.** The court shall appoint a
18 guardian ad litem to advocate for the best interests of the child in all cases where such
19 appointment is mandated by Minnesota Statutes section 260C.163, subd. 5. If the court has
20 issued an ordering appointing a person as a guardian ad litem in a Child in Need of Protection or
21 Services proceeding, the Court may, but is not required, to issue an order reappointing the same
22 person in the Termination of Parental Rights or other Permanent Placement Determination
23 proceeding. A order is required only if a new person is being appointed as guardian ad litem.
24

25 **Rule 26.02. Discretionary Appointment for Child's Parent or Legal Custodian**

26 **Subd. 1. Appointment.** The court may sua sponte or upon the written or on-the-record
27 request of a party or participant appoint a guardian ad litem for a parent who is a party or the
28 legal custodian if the court determines that the parent or legal custodian:

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

31 (b) it appears at any stage of the proceedings that the parent is under eighteen (18)
32 years of age and is without a parent or legal custodian, or that considered in the context of the
33 matter the minor parent's parent or legal custodian is unavailable, incompetent, indifferent to,
34 hostile to, or has interests in conflict with the interests of the minor parent.
35

36 **Subd. 2. Attorney Not Discharged.** Appointment of a guardian ad litem for a parent or
37 legal custodian shall not result in discharge of counsel for the parent or legal custodian.
38

39 **Subd. 3. Responsibilities; Rights.** The guardian ad litem shall carry out the
40 responsibilities set forth in the Rules of Guardian ad Litem Procedure in Juvenile and Family
41 Court. The guardian ad litem shall have the rights set forth in the Rules of Guardian Ad Litem
42 Procedure in Juvenile and Family Court.
43

44 (e) ~~In every appointment under this rule, the guardian ad litem shall perform the~~
45 ~~following responsibilities:~~

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

2 **Rule 30.09. Factors**

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

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

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

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

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

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

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

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

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

22
23 **Subd. 3. ~~Egregious Harm~~ Cases Permitting By-Pass of Child In Need of Protection**
24 **or Services Proceedings.**

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

28 ~~(i) whether a termination of parental rights petition has been filed stating a~~
29 prima facie case that

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

32 (2) the parental rights of the parent to another child have been terminated
33 involuntarily; or

34 (3) the child is an abandoned infant under Minnesota Statutes § 260C.301, subd.
35 2(a)(2);

36 (4) the parent's custodial rights to another child haven been involuntarily
37 transferred to a relative under Minnesota Statutes § 260C.201, subd. 11 (e)(1); or

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

40 ~~(iii) whether a termination of parental rights petition or other petition~~
41 according to Minnesota Statutes § 260C.201, subd. 11, has been filed alleging a prima facia case
42 that

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

1 (b) **Permanency Hearing Required.** Once the court makes the determination
2 required in subdivision 3(a), the court shall schedule a permanency hearing pursuant to Rule 42
3 within thirty (30) days ~~unless the county attorney files a petition to terminate parental rights.~~
4

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

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

8 (a) that the child:

9 (1) continue in protective care;

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

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

13 (4) return home with no conditions;

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

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

17 (d) where the child shall be placed;

18 (e) terms of parental and sibling visitation pending further proceedings; and

19 (f) the parent's responsibility for costs of care pursuant to Minnesota Statutes §
20 260C.331, subd. 1.
21
22

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

24 **Rule 31.02. Types of Service**

25 **Subd. 1. Personal Service.** Personal service means personally delivering the original
26 document to the person to be served or leaving it at the person's home or usual place of abode
27 with a person of suitable age and discretion residing therein, unless the court authorizes service
28 by publication. Unless otherwise ordered by the court, the sheriff or other person not less than
29 18 years of age and not a party to the action may make such personal service.

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

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

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

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

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

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

46 (c) unless prohibited by the law of the foreign country, by:

1 (i) delivery to the individual personally of a copy of the
2 summons and the complaint; or
3 (ii) any form of mail requiring a signed receipt, to be addressed
4 and dispatched by the court administrator to the party to be served; or
5 (3) by other means not prohibited by international agreement as may be
6 directed by the court.
7

8 **Subd. 2. U.S. Mail.** Service by U.S. Mail means placing a copy of the document in the
9 U.S. mail, first class, postage prepaid, addressed to the person to be served. The social services
10 reports and guardian ad litem reports required under Rule 38 may be served directly by the social
11 worker or guardian ad litem.
12

13 **Subd. 3. Publication.** Service by publication means the publication in full of the
14 summons, notice, or other papers in the regular issue of a qualified newspaper, once each week
15 for the number of weeks specified pursuant to Rule 32.02. Service by publication substitutes for
16 personal service where authorized by the court. The court shall authorize service by publication
17 only if the petitioner has filed a written statement or affidavit describing unsuccessful efforts to
18 locate the party to be served. A new affidavit describing the search efforts shall be filed with
19 each new request for publication. Publication shall be made in a location reasonably calculated
20 to provide actual notice to the person to be served.
21

22 **2005 Advisory Committee Comment**

23 The location of where the summons or other document should be
24 published will vary from case to case and will depend upon whether there is
25 information about the person's last known address.
26

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

28 **Subd. 1. Orders.** Pursuant to Rule 10.03, orders shall be served upon both the party and
29 any attorney representing such party, except for orders issued as a result of a Termination of
30 Parental Rights proceeding which shall be served only upon the attorney representing the party,
31 if any.
32

33 **Subd. 2. Other Documents.** Unless personal service upon a party is required, service upon
34 counsel for a party or counsel for a participant shall be deemed service upon the party or
35 participant. Service upon the county attorney shall be deemed to be service upon the responsible
36 social services agency. Documents that are not court orders shall not be served directly upon a
37 represented party.
38

39 **Rule 31.07. Proof of Service**

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

- 42 (a) whether the document was served;
 - 43 (b) the method of service ~~how the document was served;~~
 - 44 (c) the name of the person on whom the document was served; and
 - 45 (d) the date and place of service.
- 46

1 ~~the child's physical custodian, and any unrepresented child age ten (10) or older. Children under~~
2 ~~age ten (10) shall not be served with the petition, summons, or a notice of hearing.~~

3
4 **Rule 32.04. Notice of Subsequent Hearings**

5 For each hearing following the Emergency Protective Care or Admit/Deny Hearing, the
6 court administrator shall serve upon each party, participant, and attorney a written notice of the
7 date, time, and location of the next hearing. Such notice shall be delivered at the close of each
8 hearing or mailed at least five (5) days before the date of the hearing or ten (10) ~~fifteen (15)~~ days
9 before the date of the hearing if mailed to an address outside the state. If written notice is
10 delivered at the end of the hearing, later written notice is not required.

11
12 **Rule 32.06. Agency Notice Responsibility Under Indian Child Welfare Act**

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

26
27
28 **RULE 33. PETITION**

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

30 **Subd. 1. Generally.** A petition may be drafted and filed by the county attorney or any
31 responsible person. A petition shall be served pursuant to Rule 32.02. If the petition contains
32 any information under Rule 8.04 that is inaccessible to the public, the petitioner shall file the
33 original petition and a copy with the confidential information redacted.

34
35 **Subd. 3. Termination of Parental Rights Matters.**

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

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

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

45 (1) has been subjected to egregious harm as defined in Minnesota Statutes §
46 260C.007, subd. 14;

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

3 (3) is an abandoned infant as defined in Minnesota Statutes § 260C.301, subd.
4 2;

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

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

10 (d) Joinder of Social Services Agency. If the termination of parental rights petition
11 has been filed by another party, that party shall join the responsible social services agency as a
12 party pursuant to Rule 24.

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

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

18 (ii) a petition alleging the child and, where appropriate, the child's siblings, to
19 be in need of protection or services

20 Such petition shall be accompanied by a case plan prepared by the responsible social
21 services agency documenting there is a compelling reason documented by the responsible social
22 services agency that why filing a termination of parental rights petition is not in the best interests
23 of the child.

24
25 **Subd. 4. Permanent Placement Matters.**

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

28 (b) **Filing by Whom; Service.** The county attorney shall file a permanent placement
29 petition in juvenile court to determine the permanent placement of a child. The county attorney
30 may seek any alternative permanent placement relief, and any other party may only seek
31 termination of parental rights or transfer of permanent legal and custody. Any party may also
32 file a petition to establish the basis for a permanent placement order.—A party, including a
33 guardian ad litem for the child, shall file ~~a~~ an authorized permanent placement petition if the
34 party disagrees with the permanent placement determination set forth in the petitions filed by
35 other parties. A petition shall be served pursuant to Rule 32.02.

36
37 **Rule 33.02. Content**

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

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

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

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

- 1 (d) the name, residence, and post office address of the child’s legal custodian, the
- 2 person having custody or control of the child, or the nearest known relative if no parent or legal
- 3 custodian can be found;
- 4 (e) the name, residence, and post office address of the spouse of the child;
- 5 (f) the statutory grounds on which the petition is based, together with a recitation of
- 6 the relevant portion of the subdivision(s);
- 7 (g) a statement regarding the applicability of the Indian Child Welfare Act;
- 8 (h) the names and address of the parties identified in Rule 21, as well as a statement
- 9 designating them as parties; ~~and~~
- 10 (i) the names and addresses of the participants identified in Rule 22, as well as a
- 11 statement designating them as participants; and
- 12 (j) the information set forth in Rule 48.02 if the child is believed to be an Indian
- 13 child.

14
 15 If any information required by subdivision 1 is unknown at the time of the filing of the
 16 petition, as soon as such information becomes known to the petitioner it shall be provided to the
 17 court and parties either orally on the record, by sworn affidavit, or by amended petition. If
 18 presented orally on the record, the court shall annotate the petition to reflect the updated
 19 information.

20
 21 **Subd. 3. Termination of Parental Rights Matters.**

22 (a) **Generally.** A termination of parental rights matter shall be entitled “Petition to
 23 Terminate Parental Rights” and shall conform to the requirements of Minnesota Statutes §
 24 260C.141.

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

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

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

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

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

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

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

45 (c) **Petitions Seeking Alternative Permanent Placement Relief.** In addition to the
 46 content requirements set forth in subdivision 1, any termination of parental rights petition may

1 seek alternative permanent placement relief authorized in Rule 33.01, subds. 3 and 4, including
2 transfer of permanent legal and physical custody to a relative or placement of the child in long-
3 term foster care. A petition seeking alternative permanent placement relief shall identify which
4 proposed permanent placement option the petitioner believes is in the best interests of the child.
5 A petition may seek separate permanent placement relief for each child named as a subject of the
6 petition as long as the petition identifies which option(s) is sought for each child and why that
7 option(s) is in the best interests of the child. At the admit/deny hearing on a petition that seeks
8 alternative relief, each party shall identify on the record the permanent placement option that is
9 in the best interests of the child.

10
11 **Rule 33.04. Amendment**

12 **Subd. 1. Prior to Trial.** The petition may be amended at any time prior to the
13 commencement of the trial, including, in a child in need of protection or services matter, adding
14 a child as the subject matter of the petition. The petitioner shall provide notice of the amendment
15 to all parties and participants. The petitioner shall provide written or on-the-record notice of any
16 amendment. When the petition is amended, the court shall grant all other parties sufficient time
17 to respond to the amendment. The amended petition need not be personally served.

18
19 **Subd. 2. After Trial Begins.** The petition may be amended after the trial has
20 commenced if the court finds that the amendment does not prejudice a party and all parties are
21 given sufficient time to respond to the proposed amendment. Upon receipt of approval from the
22 court, the petitioner shall provide written or on-the-record notice of the proposed amendment to
23 all parties and participants. The amended petition need not be personally served.

24
25
26 **RULE 34. ADMIT/DENY HEARING**

27 **Rule 34.02. Timing**

28 **Subd. 2. Child Not in Placement.**

29 (a) **Generally.** When the child is not placed outside the child's home by court order,
30 an admit/deny hearing shall be held no sooner than three (3) ~~five (5)~~ days and no later than
31 twenty (20) days after the parties have been served with the summons and petition.

32 (b) **Child's Behavior.** In matters where the sole allegation is that the child's
33 behavior is the basis for the petition and the child is not in placement, an admit/deny hearing
34 shall be commenced within a reasonable time after service of the summons and petition upon the
35 child.

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

40
41 **Rule 34.03. Hearing Procedure**

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

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

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

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

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

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

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

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

13 (h) explain the purpose of the hearing and the possible transfer of custody of the child
14 from the parent or legal custodian to another, when such transfer is permitted by law and the
15 permanency requirements of Minnesota Statutes § 260C.201, subd. 11.
16

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

18 (a) In each child in need of protection or services matter, after completing the initial
19 inquiries set forth in subdivision 1, the court shall determine whether the petition establishes a
20 prima facie showing that a juvenile protection matter exists and that the child is the subject of the
21 matter, unless the prima facie determination was made at the Emergency Protective Care Hearing
22 pursuant to Rule 30.08.

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

27 (1) a permanency progress review hearing shall be held within six (6) months
28 of the date of the child's ~~out-of-home~~ placement in foster care or the home of a noncustodial
29 parent if the child was under eight (8) years of age at the time of the filing of the petition; or

30 (2) a permanent placement determination hearing must be held within twelve
31 (12) months of the date of the child's ~~out-of-home~~ placement in foster care or the home of a
32 noncustodial parent ~~if the child was eight (8) years of age or older at the time of the filing of the~~
33 ~~petition.~~
34

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

36 (a) In each termination of parental rights matter, after completing the initial inquiries
37 set forth in subdivision 1, the court shall determine whether the petition states a prima facie case
38 in support of termination of parental rights under the statutory grounds stated in the petition.

39 (b) When the petition alleges that reasonable efforts, or active efforts in the case of an
40 Indian child, have been made to reunify the child with the parent or legal custodian, the court
41 shall enter a separate finding regarding whether the factual allegations contained in the petition
42 state a prima facie case that the agency has provided reasonable efforts, ~~or active efforts in the~~
43 ~~case of an Indian child,~~ to reunify the child and the parent or legal custodian. In the alternative,
44 the court may enter a finding that reasonable efforts, or active efforts in the case of an Indian
45 child, to reunify the child and the parent or legal custodian were not required under Minnesota
46 Statutes § 260.012.

1 (c) If the court determines that the petition states a prima facie case in support of
2 termination of parental rights, the court shall proceed pursuant to Rule 35. If the court
3 determines that the petition fails to state a prima facie case in support of termination of parental
4 rights, the court shall:

- 5 (i) return the child to the care of the parent or legal custodian;
- 6 (ii) give the petitioner ten (10) days to file an amended petition or
7 supplementary information if the petitioner represents there are additional facts which, if
8 presented to the court, would establish a prima facie case in support of termination of parental
9 rights;
- 10 (iii) give the petitioner ten (10) days to file a child in need of protection or
11 services petition; or
- 12 (iv) dismiss the petition.

13
14 **Subd. 4. Permanent Placement Matters.**

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

19 (b) When the petition seeking permanent placement of the child away from the parent
20 or legal custodian requires a determination by the court that reasonable efforts, or active efforts
21 in the case of an Indian child, have been made to reunify the child with the parent or legal
22 custodian, the court shall enter a separate finding regarding whether the factual allegations in the
23 petition state a prima facie case that the agency has provided reasonable efforts, or active efforts
24 in the case of an Indian child, to reunify the child and the parent or legal custodian. In the
25 alternative, the court may enter a finding that reasonable efforts, ~~or active efforts in the case of~~
26 ~~an Indian child,~~ were not required under Minnesota Statutes § 260.012.

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

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

35
36
37 **RULE 35. ADMISSION OR DENIAL**

38 **Rule 35.01. Generally**

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

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

45 (b) **Termination of Parental Rights Matters.** In a termination of parental rights
46 matter, only the parents of the child are required to admit or deny the petition. A party who is

1 not required to admit or deny the petition may object to the admission if that party has filed a
2 petition pursuant to Rule 33.

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

4 (1) only the legal custodian of the child who is not the petitioner is required to
5 admit or deny the petition. A party who is not required to admit or deny the petition may object
6 to the entry of the proposed permanent placement order if that party has filed a petition pursuant
7 to Rule 33.

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

12 (i) the legal consequences of a transfer of permanent legal and
13 physical custody;

14 (ii) the nature and amount of financial support and services that will be
15 available to help care for the child;

16 (iii) how the custody order can be modified; and

17 (iv) any other permanent placement options available for the subject
18 child.

19
20 **Subd. 2. Child.**

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

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

26
27 **Subd. 3. Contested Petition.** Any party has the right to contest the basis of a petition.
28 The county attorney has the right to contest the basis of a petition filed by an individual who is
29 not a county attorney or an agent of the Commissioner of Human Services.

30
31 **Rule 35.03. Admission**

32 **Subd. 1. Admission Under Oath.** Any admission must be made under oath.

33
34 **Subd. 2. Admission Without Appearance.** Upon approval of the court, a written
35 admission of the statutory grounds set forth in the petition, made under oath, may be entered by
36 counsel without personal appearance of the person represented by counsel.

37
38 **Subd. 3. Questioning of Person Making Admission.**

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

42 (1) the person admitting acknowledges an understanding of:

43 (i) the nature of the statutory grounds set forth in the petition;

44 (ii) if unrepresented, the right to representation pursuant to Rule 25;

45 (iii) the right to a trial;

46 (iv) the right to testify; and

1 (v) the right to subpoena witnesses; and

2 (2) whether the person admitting acknowledges an understanding that, if the
3 child is not returned home, a permanency progress review hearing to determine the permanent
4 placement of the child will be held within six (6) months of the date of the child's out-of-home
5 placement in foster care or in the home of a noncustodial parent if the child was under eight (8)
6 years of age at the time of the filing of the petition, and a permanent placement determination
7 hearing will be held ~~or~~ within twelve (12) months of the date of the child's out-of-home
8 placement in foster care or the home of a noncustodial parent ~~if the child was eight (8) years or~~
9 ~~older at the time of the filing of the petition.~~

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

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

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

26
27
28 **RULE 36. PRETRIAL HEARING CONFERENCE**

29 **Rule 36.01. Timing**

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

33
34 **Rule 36.02. Purpose**

35 The purposes of a pretrial hearing conference shall be to:

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

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

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

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

45 (e) identify any unresolved discovery matters;

46 (f) resolve any pending pretrial motions;

- 1 (g) identify and narrow issues of law and fact for trial, including identification of:
2 (1) the factual allegations admitted or denied;
3 (2) the statutory grounds admitted or denied;
4 (3) any stipulations to foundation and relevance of documents; and
5 (4) any other stipulations, admissions, or denials;
6 (h) exchange witness lists and a brief summary of each witness' testimony;
7 (i) exchange exhibit lists;
8 (j) confirm the trial date and estimate the length of trial; and
9 (k) determine any other relevant issues.

10
11 **Rule 36.03. Pretrial Order**

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

14
15 **Rule 36.04. Continuing Obligation to Update Information**

16 From the date of the pretrial ~~hearing conference~~ through the date of trial, the parties shall
17 have a continuing obligation to update information provided during the pretrial conference.
18
19

20 **RULE 37. CASE PLANS**

21 **Rule 37.01. Case Plans and Reports Generally**

22 When the responsible social services agency is the petitioner, the agency shall file with
23 the court and provide to the parties and foster parent a case plan for the child and the parents or
24 legal custodians, as appropriate. A case plan shall be prepared according to the requirements of
25 Minnesota Statutes § 245.4871, subds. 19 or 21; § 245.492, subd. 16; § 256B.092; ~~§ 256E.08;~~ §
26 260C.212, subd. 1; or § 626.556, subd. 10, whichever is applicable.
27

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

30 **Subd. 1. Plan Required.** When a child is placed in foster care ~~out of the care of a~~
31 ~~parent or legal custodian~~ by court order, the responsible social services agency shall file with the
32 court and provide to the parties and foster parents the out-of-home placement plan required under
33 Minnesota Statutes § 260C.212, subd. 1.
34

35 **Subd. 2. Timing.** The out-of-home placement plan shall be filed with the court and
36 provided to the parties and foster parents by the responsible social services agency within thirty
37 (30) days of the ~~filing of the petition alleging the child to be in need of protection or services~~
38 court order placing the child in foster care, an order for protective care, or order transferring legal
39 custody to the responsible social services agency, which ever is earliest.
40

41 **Subd. 3. Content.** The out-of-home placement plan shall include a statement about
42 whether the parent, legal custodian, and child participated in the preparation of the plan. If a
43 parent or legal custodian refuses to participate in the preparation of the plan, cannot be located to
44 participate in the development of the plan, or disagrees with the services recommended by the
45 responsible social services agency in the plan, the information submitted with the plan shall
46 describe the agency's efforts to solicit the parents' participation and describe the parents'

1 ~~response~~ the agency shall state in the plan the ~~reasonable~~ attempts made to engage the parent,
2 legal custodian, and child in case planning and note such refusal, inability, or disagreement. The
3 plan shall also include a statement about whether the child's guardian ad litem; the child's tribe,
4 if the child is an Indian child; and the child's foster parent or representative of the residential
5 facility have been consulted in the plan's preparation. The agency shall document whether the
6 parent or legal custodian; the child, if appropriate; the child's tribe, if the child is an Indian child;
7 and foster parents have received a copy of the plan. When a child is in foster care due solely or
8 in part to the child's emotional disturbance, the child's mental health treatment provider shall
9 also be consulted in preparation of the plan and the agency shall document such consultation in
10 the plan filed with the court.

11
12 **Subd. 4. Procedure for Approving or Ordering Out-of-Home Placement Plan Prior**
13 **to Disposition.**

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

24 (b) **Refusal or Inability to Participate in Development of Plan.** ~~Upon notice and~~
25 ~~motion by a parent or child who agrees to comply with the terms of an out-of-home placement~~
26 ~~plan, the court may modify the plan and order the responsible social services agency to provide~~
27 ~~other or additional services for reunification, if reunification services are required, and the court~~
28 ~~determines the agency's plan inadequate under Minnesota Statutes § 260.012.~~ When a parent or
29 legal custodian refuses to participate in the preparation of the out-of-home placement plan,
30 cannot be located to participate in the development of the plan, or disagrees with the services
31 recommended by the responsible social services agency, the agency shall notify the court of the
32 services it will provide or efforts it will attempt under the plan notwithstanding the parent's
33 refusal to cooperate, unavailability, or disagreement with the services. Any party may ask the
34 court to modify the plan to require different or additional services. The court may approve the
35 plan as presented by the agency or may modify the plan to require services requested. The
36 court's approval of the plan shall be based upon the content of the petition or amended petition.

37 (c) **Voluntary or Court-Ordered Compliance with Plan.** A parent may voluntarily
38 agree to comply with the terms of an out-of-home placement plan filed with the court. Unless
39 the parent voluntarily agrees to the plan, the court may not order a parent to comply with the plan
40 until there is a disposition ordered under Minnesota Statutes § 260C.201, subd. 1, and Rule 41.
41 However, the court may find that the responsible social services agency has made reasonable
42 efforts for reunification if the agency makes efforts to implement the terms of an out-of-home
43 placement plan approved under this rule and Minnesota Statutes § 260C.178, subd. 7.

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

1
2 **Rule 37.03. Child in Voluntary Foster Care ~~Out-of-Home Placement~~: **Out-of-Home****
3 **Placement Plan**

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

6 (a) **Timing.** The out-of-home placement plan required under Minnesota Statutes §
7 260C.212, subd. 1, shall be filed and served with the petition asking the court to review a
8 voluntary placement of a child in placement when the placement is not due solely to the child's
9 disability under Minnesota Statutes § 260C.141, subd. 2, and Rule 44.

10 (b) **Content.** The plan shall include a statement about whether the parent, legal
11 custodian, and child participated in the preparation of the plan. The plan shall also include a
12 statement about whether the child's guardian ad litem; the child's tribe, if the child is an Indian
13 child; and the child's foster parent or representative of the residential facility have been
14 consulted in the plan's preparation. The agency shall document whether the parent or legal
15 custodian; the child, if appropriate; the child's tribe, if the child is an Indian child; and foster
16 parents have received a copy of the plan. When a child is in foster care due solely or in part to
17 the child's emotional disturbance, the child's mental health treatment provider shall also be
18 consulted in preparation of the plan and the agency shall document such consultation in the plan
19 filed with the court.

20
21 **Subd. 2. Child in Voluntary Foster Care ~~Placement~~ **Due Solely to Child's Disability.****

22 (a) **Timing.** The out-of-home placement plan required under Minnesota Statutes §
23 260C.212, subd. 1, shall be filed with the report or petition asking the court to review a voluntary
24 placement of a child in placement when the placement is due solely to the child's disability, as
25 defined in Minnesota Statutes § 260C.007, subd. 12 or 16, under Minnesota Statutes § 260C.141,
26 subd. 2, and Rule 44.

27 (b) **Content.** The plan shall include a statement about whether the parent, legal
28 custodian, and child participated in the preparation of the plan. The plan shall also include a
29 statement about whether the child's guardian ad litem; the child's tribe, if the child is an Indian
30 child; and the child's foster parent or representative of the residential facility have been
31 consulted in the plan's preparation. The agency shall document whether the parent or legal
32 custodian; the child, if appropriate; the child's tribe, if the child is an Indian child; and foster
33 parents have received a copy of the plan. When a child is in foster care due solely to the child's
34 emotional disturbance, the child's mental health treatment provider shall also be consulted in
35 preparation of the plan and the agency shall document such consultation in the plan filed with the
36 court.

37
38 **Subd. 3. Procedure for Approving Out-of-Home Plan for Child in Voluntary Foster**
39 **Care ~~Placement~~.** The court shall consider the appropriateness of the out-of-home placement
40 plan in determining whether the voluntary placement is in the best interests of the child as
41 required under Rule 44.
42

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

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

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

14 (b) **Procedure for Ordering Child Protective Services Plan.** When the child is not
15 foster care ~~in out-of-home placement~~ or is not recommended to continue in foster care ~~out-of-~~
16 ~~home placement~~, but the court finds endangerment under Rule 30, the court may order the parties
17 to comply with the provisions of the child protective services case plan as a condition of the
18 child remaining in the care of the parent, guardian, or custodian. The court may also order the
19 parties to comply with the provisions of the plan as part of a disposition under Rule 41. When
20 the court orders a child protection services plan, a copy of the plan shall be attached to the
21 court's order and incorporated into it by reference.

22
23 **Rule 37.05. Child with Disability: Case Plan**

24 **Subd. 1. Procedure.** If a child found to be in need of protection or services has a
25 physical or mental disability and a case plan is required under Minnesota Statutes § 245.4871,
26 subd. 19 or 21; § 245.492, subd. 16; or § 256B.092; ~~or~~ ~~§ 256E.08~~, the plan shall be filed with the
27 court. Services may be ordered provided to the child according to the provisions of Minnesota
28 Statutes § 260C.201, subd. 1(a)(3). When an out-of-home placement plan is required under Rule
29 37.02 or a child protective services plan is required under Rule 37.04, the requirements of a plan
30 under this paragraph may be included in such plans and need not be a separate document.

31
32 **Subd. 2. Timing.** The ~~case~~ child protective services plan shall be provided to the parties
33 by the responsible social services agency at the time it is filed with the court.

34
35
36 **RULE 38. REPORTS TO THE COURT**

37 **Rule 38.01. Social Services Court Reports Generally**

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

1 report or as a supplement to the report. Such reports may be supplemented at or before the
2 hearing either orally or in writing.

3
4 **Subd. 2. Content.** While pursuant to Rule 16 a report is not required to be signed, each
5 Each report shall include a statement certifying the content as true based upon personal
6 observation, first-hand knowledge, or information and belief and shall include the case caption,
7 the date of the report, and the date of the hearing at which the report is to be considered. Each
8 report shall contain or have attached a certificate of distribution required under Rule 31.07, subd.
9 2.

10
11 **Subd. 3. Timing of Reports.** Periodic reports required under this Rule shall be filed
12 with the court and served upon the parties by the responsible social services agency not later than
13 five (5) business days prior to each review hearing required under Rule 41.06, permanent
14 placement determination hearing required under Rule 42.04, and as otherwise directed by the
15 court.

16
17 **Rule 38.02. Social Services Court Reports – Child Ordered into Foster Care** ~~Out-of-Home~~
18 ~~Placement~~

19 **Subd. 1. Content.** In addition to the requirements of Rule 38.01, subd. 2, each certified
20 report regarding an out-of-home placement plan shall include the following:

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

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

25 (2) the names of the child’s parents or legal custodians;

26 (3) the dates of birth of the child’s parents who are minors;

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

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

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

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

35 (8) if the child’s placement has changed since the out-of-home placement plan
36 was approved or ordered, a description of how the child’s placement meets the child’s best
37 interests as set out in the modified out-of-home placement plan, or in the case of an Indian child,
38 whether the placement complies with placement preferences established in 25 U.S.C. § 1915;
39 and

40 (9) when the child has siblings, the names and ages of the child’s siblings, the
41 residence or placement status of each sibling and, where appropriate, the efforts the agency has
42 made to place the children together; and

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

44 (1) the agency’s efforts to implement the out-of-home placement plan
45 requirements;

46 (2) the parent’s or legal custodian’s compliance with the plan requirements;

- 1 (3) services provided to child;
- 2 (4) the child's adjustment in placement;
- 3 (5) visitation between the parents or legal custodian and the child and between
- 4 the child and the siblings; and
- 5 (6) the agency's efforts to finalize adoption; and

6 (c) **Placement with Relatives.** At least once during the first six (6) months the child
7 is in placement or until placement is made with a relative or the court finds the agency's efforts
8 adequate under Minnesota Statutes § 260C.212, subd. 5, the report shall describe the efforts the
9 agency has made to identify and notify relatives, or in the case of an Indian child the report shall
10 describe how the placement complies with requirements of 25 U.S.C. § 1915; and

11 (d) **Independent Living Plan.** When the child is age 16 or older, the report shall
12 include a description of the elements of the child's independent living plan and how the child is
13 progressing on that plan;

14 (e) **Child with Emotional Disturbance.** For a child in placement due solely or in
15 part to the child's emotional disturbance, diagnostic and assessment information, specific
16 services relating to meeting the mental health care needs of the child, and treatment outcomes;
17 and

18 (ef) **Recommendations.** The report shall include recommendations to the court for
19 modification of the plan or for actions the parents or legal custodian must take to provide
20 protection or services for the child.

21 22 **Rule 38.03. Social Services Court Reports – Child Not in Out-of-Home Placement**

23 In addition to the requirements of Rule 38.01, subd. 2, each certified report regarding the
24 case plan shall include the following:

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

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

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

32 (3-2) the names of the child's parents or legal custodians;

33 (4-3) the dates of birth of the child's parents who are minors;

34 (5-4) the child's residence and, if the child's residence has changed since the
35 case plan was ordered, the date of the change;

36 (6-5) the date the case was most recently opened for services in the responsible
37 social services agency;

38 (7-6) the date of all other case openings for this child and ~~or~~ the child's siblings
39 with the responsible social services agency and, if known, case openings for this child or the
40 child's siblings with any other social services agency responsible for providing child welfare or
41 child protection services to this child; in addition to the date of other case openings, the report
42 should contain a brief description of the nature of the contact with the responsible or other social
43 services agency; and

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

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

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

3 (3) the services provided to the child; and
4 (c) **Recommendations.** The report shall include recommendations to the court for
5 modification of the plan or for actions the parent or legal custodian must take to provide
6 adequate protection or services for the child.
7

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

9 **Subd. 2. Content.** While pursuant to Rule 16 a report is not required to be signed, each
10 ~~Each~~ report shall include a statement certifying the content as true based upon personal
11 observation, first-hand knowledge, or information and belief and shall include the following:

- 12 (a) the child's name, date of birth, and age at the time the report is filed;
13 (b) the names of the child's parents or legal custodians;
14 (c-a) the case caption;
15 (d-b) the date of the report;
16 (e-e) the date of the hearing at which the report is to be considered;
17 (f-d) the date the guardian ad litem was appointed by the court;
18 (g-e) a brief summary of the issues that brought the child and family into the court
19 system;
20 (h-f) a list of the resources or persons contacted who provided information to the
21 guardian ad litem since the date of the last court hearing;
22 (i-g) a list of the dates and types of contacts the guardian ad litem had with the
23 child(ren) since the date of the last court hearing;
24 (j-h) a list of all documents relied upon when generating the court report;
25 (k-i) a summary of information gathered regarding the child and family since the date
26 of the last hearing relevant to the pending hearing;
27 (l-j) a list of any issues of concern to the guardian ad litem about the child's or
28 family's situation; and
29 (m-k) a list of recommendations designed to address the concerns and advocate for the
30 best interests of the child.
31

32 Each report shall contain or have attached a certificate of distribution required under Rule
33 31.07, subd. 2.
34

35 **Subd. 3. Timing of Reports.** Except for an Emergency Protective Care Hearing for
36 which no written report is required, reports required under this rule shall be filed with the court
37 and served upon the parties by the guardian ad litem not later than five (5) business days prior to
38 each review hearing required under Rule 41.06, permanent placement determination hearing
39 required under Rule 42, and as otherwise directed by the court.
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RULE 39. TRIAL

Rule 39.02. Timing

Subd. 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 sixty (60) days after the admit/deny hearing or ninety (90) days after the filing of the petition, whichever is earlier ~~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 if the responsible social services agency demonstrates at this hearing at the permanency progress review hearing required under Rule 42 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 filing of the petition.

(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.

Rule 39.04. Standard of Proof

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 40. If the court finds that the statutory grounds set forth in the petition are proved, the court may terminate parental rights. The findings and order shall be filed with the court administrator who shall proceed pursuant to Rule 10.

(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

1 efforts made by the responsible social services agency to rehabilitate the parent and reunite the
2 family, including, where applicable, a statement that :

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

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

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

10 11 **RULE 40. ADJUDICATION**

12 **Rule 40.02. Withholding Adjudication**

13 **Subd. 1. Generally.** When it is in the best interests of the child to do so, the court may
14 withhold an adjudication that the child is in need of protection or services. The court may
15 withhold adjudication for a period not to exceed ninety (90) days from the finding that the
16 statutory grounds set forth in the petition have been proved. During the withholding of an
17 adjudication, the court may enter a disposition order pursuant to Rule 41.

18
19 **Subd. 2. Further Proceedings.** At a hearing, which shall be held within ninety (90)
20 days following the court's withholding of adjudication, the court shall either:

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

23 (b) adjudicate the child in need of protection or services if either the child or the
24 child's parent who is a party or legal custodian has not complied with the terms of the
25 continuance. If the court enters an adjudication, the court shall proceed to disposition pursuant
26 to Rule 41.

27 28 29 **RULE 41. DISPOSITION**

30 **Rule 41.01. Disposition**

31 After an adjudication that a child is in need of protection or services pursuant to Rule
32 40.01, the court shall conduct a hearing to determine disposition. Dispositions in regard to
33 review of voluntary foster care ~~out-of-home placement~~ matters shall be pursuant to Minnesota
34 Statutes § 260C.205 and § 127A.47.

35 36 **Rule 41.03. Pre-Disposition Reports**

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

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

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

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

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

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

10 **(b) Consideration of Reports.** Before making a disposition in a case, terminating
11 parental rights, or appointing a guardian for a child, the court may consider any report or
12 recommendation made by the responsible social services agency, probation officer, licensed
13 child-placing agency, foster parent, guardian ad litem, tribal representative, the child’s health or
14 mental health care provider, or other authorized advocate for the child or child’s family, a school
15 district concerning the effect on student transportation of placing a child in a school district in
16 which the child is not a resident, or any other information deemed material by the court.

17
18 **Rule 41.05. Disposition Order**

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

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

23 (b) a statement of all alternative dispositions or services under the case plan
24 considered by the court and why such dispositions or services are not appropriate in the instant
25 case;

26 (c) if the disposition is ~~out of home placement through~~ legal custody to a responsible
27 social services agency, a statement reviewing the agency’s use of the factors set out below in
28 making the child’s foster care placement. ~~Among the factors the agency to be considered~~
29 ~~considers in determining the needs of the child are:~~

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

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

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

44
45 The court may authorize or continue an award of legal custody to the responsible social
46 services agency despite a finding that the agency’s preventive or reunification efforts have not

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

3
4 If the child has been identified by the responsible social services agency as the subject of
5 concurrent permanency planning, the court shall review and make findings regarding the
6 reasonable efforts of the agency to recruit, identify, and make a placement with a foster parent or
7 relative who has committed to providing the legally permanent home for the child in the event
8 reunification efforts are not successful.

9
10 **Subd. 2. Content.**

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

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

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

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

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

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

32 (3) **Trial Home Visit.** Order a trial home visit without modifying the transfer
33 of legal custody to the responsible social services agency under clause (2). Trial home visit
34 means the child is returned to the care of the parent or guardian from whom the child was
35 removed for a period not to exceed six months;

36 (4) **Special Services.** If the child has been adjudicated as a child in need of
37 protection or services because the child is in need of special services or care to treat or
38 ameliorate a physical or mental disability or emotional disturbance as defined in section
39 245.4871, subd. 15, the court may order the child's parent, guardian or custodian to provide it.
40 The court may order the child's health plan company to provide mental health services to the
41 child. Minn. Stat. § Section 62Q.535 applies to an order for mental health services directed to
42 the child's health plan company. ~~in the case of a child who needs special treatment and care for~~
43 reasons of physical or mental health when If the health plan, the child's parent or legal custodian
44 fails or is unable to provide the treatment or **care**, the court may order it ~~that the treatment and~~
45 **care** ~~be~~ provided. Absent specific written findings by the court that the child's disability is the
46 result of abuse or neglect by the child's parent or guardian, the court shall not transfer legal

1 custody of the child for the purpose of obtaining special treatment or care solely because the
2 parent is unable to provide the treatment or care. If the court's order for mental health treatment
3 is based on a diagnosis made by a treatment professional, the court may order that the diagnosing
4 professional not provide the treatment to the child if it finds that such an order is in the child's
5 best interests; or

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

10 (6) **Monitoring.** Monitoring under Rule _____ Minnesota Statutes § 260C.201
11 subdivision 1 (e).

12
13 **Rule 41.06. Hearings to Review Disposition**

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

15 (a) **Legal Custody to Agency with Out-of-Home Placement.** When disposition is
16 legal custody to the responsible social services agency, the court shall conduct a hearing at least
17 every ninety (90) days to review whether out-of-home placement is necessary and continues to
18 be appropriate or whether the child should be returned to the home of the parent or legal
19 custodian from whom the child was removed. The review shall include the following:

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

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

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

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

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

31 (6-5) whether the child is receiving appropriate services under the out-of-home
32 placement plan;

33 (7-6) when a child has siblings in out-of-home placement:

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

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

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

39 (8-7) when a child is not placed with a relative, whether the agency's efforts
40 under Minnesota Statutes § 260C.212, subd. 5, are adequate; in the case of an Indian child,
41 whether the placement preferences of 25 U.S.C. § 1915 are met;

42 (9-8) when the agency is utilizing concurrent permanency planning, the
43 agency's efforts to place the child with a relative or a foster parent who has committed to
44 providing the child's legally permanent home in the event reunification efforts are not
45 successful; and

1 (10-9) whether the parent or legal custodian understands the requirements of
2 Minnesota Statutes § 260C.201, subd. 11, related to the required permanency placement
3 determination hearing including the projected date by which the child will be returned home or
4 the hearing will be held.

5 **(b) Legal Custody to Agency with Trial Home Visit.** When the disposition is trial
6 home visit:

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

10 (2) the responsible social services agency shall prepare a report for the court
11 when the trial home visit is terminated whether by the agency or court order which describes the
12 child's circumstances during the trial home visit and recommends appropriate orders, if any, for
13 the court to enter to provide for the child's safety and stability. In the event a trial home visit is
14 terminated by the agency by removing the child to foster care without prior court order or
15 authorization, the court shall conduct a hearing within ten (10) days of receiving notice of the
16 termination of the trial home visit by the agency and shall order disposition under this
17 subdivision or conduct a permanency hearing under Rule 42. The time period for the hearing
18 may be extended by the court for good cause shown and if it is in the best interests of the child as
19 long as the total time the child spends in foster care without a permanency hearing does not
20 exceed twelve (12) months; and

21 (3) the court shall conduct a hearing to determine wither the trial home visit
22 continues to be necessary.

23 **(c-b) Protective Supervision in Home of Parent.** When the disposition is protective
24 supervision of the child in the home of a custodial parent the court shall conduct a review
25 hearing at least every six (6) months. When the disposition is protective supervision of the child
26 in the home of a noncustodial parent, the court shall conduct a review hearing at least every
27 ninety (90) days. At the hearing, the court shall review ~~the court shall conduct a hearing at least~~
28 every six (6) months to review:

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

31 (2) after the agency has submitted a plan to the court as required under Rule
32 37, whether the plan continues to be relevant to the safety and best interests of the child;

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

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

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

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

41
42 **Subd. 3. Procedure.** Any party or the county attorney may seek modification of a
43 disposition order by motion made pursuant to Rule 15. The motion may be heard at the
44 scheduled review hearing or at an earlier date or may be considered by the court without hearing
45 if no party objects.
46

1 **Subd. 4. Modification of Disposition or Case Plan.**

2 (a) **Agreement.** The court, on its own motion or that of any party, may modify the
3 disposition or order the case plan modified when all parties agree the modification is in the best
4 interests of the child and:

5 (1) a change of circumstances requires a change in the disposition or
6 modification of the case plan; or

7 (2) the original disposition or case plan is inappropriate.

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

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

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

17 (3) in the case of an Indian child, unless good cause is found under 25 U.S.C.
18 § 1915, order the agency to make additional efforts to comply with the placement preferences of
19 25 U.S.C. § 1915.

20
21 **Subd. 5. Notice.** Notice of the review hearing shall be given to all parties and
22 participants.

23
24 **Subd. 6. Procedure.** Review hearings shall be conducted pursuant to Rule 41.04.

25
26 **Subd. 7. Findings and Order.** In the event the disposition is modified, the court shall
27 issue a disposition order in accordance with Rule 41.05.

28
29
30
31 **RULE 42. PERMANENT PLACEMENT MATTERS**

32 **Rule 42.01. Timing and Purpose**

33 **Subd. 1. Timing.** The court in its disposition order shall set the date or deadline for the
34 permanent placement determination hearing and the permanency progress review hearing
35 required for a child under age eight at the time the petition alleging the child to be in need of
36 protection or services is filed. Not later than when the court sets the date or deadline for the
37 permanent placement determination hearing and the permanency progress review hearing, the
38 court shall notify the parties and participants of the following requirements of Minnesota Statutes
39 § 260C.201, subd. 11 and subd. 11a:

40 (a) **Requirement of Six (6) Month Hearing for Child Under Eight (8) Years of**
41 **Age.** The Court shall conduct a permanency progress review hearing within six (6) months of
42 the date of the child's placement in foster care or in the home of a noncustodial parent if the
43 child was under eight (8) years of age at the time of the filing of the petition. For a child under
44 eight (8) years of age at the time a petition is filed alleging the child to be in need of protection
45 or services, unless a termination of parental rights petition has been filed, the court shall conduct
46 a to review the progress of the case, the parent's progress on the out-of-home placement plan,

1 and the provision of services not later than six (6) months after the child is placed out of the
2 home of the parent.

3 (b) ~~Requirement of Twelve (12) Month Hearing for Child Eight (8) Years of Age~~
4 ~~or Older.~~ Unless a termination of parental rights petition has been filed, the court shall conduct a
5 permanent placement determination hearing within twelve (12) months of the date of the child's
6 placement in foster care or the home of a noncustodial parent. ~~to determine the permanent status~~
7 ~~of a child not later than twelve (12) months after the child is placed out of the home of the~~
8 ~~parent.~~

9
10 **Subd. 2. Purpose.**

11 (a) ~~Child Eight (8) Years of Age and Older~~ **Any Child in Foster Care or in Home**
12 **of a Noncustodial Parent.** The purpose of the permanent placement determination hearing is to
13 determine the permanent status of a child, including a review of the progress of the case and the
14 parent's progress on the case plan, including the services provided by the responsible social
15 services agency, and whether or not the conditions which led to the child's placement in foster
16 care or in the home of a noncustodial parent have been corrected so that the child can return to
17 the care of the parent or custodian from whom the child was removed. The court shall determine
18 whether the child shall be returned home or, if not, order permanent placement consistent with
19 the child's best interests.

20 (b) **Permanency Progress Review: Child Under Eight (8) Years of Age.** The
21 purpose of the permanency progress review hearing is to review the progress of the case, the
22 parent's progress on the case plan, and the provision of services by the responsible social
23 services agency. ~~The court shall determine whether the child shall be returned home or, if not,~~
24 ~~determine whether~~

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

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

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

31
32 **1999 Advisory Committee Comment**

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

39
40 **Rule 42.02. Calculating Time Period**

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

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

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

1 **Rule 42.03. Cumulation of Out-of-Home Placement Time**

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

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

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

14
15 **Rule 42.04. Procedures for Permanent Progress Review Hearing and Permanent**
16 **Placement Determination Hearing**

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

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

27 (b) ~~Termination of Parental Rights.~~

28 ~~(1) Order to Show Cause.~~ The court may order the responsible social
29 services agency to show cause why it should not file a termination of parental rights petition. If
30 the court determines that the responsible social services agency has not shown cause why it
31 should not file a termination of parental rights petition, the court may order the agency to file
32 such a petition within thirty (30) days of the date of the hearing pursuant to Rule 33.01.

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

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

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

1 **(b) Court Determination.**

2 **(1) Regular Contact Maintained or Parent Not Complying.** If the court
3 determines that parent or legal custodian has maintained regular contact with the child, the parent
4 is complying with the court-ordered case plan, and the child would benefit from continuing this
5 relationship, the court may either:

6 (i) return the child home, if the conditions which led to the out-of-
7 home placement have been sufficiently mitigated and it is safe and in the child's best interests to
8 return home; or

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

10 **(2) Regular Contact Not Maintained or Parent Not Complying.** If the
11 court determines that the parent or legal custodian has not maintained regular contact with the
12 child as outlined in the visitation plan required under the out-of-home placement plan or the
13 parent is not complying with the out-of-home placement plan, the court may order the
14 responsible social services agency to develop a plan for permanent placement of the child away
15 from the parent and to file a petition to support an order for the permanent placement plan.

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

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

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

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

31
32 **Subd. 2. Child Eight (8) Years of Age or Older or a Child Under Age Eight (8) for**
33 **Whom Permanency Has Not Been Ordered; Admit/Deny Hearing Required at Month 12.**

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

37 **(b) Petition or Motion.** Unless the responsible social services agency recommends
38 return of the child to the custodial parent or parents or files a motion pursuant to Rule 42.06, not
39 later than thirty (30) days prior to this—the admit/deny hearing required in subd. 2(a)
40 commencement of the permanent placement determination proceeding—hearing required for all
41 children in foster care or ordered into the care of a noncustodial parent for a cumulative time
42 period of twelve months, the responsible social services agency shall file with the court a petition
43 required under Rule 33.01 to establish the basis of—for the juvenile court to order permanent
44 placement of the child according to Rule 42.05.

1 **Rule 42.05. Permanent Placement Order**

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

7
8 **Subd. 2. Order.**

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

13 (i) returned on a trial home visit pursuant to Rule 41.05, subd. 2(a)(3);

14 (ii) under the protective supervision of the responsible social services agency
15 under Rule 45.01, subd. 2(a)(1); or

16 (iii) with monitoring under Rule 41.05(a)(6).

17 **(b) Transfer of Permanent Legal and Physical Custody.** If the court transfers
18 permanent legal and physical custody to a relative, juvenile court jurisdiction is terminated
19 unless specifically retained by the court in its order. The court may maintain jurisdiction over
20 the responsible social services agency, the parents or legal custodian of the child, the child, and
21 the permanent legal and physical custodian for purposes of ensuring that appropriate services are
22 delivered to the child and permanent legal custodian or for the purpose of ensuring that
23 conditions ordered by the court related to the care and custody of the child are met. The court
24 may order further in-court hearings at such intervals as it determines to be in the best interests of
25 the child. When juvenile court jurisdiction is terminated, the court shall include an order
26 directing the juvenile court administrator to file the order with the family court. Any further
27 proceedings shall be brought in the family court pursuant to Minnesota Statutes § 518.18. Notice
28 of any family court proceedings shall be provided to the responsible social services agency who
29 shall be a party to the family court proceeding pursuant to Minn. Stat. § 260C.201, subd. 11(a)(i).
30 A parent or legal custodian may voluntarily agree to transfer permanent legal and physical
31 custody of the child to a fit and willing relative by either filing a petition to transfer permanent
32 legal and physical custody and establishing that such transfer is in the child's best interests under
33 Minnesota Statutes § 260C.201, subd. 11, or by entering an admission to such a petition filed by
34 another party and stating, under oath, that the parent or legal custodian believes such a transfer is
35 in the child's best interests and establishes good cause for the transfer on the record before the
36 court. The order transferring permanent legal and physical custody shall address parental and
37 sibling visitation, child support, ongoing services to be delivered to the child while the juvenile
38 court has jurisdiction, and shall state whether the transfer was voluntary or involuntary.

39 **2005 Advisory Committee Comment**

40 When the court transfers permanent legal and physical custody to a
41 relative, the best practice is for the court to keep the juvenile court file open for at
42 least ninety (90) days to allow the social worker and guardian ad litem to monitor
43 implementation of the transfer and thereafter to hold a reviewing hearing prior to
44 closing the file.

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

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

5 (2) When a child has been in placement 15 of the last 22 months, if the court
6 finds following a trial on a termination of parental rights petition that the petition is not proven or
7 that termination of parental rights is not in the child's best interests, the court must order the
8 child returned to the care of the parent unless the court approves the responsible social services
9 agency's determination of compelling reasons why the child should remain out of the care of the
10 parent. If the court orders the child returned to the care of the parent, the court may order a trial
11 home visit, protective supervision, or monitoring under Rule 45.01.

12 (d) **Guardianship and Legal Custody to the Commissioner of Human Services.**

13 The court may award guardianship and legal custody to the Commissioner of Human Services
14 under the following procedures and conditions:

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

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

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

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

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

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

35 (3) If the long-term foster care placement disrupts, the responsible social
36 services agency shall return to court within ten (10) days for further review of the permanent
37 status of the child.

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

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

44 (1) The court may only order foster care for a specified period of time if it
45 finds approves the responsible social services agency's compelling reasons that neither an award
46 of permanent legal and physical custody to a relative, nor termination of parental rights, is in the

1 child's best interests and all of the requirements of Minnesota Statutes § 260C.201, subd. 11, are
2 met.

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

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

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

13 (a) ensure that long-term foster care continues to be the most
14 appropriate legal arrangement for meeting the child's need for permanency and stability or, if
15 not, to identify and attempt to finalize another permanent placement option available under
16 Minnesota Statutes § 260C that would better serve the child's needs and best interests;

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

19 (c) support continued placement of the child in the identified home, if
20 one has been identified;

21 (d) ensure appropriate services are provided to address the physical
22 health, mental health, and education needs of the child during the period of long-term foster care
23 ~~or foster care for a specified period of time~~ and also ensure appropriate services or assistance to
24 maintain relationships with appropriate family members and the child's community and;

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

27 (52) ~~where placement is for a specified period of time, plan for the safe return~~
28 ~~of the child to the care of the parent in the event it is necessary for a child that has been ordered~~
29 ~~into foster care for a specified period of time to be in foster care longer than one year, not later~~
30 ~~than twelve (12) months after the time the child was ordered into foster care for a specified~~
31 ~~period of time the matter must be returned to court for a review of the appropriateness of~~
32 ~~continuing the child in foster care and of the responsible social services agency's reasonable~~
33 ~~efforts to finalize a permanent plan for the child; if it is in the child's best interests to continue~~
34 ~~the order for foster care for a specified period of time past a total of twelve (12) months, the~~
35 ~~court shall set objectives for the child's continuation in foster care, specify any further amount of~~
36 ~~time the child may be in foster care, and review the plan for the safe return of the child to the~~
37 ~~parent.~~

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

39 (1) **Modification by Parent.** A parent may only seek modification of an
40 order for long-term foster care upon motion and a showing by the parent of a substantial change
41 in the parent's circumstances such that the parent could provide appropriate care for the child
42 and that removal of the child from the child's permanent placement and the return to the parent's
43 care would be in the best interest of the child.

44 (2) The responsible social services agency may ask the court to vacate an
45 order for long-term foster care upon a prima facie showing that there is a factual basis for the

1 court to order another permanency option under Rule 42 and that such an option is in the child's
2 best interests.

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

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

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

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

12
13 (3) Upon a hearing or trial where the court determines that there is a factual
14 basis for vacating the order for long-term foster care and that another permanent order regarding
15 the placement of the child is in the child's best interests, the court may vacate the order for long-
16 term foster care and enter a different order for permanent placement that is in the child's best
17 interests.

18 (4) The court shall not require further reasonable efforts to reunify the child
19 with the parent or guardian as a basis for vacating the order for long-term foster care and
20 ordering a different permanent placement in the child's best interests.

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

23
24 **Rule 42.06. Motion by Responsible Social Services Agency to Modify Adjudication and**
25 **Transfer of Custody Order for a Child who Continues in Placement Due Solely to the**
26 **Child's Emotional Disturbance or Developmental Disability.**

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

29 **(a) Motion by Responsible Social Services Agency; Need for Continued Foster**
30 **Care to Access Treatment.** If a child diagnosed with developmental disability or emotional
31 disturbance has been ordered into foster care under Minnesota Statutes § 260C.178 or §
32 260C.201 and the conditions which led to the court's order have been corrected so that the child
33 could safely return to the care of the parent or guardian except for the child's need for continued
34 placement to access necessary treatment or services, the responsible social services agency may
35 file with the court in the existing child in need of protection or services matter a motion pursuant
36 to Rule 15 to vacate the finding that the child is in need of protection or services, to vacate the
37 award of custody to the responsible agency, and to proceed under Rule 44.02(d).

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

39 (i) the agency's reasonable efforts to finalize a permanent plan for the
40 child including returning the child home;

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

43 (iii) why the voluntary placement is in the child's best interests.

44 (2) **Timing of Motion.** The motion must be filed no later than the time a
45 permanency placement determination hearing is required under Rule 42.

46

1 **Subd. 2. Contemporaneous Execution of Voluntary Placement Agreement.** At the
2 time scheduled for the court to hear the agency’s motion under subdivision 1, the parent or legal
3 custodian and agency may execute a voluntary placement agreement when the court approves the
4 child’s continued foster care placement as a voluntary arrangement.
5

6 **Subd. 3. Required Findings to Proceed under Rule 44.02(d).** When the parent or
7 legal custodian executes a voluntary placement agreement, the court may proceed under Rule
8 44.02(d), if it grants the responsible social services agency’s motion and finds that:

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

11 (b) the child needs to continue in foster care due solely to the child’s emotional
12 disturbance or developmental delay.
13

14 **Subd. 4. Vacate Adjudication and Order for Legal Custody to Responsible Social**
15 **Services Agency.** When the court makes the findings required under subdivision 3, the court
16 may vacate the finding that the child is in need of protection or services and the order
17 transferring legal custody to the responsible social services agency and proceed under Rule
18 44.02(d). A finding that the court approves the continued voluntary placement means the
19 responsible social services agency has continued legal responsibility for the child’s placement
20 due to the voluntary placement agreement and that the parent may terminate the voluntary
21 agreement as provided in Minnesota Statutes § 260C.212, subd. 4(c)(2), or, in the case of an
22 Indian child, as provided in Minnesota Statutes § 260.765, subd. 4.
23
24

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

26 **Rule 43.03. Further Proceedings**

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

28 (a) **Limits on Circumstances When Long-term Foster Care Ordered.** ~~The court~~
29 ~~may order long term foster care for a state ward based upon the child’s special needs and for~~
30 ~~compelling reasons.—~~The responsible social services agency may make a determination of
31 compelling reasons for a child to be in long-term foster care when the agency has made
32 exhaustive efforts to recruit, identify, and place the child in an adoptive home, and the child
33 continues in foster care for at least twenty-four (24) months after the court has issued the order
34 terminating parental rights. Upon approving the agency’s determination of compelling reasons,
35 the court may order the child placed in long-term foster care.

36 (b) **Required Annual Review.** At least every twelve (12) months thereafter as long
37 as the child continues in out-of-home placement, the court shall conduct a permanency review
38 hearing to determine the future status of the child using the review requirements of Minnesota
39 Statutes § 260C.201, subd. 11(g).

40 (c) **Jurisdiction through Child’s Minority.** The court shall retain jurisdiction
41 through the child’s minority in a case where long-term foster care is the permanent disposition,
42 unless the court extends jurisdiction to age 19.
43
44

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

2 **Rule 44.01. Generally**

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

5
6 **Subd. 2. Jurisdiction.** The court assumes jurisdiction to review a voluntary foster care
7 placement of a child pursuant to Minnesota Statutes § 260C.212, subd. 8 (child in voluntary
8 placement) upon the filing of a petition pursuant to Minnesota Statutes § 260C.141, subd. 2(a).
9 The court assumes jurisdiction to review voluntary foster care placement of a child pursuant to
10 Minnesota Statutes § 260C.212, subd. 9 (child in voluntary placement due solely to
11 developmental disability or emotional disturbance) upon the filing of a report or petition
12 pursuant to the requirements of Minnesota Statutes § 260C.141, subd. 2(b).

13
14 **Subd. 3. Court File Required.** Upon the filing of a report or petition under this Rule,
15 the court administrator shall open a juvenile protection file which is part of the juvenile
16 protection case record related to the matter. If a Child In Need of Protection or Services file
17 regarding this child already exists, the voluntary placement report or petition shall be filed in that
18 file.

19
20 **Rule 44.02. Petition and Hearing**

21 **Subd. 1. Child in Placement Due to Developmental Disability or Emotional**
22 **Disturbance.**

23 **(a) Court Report, Hearing, Petition or Motion, and Judicial Determinations.**

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

- 30 (i) a statement of facts that necessitate the child’s foster care
31 placement;
32 (ii) the child’s name, date of birth, race, gender, and current address;
33 (iii) the names, race, date of birth, residence, and post office addresses
34 of the child’s parents or legal custodian;
35 (iv) a statement regarding the child’s eligibility for membership or
36 enrollment in an Indian tribe and the agency’s compliance with applicable provisions of
37 Minnesota Statutes § § 260.751 to 260.835;
38 (v) the names and addresses of the foster parents or chief administrator
39 of the facility in which the child is placed, if the child is not in a family foster home or group
40 home;
41 (vi) a copy of the out-of-home placement plan required under
42 Minnesota Statutes § 260C.212, subd. 1;
43 (vii) a written summary of the proceedings of any administrative review
44 required under Minnesota Statutes § 260C.212, subd. 7; and

1 (viii) any other information the responsible social services agency,
2 parent or legal custodian, the child or the foster parent or other residential facility wants the court
3 to consider;

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

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

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

12 (iii) that they have received the date the court report will be filed with
13 the court and the identifying information necessary for the court administrator to accept
14 information from the child, parent or legal custodian, the foster parent, or representative of the
15 residential facility in the event they wish to submit any information to the court; and

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

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

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

25 (i) After receiving the required report or after conducting a hearing
26 under paragraph (a)(3) of this rule, the court has jurisdiction to make the following
27 determinations and must do so within ten days of receiving the forwarded report:

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

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

34 (ii) If the court finds the placement of the child in foster care is in the
35 child's best interests and that the agency and parent are appropriately planning for the child, the
36 court shall issue an order containing explicit, individualized findings to support its determination.
37 The court shall send a copy of the order to the county attorney, the responsible social services
38 agency, the parent or legal custodian, the child, and the foster parents. The court shall also send
39 the parent or legal custodian, the child, and the foster parent notice of the required review under
40 clause (2).

41 (iii) If the court finds continuing the placement of the child in foster
42 care not to be in the child's best interests or that the agency or the parent or legal custodian is
43 not appropriately planning for the child, the court shall notify the county attorney, the
44 responsible social services agency, the parent or legal custodian, the foster parent, the child, and
45 the county attorney of the court's determinations and the basis for the court's determinations.

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

2 ~~(1) — Petition alleging child to be in need of protection or services, for~~
3 ~~termination of parental rights, or other permanent placement of the child.~~ In lieu of a
4 report under subdivision (a)(1), a petition alleging the child to be in need of protection or
5 services, for termination of parental rights, or other permanent placement of the child may be
6 filed in time for the matter to be heard by the court within 180 days of the date of the voluntary
7 placement agreement. The petition shall state the date of the voluntary placement agreement, the
8 nature of the child's disability, the plan for the ongoing care of the child and the parent's
9 participation in that plan, and the statutory basis for the petition. The matter shall proceed
10 according to the requirements of Rule 30 or 34 whichever is applicable. If the court proceeds
11 under Rule 34, based on the content of the petition and the Out of Home Placement Plan filed
12 with the court, the court must determine whether placement is in the child's best interests. If the
13 court proceeds under Rule 30, the court must make the findings required under that rule in order
14 for the child to continue in out-of-home placement.

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

19 ~~(3) — In the case of a voluntary placement agreement pursuant to Minnesota~~
20 ~~Statutes § 260C.212, subd. 9 where the child is placement due solely to the child's disability as~~
21 ~~defined in Minnesota Statutes § 260C.007, subd. 12 and 16, the provisions of Minnesota Statutes~~
22 ~~§ 260C.212, subd. 11, do not apply unless custody of the child is transferred to the responsible~~
23 ~~social services agency pursuant to Minnesota Statutes § 260C.201, subd. 1.~~

24 **(be) Permanency Review by petition.**

25 **(1) Required Permanency Hearing when Child in Placement 13 Months.**
26 In the case of a voluntary foster care placement agreement pursuant to Minnesota Statutes §
27 260C.212, subd. 9 where the child is in foster care due solely to the child's disability as defined
28 in Minnesota Statutes § 260C.007, subd. 12 or 16, the provisions of Minnesota Statutes §
29 260C.201, subd. 11 and Rule 42 do not apply. If When a child with a is in foster care due solely
30 to the child's developmental disability or an emotional disturbance and the child continues in
31 out-of-home placement foster care for 13 consecutive months from the date of a the voluntary
32 placement, a petition alleging the child to be in need of protection or services, for termination of
33 parental rights, or for permanent placement of the child away from the parent under Minnesota
34 Statutes § 260C.201 pursuant to Minnesota Statutes § 260C.007 (4) shall be filed. The court
35 shall conduct a permanency hearing on the petition no later than fourteen (14) months after the
36 date of the voluntary placement in foster care.

37 **(2) Conduct of Permanency Hearing.** At the permanency hearing, the court,
38 upon review of the petition and inquiry of the parties, shall determine:

39 (i) the need for an order permanently placing the child away from the
40 parent; or

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

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

1 (c~~d~~) **Petition alleging Child is in Need of Protection or Service; Hearing;**
2 **Adjudication ~~not Required~~ Prohibited.**

3 **(1) Petition or Motion.** A petition alleging the child to be in need of
4 protection or services may be filed stating the date of the voluntary placement agreement, the
5 nature of the child’s developmental disability or emotional disturbance, the plan for the ongoing
6 care of the child, the parents’ participation in the plan, and the statutory basis for the petition. A
7 motion by the responsible social services agency under Rule 42.06 may also be filed in the
8 juvenile protection file when the matter was commenced by a petition alleging the child to be in
9 need of protection or services due to conditions in the home of the parent or legal custodian
10 which led to the foster care placement of the child and those conditions have been corrected such
11 that the child could safely return home except for the continued need for foster care placement
12 due solely to the child’s emotional disturbance or developmental disability.

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

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

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

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

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

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

29 **(4) ~~3) No Adjudication or and~~ Transfer of Custody Required ~~Prohibited.~~**
30 No adjudication that the child is in need of protection or services ~~need~~ shall be made or be
31 entered and no transfer of legal custody under Minnesota Statutes § 260C.201, subd. 1, is
32 necessary shall be ordered as a result of permanency hearings conducted under this rule. If a
33 motion by the responsible social services agency under Rule 42.06 is granted for compelling
34 reasons and the court finds that continued foster care is necessary due solely to the child’s
35 emotional disturbance or developmental disability, the court shall vacate the adjudication and the
36 order transferring legal custody to the responsible social services agency.

37 **(e) Continued Review Required.** The matter must be returned to the court for
38 further review every twelve (12) months from the date of the Permanency Hearing as long as the
39 child remains in ~~placement~~ foster care. The court shall give notice to the parent or legal
40 custodian of this continued review requirement by registered mail or on the record at the time of
41 the permanency hearing. At the time of the continued reviews, the court shall determine whether
42 the continued voluntary arrangement is in the best interests of the child and the reasonable efforts
43 of the agency to:

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

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

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

4 (4) Upon the child becoming age 16, plan for the child's transition to an
5 appropriate living arrangement and for appropriate services once the child reaches age 18.

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

11 ~~(1) If any party, including the child, disagrees with the voluntary arrangement,~~
12 ~~the court shall proceed under Rule 30 or 34, whichever is applicable, and Minnesota Statutes §~~
13 ~~260C.163.~~

14 ~~**(f) Permanent Placement Away from the Parent by Court Order Prohibited**~~
15 ~~**When Court Approves Voluntary Arrangement.** Nothing in this rule shall be construed to~~
16 ~~mean the When the court finds compelling reasons and approves the continued voluntary~~
17 ~~arrangement for placement of a child in foster care due solely to the child's developmental~~
18 ~~disability or emotional disturbance, the court must not order permanent placement for the child~~
19 ~~under Minnesota Statutes § 260C.201, subd. 11, and Rule 42, as long as the court finds~~
20 ~~compelling reasons at the first review required under this rule.~~

21
22 **Subd. 2. Other Voluntary Placements.**

23 (a) **Petition.** In the case of a child in voluntary foster care placement pursuant to
24 Minnesota Statutes § 260C.212, subd. 8, ~~the~~ a petition shall be filed within ninety (90) days of
25 the date of the voluntary placement agreement and shall state the reasons why the child is in
26 placement, the progress on the case plan required pursuant to Minnesota Statutes § 260C.212,
27 subd. 1, and the statutory basis for the petition pursuant to Minnesota Statutes § 260C.007, subd.
28 6; § 260C.201 subd. 11; or § 260C.301.

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

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

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

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

34 (3) reasonable efforts to reunify the child and the parent or legal custodian are
35 being made; and

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

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

41 (e) **Further Proceedings.**

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

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

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

13
14 **Subd. 3. Child Determined to be in Need of Protection or Services.**

15 (a) **Further Proceedings After Adjudication.** Pursuant to subdivision 1(c)(2) or
16 2(e), after the parties admit the petition or the petition is proven at trial, the court may determine
17 that the child is in need of protection or services or withhold adjudication pursuant to Rule 40.

18 ~~(b) If the court determines that the child is in need of protection or services or~~
19 ~~withholds adjudication, and the court orders services provided without transferring legal custody~~
20 ~~to the responsible social services agency pursuant to Minnesota Statutes § 260C.201, subd.~~
21 ~~1(a)(3), the provisions of Minnesota Statutes § 260C.201, subd. 11, shall not apply.~~

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

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

26
27
28 **RULE 45. POST-TRIAL MOTIONS**

29 **Rule 45.01. Procedure and Timing**

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

32
33 **Subd. 1-2. Timing.** All ~~non-dispositional~~ post-trial motions shall be filed within fifteen
34 (15) days of the service of notice by the court administrator filing ~~of the~~ filing of the court's
35 order finding that the statutory grounds set forth in the petition are or are not proved.

36
37 **Subd. 2-3. Basis of Motion.** A post-trial motion shall be made and decided on the files,
38 exhibits, and minutes of the court. Pertinent facts that would not be a part of the minutes may be
39 shown by affidavit except as otherwise provided by these rules. A full or partial transcript of the
40 court reporter's notes of the testimony taken at the trial or other verbatim recording thereof may
41 be used in deciding the motion.

42
43 **Subd. 3-4. Time for Serving Affidavits.** When a post-trial motion is based upon
44 affidavits, such affidavits shall be served with the notice of motion. The parties and the county
45 attorney shall have ten (10) days after such service in which to serve opposing affidavits

1 pursuant to Rule 15. The period may be extended by the court upon an order extending the time
2 for hearing under this rule. The court may permit reply affidavits.

3
4 **Rule 45.03. Amendment of Findings**

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

10
11 **Rule 45.04-45.03. Grounds for New Trial**

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

- 13 (a) irregularity in the proceedings of the court, referee, or prevailing party, or any
14 order or abuse of discretion whereby the moving party was deprived of a fair trial;
15 (b) misconduct of counsel;
16 (c) fraud, misrepresentation, or other misconduct of the county attorney, any party,
17 their counsel, or their guardian ad litem;
18 (d) accident or surprise that could not have been prevented by ordinary prudence;
19 (e) material evidence, newly discovered, which with reasonable diligence could not
20 have been found and produced at the trial;
21 (f) errors of law occurring at the trial and objected to at the time, or if no objection
22 need have been made, then plainly assigned in the motion;
23 (g) a finding that the statutory grounds set forth in the petition are proved is not
24 justified by the evidence or is contrary to law; or
25 (h) if required in the interests of justice.

26
27 **Rule 45.05-45.04. Decision**

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

31
32 **Rule 45.06-45.05. Relief**

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

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

38
39
40 **RULE 47. APPEAL**

41 **Rule 47.02. Procedure**

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

1 **Subd. 2. Timing.** Any appeal shall be taken within thirty (30) days of the service of
2 notice by the court administrator of the filing of the ~~appealable~~ court’s order. In the event of the
3 filing and service of a timely and proper post-trial motion under Rule 45, or for relief under Rule
4 45 if the motion is filed within the time specified in Rule 45.01, subd. 2, the provisions of
5 Minnesota Rules of Civil Appellate Procedure Rule 104.01, subdivisions 2 and 3, apply, except
6 that the time for appeal runs for all parties from the time of filing of the ~~appealable~~ order
7 disposing of the last post-trial motion.

8
9 **2004 Advisory Committee Comment – 2005 Amendment**

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

21
22 **Subd. 3. Service and Filing of Notice of Appeal.** Within the time allowed for an
23 appeal ~~from an appealable order~~, as provided in subdivision 2, the person appealing shall:

- 24 (a) serve a notice of appeal upon the county attorney and all parties or their counsel if
25 represented, including notice of the correct case caption pursuant to Rule 8.08; and
26 (b) file with the clerk of appellate courts a notice of appeal, together with proof of
27 service upon all parties, including notice of the correct case caption pursuant to Rule 8.08.

28
29
30 **RULE 48. PROCEEDINGS GOVERNED BY THE INDIAN CHILD WELFARE ACT**

31 **Rule 48.01. Required Agency Inquiry for All Indian Children**

32 Whenever an Indian child is removed from the physical custody of the child’s parents or
33 Indian custodians pursuant to the emergency removal provisions of Minnesota Statutes § 260C
34 and Rule 28, the responsible social services agency shall immediately make an inquiry about the
35 residence and domicile of the child.

36
37 **Rule 48.02. Exclusive Jurisdiction**

38 **Subd. 1. Determination of Residence or Domicile and Ward of Tribal Court.** The
39 court shall determine the residence or domicile of an Indian child who is the subject of the
40 proceeding and whether the Indian child is a ward of the tribal court.

41
42 **Subd. 2. Indian Child Residing or Domiciled on Reservation Where Tribe Has**
43 **Exclusive Jurisdiction.**

44 **(a) Statement of Efforts to Determine Jurisdiction of Tribe.** If the child is
45 believed to reside or be domiciled on a reservation where the tribe has exclusive jurisdiction over

1 child custody matters, the petition filed under Rule 33 requesting jurisdiction over the child or an
2 affidavit supplementing the petition shall address the following:

3 (1) the name, age, and last known address of the Indian child;

4 (2) the name and address of the child's parents and Indian custodian, if any,
5 and if the whereabouts of such persons are unknown, an explanation of the efforts made to locate
6 them;

7 (3) the information known to the agency regarding the residence or domicile
8 of the Indian child and, if either the residence or domicile is believed to be on an Indian
9 reservation, the name of the reservation;

10 (4) the tribal affiliation of the child and of the parents and Indian custodian, if
11 any;

12 (5) the circumstances that caused the agency responsible for the emergency
13 removal of the child to take such action;

14 (6) if the child is believed to reside or be domiciled on a reservation where the
15 tribe has jurisdiction over child custody matters, a statement of efforts that have been made and
16 are being made to return the child to the tribe's jurisdiction;

17 (7) a statement of the specific actions that have been taken to assist the
18 parents or Indian custodian so the child may safely be returned to the custody of the parents or
19 Indian custodian.

20 (b) **Return of Child to Tribe Required; Standard for Terminating Placement;**
21 **Dismissal.** If a child resides or is domiciled on a reservation where the tribe has exclusive
22 jurisdiction over child custody matters, the child's placement must terminate when the placement
23 or removal is no longer necessary to prevent imminent physical damage or harm to the child or
24 the child is returned to the jurisdiction of the tribe, whichever is earlier.

25
26 **Subd. 3. Indian Child Ward of Tribal Court.** Where an Indian child is a ward of a
27 tribal court, the Indian tribe retains exclusive jurisdiction, notwithstanding the residence or
28 domicile of the child. An Indian child who is a ward of a tribal court shall be returned to the
29 jurisdiction of the tribe at the earliest practicable time.

30
31 **Rule 48.03. Transfer of Juvenile Protection Proceedings to Tribal Court.**

32 **Subd. 1. Transfer Required Absent Objection or Good Cause Finding.** Upon
33 motion or request of a parent, an Indian custodian, or the Indian child's tribe, the court shall
34 transfer a juvenile protection matter to the jurisdiction of tribal court absent objection by either
35 parent or a finding of good cause to the contrary. The court may sua sponte move for transfer of
36 a juvenile protection proceeding to the jurisdiction of the tribal court and such transfer shall be
37 ordered absent objection by either parent or a finding of good cause to the contrary.

38 **Subd. 2. Motion or Request.** A parent, Indian custodian, or the Indian child's tribe
39 may:

40 (a) file a motion under Rule 15 requesting transfer of the proceeding to the
41 tribal court of the Indian child's tribe; or

42 (b) ask to transfer the juvenile protection proceeding to the tribal court of the
43 Indian child's tribe on the record or in other writing to the court.

44
45 **Subd. 3. Notice of Request to Transfer Jurisdiction.** The court shall ensure that
46 parties, parents regardless of party status, and child age twelve (12) or older regardless of party

1 status have been served with the motion or given actual notice of the request to transfer the
2 matter to tribal court or of the court's sua sponte motion to transfer the matter to tribal court.

3
4 **Subd. 4. Reasonable Time to Object or for Hearing on Good Cause under 25 U.S.C.**
5 **§ 1911(b).** Parties, parents regardless of party status, and the child age twelve (12) or older
6 regardless of party status shall be given a reasonable opportunity to respond to the motion or
7 request for transfer of jurisdiction to tribal court. Parties and a child age twelve (12) or older
8 regardless of party status shall be given a reasonable time to request a hearing as to whether there
9 is good cause not to transfer the matter to tribal court.

10 (a) **Objection by Parent.** If a parent, regardless of party status, objects to the
11 proceeding being transferred to tribal court, the judge shall not order the matter transferred to
12 tribal court.

13 (b) **Request for Good Cause Determination.** If another party or a child age twelve
14 (12) or older regardless of party status objects to the transfer to tribal court, the court shall
15 conduct a hearing to determine whether there is good cause not to transfer the proceeding to
16 tribal court.

17 (c) **Outcome of Hearing on Good Cause.**

18 (1) If the court finds there is not good cause under 25 U.S.C. § 1911(b) to
19 transfer the matter to tribal court, the court shall make appropriate findings and order the transfer
20 to tribal court.

21 (2) If the court finds that good cause exists under 25 U.S.C. § 1911(b) to
22 transfer the matter to tribal court, the court shall make appropriate findings and deny the transfer to
23 tribal court.

24
25 **Subd. 5. Declination by Tribal Court.** An order transferring a proceeding to tribal
26 court shall be subject to declination by the tribal court.

27
28 **Subd. 6. Contact between District Court and Tribal Court.** Prior to the court
29 ordering transfer of jurisdiction to tribal court, the district court shall contact the tribal court of the
30 Indian child's tribe to inquire whether the tribal court will accept the transfer. Contact between the
31 district court and the tribal court may be in writing, by telephone, or by electronic means.

32 (a) **Tribal Court Declination.** If the tribal court indicates that it will not accept the
33 proposed transfer of the matter to tribal court, the district court shall record that indication in the
34 file together with any reason given by the tribal court, and proceed with the matter as otherwise
35 required by these rules, Minnesota Statutes Chapters 260 and 260C, and 25 U.S.C. § 1901 et al.

36 (b) **Tribal Court Acceptance.** If the tribal court indicates the tribal court will accept
37 the transfer of jurisdiction to tribal court, the district court shall record that indication in the file
38 and issue an order transferring the proceeding to tribal court and the court administrator shall
39 proceed according to the requirements in subd. 7.

40
41 **Subd. 7. Contact between District Court and Tribal Court Not Possible.**

42 (a) If, after reasonable attempts, the district court is not successful in making contact
43 with tribal court, the district court may order transfer to tribal court without prior indication of
44 the tribal court's willingness to accept the transfer and the court administrator shall proceed
45 according to subd. 9.

1 (b) The district court may presume acceptance by tribal court within a reasonable
2 time after the order transferring the proceeding to tribal court has been provided to the tribal
3 court and reasonable attempts have been made by the district court to contact tribal court and no
4 declination by tribal court is received.

5
6 **Subd. 8. Retention of Jurisdiction until Accepted by Tribal Court.**

7 (a) The district court retains jurisdiction over the juvenile protection matter until the
8 tribal court accepts the transfer of jurisdiction or until acceptance is presumed under subdivision
9 7(b).

10 (b) The district court may conduct hearings as required by Minnesota Statutes § 260C
11 and these rules until the tribal court assumes jurisdiction over the proceeding, except that the
12 district court may not terminate parental rights or issue any order establishing permanent
13 placement away from the parent or Indian custodian unless the tribal court declines jurisdiction.

14 (c) Upon acceptance or presumed acceptance by tribal court of the proceedings, the
15 district court shall dismiss the proceedings in district court.

16
17 **Subd. 9 Court Administrator's Duties.** Upon receiving an order transferring a juvenile
18 protection matter to tribal court, the court administrator shall file the order and serve it on all
19 parties, the child's parents regardless of party status, and the child as directed by the court
20 according to the requirements of Rule 10. The court administrator shall make a complete copy
21 of the juvenile protection proceeding case file including all petitions, motions, pleadings, reports,
22 exhibits, and any paper received from any party. A copy of the complete file, together with the
23 court order transferring jurisdiction, shall be sent by U.S. Mail to the Indian child's tribal court.