

STATE OF MINNESOTA  
IN SUPREME COURT

ADM10-8050

**ORDER PROMULGATING AMENDMENTS  
TO THE RULES OF PUBLIC ACCESS TO RECORDS  
OF THE JUDICIAL BRANCH**

The Minnesota Supreme Court Advisory Committee on the Rules of Public Access to Records of the Judicial Branch has recommended amendments to the rules to accommodate the transition by the judicial branch to a more universal electronic environment. The committee's recommended amendments seek to clarify the appropriate designation of documents filed with the judicial branch in order to determine the type of public access to those documents, especially for purposes of electronic case records.

In an order filed January 2, 2015, the court opened a public comment period on the proposed amendments to the Rules of Public Access to Records of the Judicial Branch. The court also scheduled a public hearing on March 17, 2015 to consider issues related to public access to judicial-branch case records that might be presented by the recommended amendments, as well as public access issues that might arise from amendments recommended by the advisory committees for the Rules of Civil Procedure; Criminal Procedure; Juvenile Delinquency Procedure; General Rules of Practice; Juvenile Protection, Adoption, and Guardian Ad Litem Procedures; and Civil Commitment and Treatment Act Procedures. Twenty written comments were received on public access issues, primarily related to public access to case records in juvenile protection proceedings. Chief Judge Peter Cahill, a member of the Advisory Committee

for the Rules of Public Access to Records of the Judicial Branch, spoke at the March 17 hearing, as did several interested individuals and representatives of interested organizations.

The court has carefully considered the committee's recommendations and the comments. Based on all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The attached amendments to the Rules of Public Access to Records of the Judicial Branch be, and the same are, prescribed and promulgated to be effective as of July 1, 2015, except that the following rules as amended shall apply only to documents, including judgments, orders, decisions, and notices submitted to, or filed with or by, the court on or after July 1, 2015: Rule 4, subdivision 1(a), (b), (f), (h), (j)-(n), (o)(2)(D), (H), and (L); Rule 4, subdivision 4; Rule 5, subdivision 5; and Rule 8, subdivision 5.

2. The inclusion of committee comments is for convenience and does not reflect court approval of those comments.

3. The Advisory Committee for the Rules of Public Access to Records of the Judicial Branch shall continue to serve and monitor the rules and these amendments during the expansion of electronic filing and electronic service in the district courts, and by April 1, 2016, report to the court concerning any further amendments to the rules are deemed advisable by the committee.

Dated: April 22, 2015

BY THE COURT:

Lorie S. Gildea  
Chief Justice

STATE OF MINNESOTA  
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MEMORANDUM

PER CURIAM.

In July 2014 we directed the Advisory Committee on the Rules of Public Access to Records of the Judicial Branch to consider whether amendments to the rules were needed to accommodate the transition by the judicial branch to a more universal electronic environment. The committee met several times in 2014, and on December 29, 2014, filed a report and recommendations for amendments to the public access rules. The recommended amendments seek to balance several competing concerns presented by electronic court records, including: (a) the different forms of access to court records, i.e., remote (via the Internet) versus access to paper records at courthouses or viewable documents on courthouse terminals; (b) the privacy interests of some parties and case participants, especially children and minor victims, with the commitment of the judicial branch to transparency and accountability in the work of the state's courts; and, (c) the cost, complexity, and burden on court staff to provide public access to court documents filed in a myriad of case types, consistent with branch policies but without forsaking valid privacy interests. In its deliberations, the committee was mindful that the branch's move to and expansion of electronic filing and service should not, in general, restrict existing public access.

The committee's recommendations sought to accommodate these competing concerns in two steps. First, the committee identified the case types and case documents that are, generally, either public or not public. The amendments recommended for this first step are found in Rule 4 of the committee's report. Second, the committee identified the type of access permitted for public cases and documents: remote or courthouse (paper or terminal access). The amendments recommended for this second step are found in Rule 8 of the committee's report.

In summary, the committee's approach distinguished between public and non-public case types or records; and for public documents, identified whether access is permitted at the courthouse only or also remotely.

A minority report filed with the committee's report and recommendations expressed concern with the committee's inability to fully explore the need to guard against the growing risk of data mining, particularly in an electronic records environment. Given the likelihood that "[p]owerful search engines" could access information stored in electronic systems, the minority report urged the court to adopt a document-by-document approach to remote access to case records. This solution, the minority report concluded, would provide a foundation for determining the need for further rule amendments to either expand or contract that access, at least for the initial phases of statewide e-filing and e-service.

The court provided a 60-day public comment period. Comments were received from a range of interested entities and persons, including:

- The Minnesota State Bar Association;

- Representatives of media organizations;
- Representatives of organizations that advocate on issues related to crime, crime victims, and the criminal justice system, as well as lawyers who represent criminal defendants; and,
- Representatives of organizations that advocate on behalf of children in need of protection, families, and the need for transparency and accountability in Minnesota’s juvenile protection system, as well as private citizens interested in the safety and protection of children.

Access to judicial branch records “is governed by rules adopted by the Supreme Court.” Minn. Stat. § 13.90, subd. 2 (2014). The Rules of Public Access to Records of the Judicial Branch presume that court records are “open to any member of the public for inspection or copying,” Minn. R. Pub. Access 2, and generally permit public access to case records, Minn. R. Pub. Access 4, subd. 1 (“All case records are accessible to the public”). Public access to court records has thus long been the standard, and historically, the public has gained access to those records by inspecting paper copies at a courthouse, sometimes after a preliminary review by court staff confirms that the document and the information in the document are properly considered public. The judicial branch’s move to an electronic-information environment—a move that began in 2012 and is scheduled to expand statewide within the next 12 to 18 months—requires changes in the procedures for identifying and accessing court records to ensure valid privacy interests are preserved in that environment without diminishing the commitment to public access.

Three major elements recommended by the Advisory Committee on the Rules of Public Access facilitate these objectives. First, the committee endeavored to provide consistency across case types, in the public versus non-public classifications, based on similar designations in other case-specific court rules: the Rules of Criminal Procedure, Civil Procedure, Juvenile Delinquency Procedure, Civil Commitment Procedure, and Juvenile Protection, Adoption, and Guardian Ad Litem Procedure. *See* Minn. R. Pub. Access 4, subd. 1(o) (listing case records made inaccessible by other court rules).

Second, the committee's recommended amendments to Rule 4 identify case records and information (sometimes referred to as "data elements") in those records that are not public. These amendments foster legitimate privacy interests, particularly for children, maintain consistency with other laws and rules, and provide clear guidelines on the distinction between public and not public case records.

Third, once a record has been designated as public, the committee's recommended amendments to Rule 8 identify the permissible remote access. The recommendation to implement in Rule 8 tiered *remote* access, primarily by case type, protects valid and important privacy interests; preserves a substantial degree of current public access by extending that access remotely; and, accommodates the branch's existing technical and resource capabilities.

With these points in mind, we turn to the comments submitted in response to the committee's recommended amendments. We have addressed the comments specific to proposed rule amendments recommended by other committees in the memoranda accompanying orders that promulgate amendments to separate rules. *See* ADM04-8001,

*Order Promulgating Amendments to the Rules of Civil Procedure* (Minn. filed Apr. 22, 2015); ADM09-8009, *Order Promulgating Amendments to the General Rules of Practice* (Minn. filed Apr. 22, 2015); ADM10-8049, *Order Promulgating Amendments to the Minnesota Rules of Criminal Procedure* (Minn. filed Apr. 22, 2015); ADM10-8003, *Order Promulgating Amendments to the Minnesota Rules of Juvenile Delinquency Procedure* (Minn. filed Apr. 22, 2015); ADM10-8046, *Order Promulgating Amendments to the Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act* (Minn. filed Apr. 22, 2015); ADM10-8041, *Order Promulgating Amendments to the Rules of Juvenile Protection, Adoption, and Guardian Ad Litem Procedure* (Minn. filed Apr. 22, 2015). Here, we address only the comments that were specific to the Rules of Public Access.

We consider first the comments of the MSBA, which raised two general concerns regarding the proposed amendments to the Rules of Public Access. The committee recommended that decisions on possible fees for remote access to judicial case records be decided by the supreme court and the Judicial Council. In response to this recommendation, the MSBA proposed that any decision to charge fees for remote access to judicial case records be preceded by a period of public notice and comment to ensure that burdens to access are not imposed. As of today's order, no fees are imposed on remote public access to case records. While we agree that the issue is best addressed after hearing a wide range of views, we need not decide today the procedure to use when the time arrives to consider this issue.

Next, the committee's recommended amendments to Rule 4 identified categories of case records that are not public, including certain information identifying minor victims. Minn. R. Pub. Access 4, subd. 2(m)(1). In response to this recommendation, the MSBA proposed adding to this category certain records involving minor victims of sexual abuse in which a maltreatment determination has been made under Minn. Stat. § 626.556 (2014). We agree that these records fall within the described category, and therefore amending language has been added to subdivision 2(m).

Second, we consider the comments that address access to certain criminal case records. Representatives of organizations that advocate on behalf of criminal justice organizations and lawyers who represent criminal defendants expressed concern about the potential collateral consequences from remote access to postconviction criminal case records.

There are valid concerns with the potential collateral consequences of electronic access to public case records. *See Council on Crime and Justice, Juvenile Records in Minnesota*, at 12-15 (Jan. 2014) (reporting on increased background screening by employers, landlords, and colleges as part of a decision-making process eased by electronic access to records). But we remain mindful that the rules we consider in this proceeding and the amendments we promulgate today address alternative forms of access to case records that are already *public*. We also note that some of the data gathered from electronic records has been available remotely for some time, in the register of actions and calendars of the district courts. Finally, we note that reasonable efforts are made, and

will continue to be made, to prevent electronic searches in pending criminal matters by defendant name. Minn. R. Pub. Access 8(c).<sup>1</sup>

The minority report expressed similar concerns, and urged the court to limit remote access to specifically identified documents. We do not treat lightly the concerns surrounding data mining and the potential collateral consequences from electronic access, to case records. Nonetheless, we conclude that restrictions on access to electronic public records must be appropriately tailored to address the competing goals of public access and the prevention of inappropriate use of those records. The amendments promulgated today provide an appropriate balance.

We appreciate the thorough and thoughtful work of the committee in completing this work in the time frame established to allow implementation of e-filing and e-service as recommended by the eCourtMN Steering Committee.

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<sup>1</sup> The MSBA Criminal Law Section requested consideration of remote access to preconviction, public case records, for all attorneys of record in a case, including private practitioners. While we understand the committee explored this topic in its discussions, we refer the Section's comment to the committee for further consideration as it deems appropriate.

## AMENDMENTS TO THE RULES OF PUBLIC ACCESS TO RECORDS OF THE JUDICIAL BRANCH

*[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]*

### **Rule 1. Scope of Rules.**

**Subd. 1. Application; Conflicts; Local Rules.** These rules govern access to the records of all courts and court administrators of the judicial branch of the state of Minnesota. To the extent that there is any conflict between these rules and other court rules, these rules shall govern. Any court may recommend rules, whether denominated as a rule or standing order, governing access to its records that do not conflict with these rules or the General Rules of Practice for the District Courts, and those recommended rules or standing orders shall become effective as ordered by the Supreme Court.

**Subd. 2. Exclusions.** ~~These~~ rules do not govern access to records of the Tax Court, ~~or the Workers' Compensation Court of Appeals, or the Office of Administrative Hearings,~~ which are part of the executive branch of the state, except to the extent that such records are submitted in an appeal or proceeding in a judicial branch court. In addition, these rules do not govern access to the substantive and procedural records of the various Boards or Commissions of the Supreme Court as they are governed by independent rules promulgated or approved by the Supreme Court. A partial list of Boards and Commissions is set forth in Appendix A. Finally, except as provided in Rule 4, ~~subdivision 1(b),~~ with respect to case records, these rules do not govern access to records of judicial branch court services departments or probation authorities. Access to these records is governed by MINN. STAT. § 13.84 ~~and~~ or any successor statute, and other applicable court rules and statutes.

**Subd. 3. Retention Unaffected.** Nothing in these rules shall affect the disposition of records as authorized by MINN. STAT. § 138.17 or any successor or prevent the return of documents or physical objects to any person or party in accordance with a court rule or order.

#### **Subd. 4. Filer's Obligations and Enforcement Sanctions Addressed Elsewhere.**

Various other court rules place obligations on parties and participants filing documents with the court to correctly designate non-public documents when filing (e.g., MINN. GEN. R. PRAC. 14 (electronic filing)), to redact certain data elements from documents before filing (e.g., MINN. GEN. R. PRAC. 11.02 (restricted identifiers such as social security numbers and certain financial account numbers); MINN. R. JUV. PROT. P. 8 (various elements in juvenile protection matters)), and to face sanctions for failure to comply (e.g., MINN. GEN. R. PRAC. 11.04 (appropriate sanctions including costs of redaction and potential striking of pleadings)). Following these rules correctly is critical to ensuring appropriate public access to court records as court staff are not required to review every word of every document submitted to the court for filing to determine if it is appropriately accessible to the public. To the extent that noncompliance is brought to the attention of the court, various rules may require, among other possible relief or action, that a document be temporarily segregated from public view until the redaction rule can be enforced.

#### **Advisory Committee Comment-2015**

Rule 1 is amended in 2015 to recognize that these rules control in case of conflict with other court rules. A list of rules that are consistent with these access rules is included in Rule 4, subd. 1(o).

Rule 1 is amended in 2015 to recognize that courts may seek approval from the Supreme Court for local rules addressing public access issues that do not conflict with these rules. A standing order that affects more than one case is considered a rule subject to the approval of the Supreme Court. This is consistent with other rules. See, e.g., MINN. R. CIV. P. 83; MINN. R. CRIM. P. 1.03. Rule 1 is also modified to clarify that public access to the personnel records of the various Supreme Court boards are governed by Rule 5, subd. 1, of these rules, but that public access to other procedural and substantive records of such boards are governed by independent rules promulgated or approved by the Supreme Court.

Rule 1 is amended in 2015 to clarify that records of various executive branch entities, such as the Tax Court, Workers' Compensation Court of Appeals, and Office of Administrative Hearings are not governed by these rules unless and until they are submitted to the judicial branch in an appeal to the Minnesota Court of Appeals or the Minnesota Supreme Court, or become part of some other proceeding in the District Court. Some of these executive branch records are not accessible to the public in the hands of the executive branch, but once submitted to the judicial branch they are presumed to be accessible to the public under Rule 2 of these rules and parties will need to ensure that sensitive items, including social security numbers and financial account numbers, are properly redacted according to the governing court rules.

Rule 1 is amended in 2015 by adding a new subdivision 4 explaining obligations imposed on filing parties to protect certain private information from public disclosure in court filings. These obligations are set forth in other court rules and are necessary to ensure that the appropriate level of public access is maintained particularly for records maintained in electronic format.

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#### **Rule 4. Accessibility to Case Records.**

**Subd. 1. Accessibility.** Subject to subdivision 4 of this rule (Records Referring to Information in Non-Public Documents) and Rule 8, subd. 5 (Access to Certain Evidence), the following ~~All~~ case records are not accessible to the public ~~except the following~~:

(a) *Domestic Abuse and Harassment Records.*

(1) Records maintained by a court administrator in accordance with the domestic abuse act, MINN. STAT. § 518B.01, until a court order as authorized by ~~subdivision 5 or 7 of section~~ MINN. STAT. § 518B.01, subds. 5 or 7, is executed or served upon the record subject who is the respondent to the action;

(2) Records of harassment restraining order proceedings maintained by a court administrator in accordance with MINN. STAT. § 609.748 until a court order as authorized by MINN. STAT. § 609.748, subd. 4, is executed or served upon the record subject who is the respondent to the action. Upon the petitioner's request, information maintained by the court regarding the petitioner's location or residence is not accessible to the public but may be disclosed to law enforcement for purposes of service of process, conducting an investigation, or enforcing an order.

(3) A law enforcement information form provided by the petitioner in a proceeding under clause (1) or clause (2) of this rule. "Law

enforcement information form” means a document in the form of OFP105 or HAR103 as published by the state court administrator on the website [www.mncourts.gov](http://www.mncourts.gov). A law enforcement information form may be disclosed to law enforcement for purposes of service of process, conducting an investigation, or enforcing an order.

- (b) *Court Services Records.* Records on individuals maintained by a court, ~~other than records that have been admitted into evidence,~~ that are gathered at the request of a court to:
- (1) determine an individual’s need for counseling, rehabilitation, treatment or assistance with personal conflicts (including, without limitation, support or attendance letters, e.g., regarding Alcoholics Anonymous, submitted by or for a party),
  - (2) assist in assigning an appropriate sentence or other disposition in a case (including, without limitation, disposition advisor memoranda or reports in criminal matters),
  - (3) provide the court with a recommendation regarding the custody of minor children, or
  - (4) provide the court with a psychological evaluation of an individual.

Provided, however, that this paragraph (b) does not apply to social services reports and guardian ad litem reports to the court in juvenile protection matters governed by the Rules of Juvenile Protection Procedure, which must be filed with the court in accordance with MINN. R. JUV. PROT. P. 8, subd. 5(b). In addition, the following information on adult individuals is accessible to the public: name, age, sex, occupation, and the fact that an individual is a parolee, probationer, or participant in a diversion program, and if so, at what location; the offense for which the individual was placed under

supervision; the dates supervision began and ended and the duration of supervision; information which was public in a court or other agency which originated the data; arrest and detention orders; orders for parole, probation or participation in a diversion program and the extent to which those conditions have been or are being met; identities of agencies, units within agencies and individuals providing supervision; and the legal basis for any change in supervision and the date, time and locations associated with the change.

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(f) ~~*Medical Records*~~*Genetic Information.* Records ~~on genetic information, other than records that have been admitted into evidence in a hearing or trial,~~ that are from medical, health care, or scientific professionals; ~~(including but not limited to reports and affidavits);~~ that are of the following types:

(1) Records that relate to the past, present, or future physical or mental health or condition of an individual, including but not limited to medical history, examinations, diagnoses and treatment, pre-petition screening reports, and court-appointed examiner reports and any other records designated by the presiding judge as medical records; and

(2) Records on genetic information. For purposes of this rule, “genetic information” means information about a specific human being that is derived from the presence, absence, alteration, or mutation of a gene or genes, or the presence or absence of a specific deoxyribonucleic acid or ribonucleic acid marker or markers, and which has been obtained from an analysis of an individual’s biological information or specimen or the biological information or specimen of a person to whom an individual is genetically related.

- (g) Request for Assistance Other Than Counsel and Any Resulting Order. A request under MINN. STAT. § 611.21 for assistance other than counsel and any resulting order. The register of actions may publicly disclose the existence of the request and the order granting or denying the request, but not the substance of the assistance sought or granted.
- (h) Response to Petition for Criminal Expungement. A response to a petition for expungement filed with the court under MINN. STAT. § 609A.03 shall not include any confidential or private data except on a separate document clearly marked as sealed or confidential, provided that the petition included or was accompanied by a request by the petitioner to seal or declare as not accessible to the public any private or confidential data as defined by MINN. STAT. ch. 13 included in a response to the petition by an agency or jurisdiction that is subject to MINN. STAT. ch. 13. When submitting a response and separate document via the court's E- Filing System, the agency or jurisdiction filing the separate document must also appropriately designate the separate document as sealed or confidential by selecting the appropriate designation in the court's E-Filing System. The agency or jurisdiction filing a response to the petition shall be entirely responsible for ensuring compliance with this rule. The court administrator is not responsible for reviewing filings for compliance with this rule. The court may issue appropriate sanctions for failure to comply with this rule.
- (i) Will Deposited for Safekeeping During Testator's Lifetime. A will deposited with the court for safekeeping under MINN. STAT. § 524.2-515, except that upon proof of a testator's death the existence of the testator's will on deposit with the court may be publicly disclosed.

Access to the will during the testator's lifetime by the testator, testator's attorney or agent, guardian or conservator is governed by MINN. GEN. R. PRAC. 418. The court, following notice of the testator's death, may deliver the will to the appropriate court and may order that copies of the will be provided to appropriate persons.

(j) *Administrative Warrants.* All records of a request, and any resulting order, submitted pursuant to MINN. STAT. § 182.659, subds. 6, 7 (Occupational Safety and Health Inspection), MINN. STAT. § 299F.08, subd. 2 (authorization for entry by state fire marshal), MINN. STAT. § 340A.704 (authorization for search warrants for liquor law violations), and for housing code inspections authorized pursuant to *Camara v. Municipal Court*, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967), and *McCaughtry v. City of Red Wing*, 831 N.W.2d 518 (Minn. 2013), unless and until the search or inspection authorized by the court has been completed, except by order of the court or consent of the official submitting the request. The person seeking to file the request for warrant/inspection shall contact the court administrator, who will establish a confidential file in the court's case records management system and provide the file number to the person seeking to file, who may then submit the request for warrant/inspection for filing into that court case file.

(k) *Motion to Enforce or Quash County Attorney Subpoena.* A request for an order enforcing or quashing an administrative subpoena issued pursuant to MINN. STAT. § 388.23 unless and until authorized by order of the court. The person seeking to file the request shall contact the court administrator, who will establish a confidential file in the court's case records management system and provide the file number to the person seeking to file, who may then submit the request for filing into that court case file.

(l) Release of Video Recordings for Use in Administrative Hearing. All records of a petition, and any resulting order, submitted pursuant to MINN. STAT. § 611A.90 seeking release of or access to a video recording of a child victim or alleged victim alleging, explaining, denying, or describing an act of physical or sexual abuse as part of an investigation or evaluation of the abuse and for use as provided in an administrative proceeding (see, e.g., MINN. STAT. § 256.045, subd. 4), except by order of the court. The person seeking to file the petition shall contact the court administrator, who will establish a confidential file in the court's case records management system and provide the file number to the person seeking to file, who may then submit the request for order for filing into that court case file.

(m) Minor Victim Identifying Information.

(1) Where Applicable. Except as otherwise provided by order of the court, information that specifically identifies a victim who is a minor at the time of the alleged offense or incident in the following cases:

(A) criminal or juvenile delinquency or extended jurisdiction juvenile cases involving a petition, complaint, or indictment issued pursuant to MINN. STAT. §§ 609.342, 609.343, 609.344, 609.345, 609.3451 or 609.3453;

(B) commitment proceedings related to a case in (A) above, in which supervisory responsibility is assigned to the presiding judge under MINN. R. CRIM. P. 20.01, subd. 7, or 20.02, subd. 8(4);

(C) judicial review pursuant to MINN. STAT. § 256.045, subd. 7, of maltreatment determinations made under MINN. STAT. § 626.556, that involve allegations of sexual abuse as defined by MINN. STAT. § 626.556, subd. 2(d).

(2) Burden on Filer. No person shall submit information that specifically identifies a minor victim on any pleading or document filed with the court in the above cases except on a separate, confidential document entitled Confidential Victim Identifier Information. It shall not be a violation of this rule for a pleading or document to include generic references, including but not limited to “the victim” or “Child 1,” and, unless otherwise ordered by the presiding judge, the victim’s initials and year of birth.

(3) Other Information Unaffected. Nothing in this rule authorizes denial of access to any other data contained in the records, including the identity of the defendant.

(4) Exception: Transcript. Unless otherwise directed by the presiding judge, identifying information on a minor victim under this rule need not be redacted from a transcript of a public proceeding before such transcript is disclosed to the public.

(n) Pre-Adjudication Paternity Proceedings. Records of proceedings to determine the existence of parent-child relationship under MINN. STAT. §§ 257.51 to 257.74, provided that the following are public: the final judgment under section 257.70(a) (minus findings of fact and restricted identifiers under MINN. GEN. R. PRAC. 11), affidavits filed pursuant to MINN. STAT. §§ 548.09-.091 to enforce the judgment, and all subsequent proceedings seeking to modify the judgment except an appeal of the initial, final judgment.

(o) Other. Case records that are made inaccessible to the public under:

(1) state statutes, other than MINN. STAT. Minnesota Statutes, chapter 13;

(2) court rules ~~or~~ not inconsistent with these rules, including but not limited to:

(A) MINN. R. ADOPT. P. 7 (all adoption case records);

(B) MINN. SPEC. R. CT. APP. FAMILY L. MEDIATION 7, 9 (appellate family mediation confidential information form and selection of mediator form);

(C) MINN. GEN. R. PRAC. 114.08, 114.09 (notes, records and recollections of the neutral);

(D) MINN. R. JUV. PROT. P. 8, 16.01, subd. 1; 33.02, subd. 6 (various records and data elements in juvenile protection proceedings);

(E) MINN. R. CRIM. P. 9.03, subs. 5-7, 18.04, 18.07, 25.01, 26.02, subd 2, 26.02, subd. 4(4), 26.03, subd. 6, 33.04, 36.06 (in camera discovery materials, grand jury records, closed hearings and records, and search warrants);

(F) MINN. GEN. R. PRAC. 313 (2004) (social security numbers and tax returns submitted to the court prior to July 1, 2005);

(G) MINN. GEN. R. PRAC. 11, 361.02, 361.05, 370.04, 371.04, 372.04, 807(e), 814 (restricted identifiers and financial source documents submitted to the court on or after July 1, 2005; juror records);

(H) MINN. SPEC. R. COMMITMENT & TREATMENT ACT 13, 21 (medical records in all commitment matters and all records in proceedings for commitment of a minor);

(I) MINN. R. CIV. APP. P. 112 (confidential or sealed portions of the record on appeal); and

(J) MINN. R. CIV. P. 47.01 (supplemental juror questionnaire).

(3) court orders; or

(34) other applicable law.

The state court administrator shall maintain, publish and periodically update a partial list of case records that are not accessible to the public.

**Subd. 2. Restricting Access; Procedure.** Procedures for restricting access to case records shall be as provided in the applicable court rules. A court may restrict access to public case records in a particular case only if it makes findings that are required by law, court rule, or case law precedent. The factors that a court must consider before issuing a restrictive order in regard to criminal case records are discussed in MINN. R. CRIM. P. 25, *Minneapolis Star & Tribune v. Kammeyer*, 341 N.W.2d 550 (Minn. 1983), and *Northwest Publications, Inc. v. Anderson*, 259 N.W.2d 254 (Minn. 1977). For a discussion of the factors to consider in civil cases, see MINN. R. CIV. P. 26.03 and *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197 (Minn. 1986). For standards to consider in cases involving a child in need of protective services, see MINN. R. JUV. PROT. P. 8.07. For factors to consider in juvenile delinquency cases, see MINN. R. JUV. DEL. P. 10.06, subd. 5. For factors to consider for restricting public access to jury records, see MINN. GEN. R. PRAC. 814(a).

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**Subd. 4. Records Referring to Information in Non-Public Documents.**

Generally, a rule or law precluding public access to an entire document such as a report or medical record shall not preclude the parties or the court from mentioning the contents of the document in open court or in otherwise publicly accessible pleadings or documents such as motions, affidavits, and memoranda of law where such discussion is necessary and relevant to the particular issues or legal argument being addressed in the proceeding. Except as otherwise authorized by the presiding judge in a particular case, this rule permitting mention of otherwise non-public information shall not apply to:

- (a) Restricted identifiers governed by MINN. GEN. R. PRAC. 11;
- (b) Identity of a minor victim of sexual assault under Rule 4, subd. 1(m), except that unless otherwise ordered by the presiding judge, such victim may be referred to by initials and year of birth;

(c) Specific data elements protected by applicable law, court rule or order, including but not limited to those protected by MINN. R. JUV. PROT. P. 8.04, subd. 1(e); and

(d) Records sealed by order in individual cases, unless otherwise directed by the court issuing such order.

Unless otherwise directed by the presiding judge, data elements in (a) through (d) of this rule that appear in a transcript of a public proceeding need not be redacted from the transcript before such transcript is disclosed to the public.

#### **Advisory Committee Comment – 2015**

Rule 4, subd. 1(a), is amended in 2015 to provide a consistent level of privacy to orders for protection involving domestic abuse under MINN. STAT. § 518B.01 and harassment restraining orders under MINN. STAT. § 609.748 as proceedings under either statute can involve domestic abuse. Courts have attempted to provide uniformity through use of standardized order forms but such forms may not always be used. The amended rule obviates the need to rely on forms. The information maintained by the court regarding the petitioner's location or residence that is not accessible to the public under the rule will typically include, but is not limited to, residence address and telephone number. The amendments also recognize that the courts provide a pass-through of a "law enforcement information form" (including, but not limited to information such as Respondent Employer Name, Employer Address, Nickname or Alias, Phone Number, Work Days/Hours, Additional Address to be Located, Expected Date/Time of Return, Vehicle Make, Vehicle Model, Vehicle Color, Vehicle License Plate Number, Vehicle License State, Respondent has vicious animal, Respondent's Weapon Use or Possession) from the petitioner to law enforcement for purposes of ensuring effective and safe service and enforcement of any resulting order. The courts do not utilize the law enforcement information form in determining whether a restraining order is appropriate.

Rule 4, subd. 1(b), is amended in 2015 to expressly add to the list of non-public records support letters submitted by or for a party and disposition advisor memos. Similar items are regularly included in pre-disposition reports from probation authorities, and this change attempts to provide consistent treatment of the same information regardless of its route to the court file. Language making the records public to the extent formally admitted into evidence in a publicly accessible, testimonial-type hearing or trial has been relocated to Rule 8, subd. 5, which addresses this issue globally.

Rule 4, subd. 1, is also amended in 2015 by adding part (g) to preclude public access to the substance of a request under MINN. STAT. § 611.21 for assistance other than counsel and any resulting order. The rule is intended to allow the register of actions to publicly disclose the existence of the request and the fact that an order granting or denying the request has been entered, but not to publicly disclose the substance of the assistance sought or granted. At least one district has a standing order precluding public access to these requests and resulting orders, and similar individual orders are common. Standing

orders generally require approval of the Supreme Court. See, e.g., MINN. R. CRIM. P. 1.03; MINN. R. CIV. P. 83. The rule obviates the use of such orders.

Rule 4, subd. 1, is amended in 2015 to add a new clause (h) that is intended to provide a procedure for carrying out recent legislative amendments codified as MINN. STAT. § 609A.03, subd. 3(d) (2014). This legislation authorizes an agency or jurisdiction that is served with an expungement petition to submit to the court private or confidential data on the petitioner that the agency or jurisdiction determines is necessary to respond to the petition. The legislation further directs the agency or jurisdiction to inform the court and the petitioner that the submission contains private or confidential data, and provides that the petitioner may, at the time of filing the petition or after that time, file a request with the court to seal the private or confidential data that are submitted by the agency or jurisdiction. Rule 4, subd. 1(h) allows the petitioner to include the request in the petition and upon such request the agency or jurisdiction must submit any confidential or private data to the court in a manner that protects such data from public view. This process attempts to avoid public disclosure of the confidential or private data before the petitioner can make a request.

Rule 4, subd. 1, is amended in 2015 by adding clause (i) to clarify the status of a filed will during a testator's lifetime. MINN. STAT. § 524.2-515 requires that the will be kept sealed and confidential" during the testator's lifetime and that the court may deliver the will to the appropriate court upon testator's death. Neither section 524.2-515 nor MINN. GEN. R. PRAC. 418 addresses a public index to such wills. Rule 4, subd. 1(i) requires proof of testator's death before the existence of a filed will may be publicly disclosed, and is based on rules in several other jurisdictions. See, e.g., 14 VERM. STAT. ANN. § 2; N. CAR. RULE OF RECORDKEEPING 6.9; and ST. JOSEPH COUNTY MICHIGAN PROBATE FAQS posted at <http://www.stjosephcountymi.org/probate/faq.htm#c>.

Rule 4, subd. 1, is amended in 2015 to add clause (j) recognizing that various administrative warrants must be submitted in a secure manner in order to avoid improper advance disclosure. See, e.g., MINN. STAT. § 182.667, subd. 3 (2014) (imposing criminal penalty for wrongful advance disclosure). A confidential case type must be established in the case management system in order to ensure that any related electronic filing remains undisclosed. The current technology in the E-Filing System does not allow the filer to establish a confidential case type (as opposed to allowing a filer to designate a particular document as confidential or sealed) so the court must establish the case type ahead of time. The rule places the burden on the filer to contact the court so that the necessary confidential case type can be established prior to the initial electronic filing in the case.

Rule 4, subd. 1, is amended in 2015 to add clause (k) to recognize that the legislature intended that requests for an order enforcing or quashing an administrative subpoena issued pursuant to MINN. STAT. § 388.23 be handled in a confidential manner. Under MINN. STAT. § 388.23, subd. 4, the recipient of the subpoena is not authorized to disclose it except as necessary to respond to it or as directed by a court order, and MINN. STAT. § 388.23, subd. 6, permits an ex parte application to enforce the subpoena, and provides that any resulting order need not be filed. Rule 4, subd. 1(k) provides the necessary confidentiality and recognizes that the order will be in the court's computer systems and although it may technically be considered filed it remains confidential unless and until authorized by order of the court. As is the case with administrative warrants under clause (j), a confidential case type must be established in the case management system, and the E-Filing System does not allow the filer to establish a confidential case type, so the court

must establish the case type ahead of time. The rule places the burden on the filer to contact the court so that the necessary confidential case type can be established prior to the initial electronic filing in the case.

Rule 4, subd. 1, is amended in 2015 to add clause (l) to ensure confidentiality of petitions under MINN. STAT. § 611A.90 seeking release of certain video recordings of child victims for use in private administrative hearings. The video recordings depict a child victim or alleged victim alleging, explaining, denying, or describing an act of physical or sexual abuse as part of an investigation or evaluation of the abuse. If authorized the video recording may be used in administrative proceedings that are not accessible to the public. See, e.g., MINN. STAT. § 256.045, subd. 4. As is the case with administrative warrants under clause (j) and motions to enforce or quash a county attorney subpoena under clause (k), a confidential case type must be established in the case management system, and the E-Filing System does not allow the filer to establish a confidential case type, so the court must establish the case type ahead of time. The rule places the burden on the filer to contact the court so that the necessary confidential case type can be established prior to the initial electronic filing in the case.

Rule 4, subd. 1, is amended in 2015 to add clause (m) to comprehensively address minor victim privacy in otherwise publicly-accessible case records involving criminal sexual conduct offenses. The legislature in MINN. STAT. § 609.3471 (2014) attempted to do this, but the statute left out one offense and lacks clarity regarding the scope. Clause (m) adds the missing offense and clarifies when a closely-related commitment matter is included, what duties must be undertaken by anyone filing documents in such a case, and whether redaction of identifiers from a transcript is required when identifiers have been disclosed in testimony during a publicly accessible hearing or trial.

Rule 4, subd. 1, is amended in 2015 to add clause (n) to ensure consistent treatment of post-adjudication paternity proceedings. Following the initial determination of a relationship between a parent and a child under MINN. STAT. §§ 257.51 to 257.74, parties may seek to modify custody or support, and such modifications are brought either as separate custody or support proceedings or as a continuation of the initial paternity matter. When custody or support modifications are brought as a continuation, there is precedent for continuing to treat the matter as non-public. See *In re Disciplinary Action Against Terrazas*, 581 N.W.2d 841 (Minn. 1998) (dismissing supplementary ethics petition in part because the board's investigator viewed the trial court file without obtaining the approval of the parties or the court under section 257.70, and that file was a custody modification motion brought some five years after the initial paternity adjudication, see *Autenreigh v. Terrazas*, 1997 WL 309414, No CX-96-2482 (Minn. Ct. App. filed June 10, 1997)). The policy supporting privacy of the initial paternity proceeding, however, is no longer present as the final judgment has already become public. MINN. GEN. R. PRAC. 371.10, subd. 1, purports to make the hearings post-adjudication open to the public, but the rule arguably does not address the records. A few trial courts require that all modification proceedings be brought as separate proceedings, and this may be the preferred approach or best practice. This rule is aimed at providing consistent public access treatment for these modification proceedings regardless of how they are presented.

Rule 4, subd. 1, is amended in 2015 to revise the catch-all paragraph by renumbering it as clause (o) and providing examples of other rules that establish non-public case record categories. The list is not exhaustive, but the rules included in the list are deemed to be

consistent with these access rules and would not create a conflict under Rule 1, subd. 1, of these rules. Noteworthy changes in other rules that are new in 2015 include extending confidentiality to all records in commitment proceedings involving commitment of a minor and to juvenile protection proceedings in which a child is a party (e.g., in truancy and runaway cases the child is always a party, but is generally only a “participant” in other child protection cases involving abuse and neglect). Rule 4, subd. 2, is amended in 2015 to emphasize that closure of otherwise publicly accessible records by court order must be determined on a case-by-case basis with appropriate findings to support the closure. Cross references to rules and case law are included in the rule rather than the comment to better assist self-represented litigants. The analysis can be complex. For example, in a civil case a court must first examine the proceeding or document to determine whether it has historically and philosophically been presumed open to the public, and if so, the court must examine the constitutional right asserted to determine whether it “affords protection” to the proceeding or document in question. If this analysis suggests a right of access under the First Amendment, then “[i]n order to overcome the presumption in favor of access, a party must demonstrate that a compelling governmental interest exists and that the restriction on access is narrowly tailored to meet this governmental interest.” *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 204 (Minn. 1986) (citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980)). If the analysis fails to demonstrate a right of access borne out of a constitutional dimension, then the balancing test of the common law applies: “In order to overcome the [common law] presumption in favor of access, a party must show strong countervailing reasons why access should be restricted.” *Schumacher, supra*, at 205-06. The burden on a party seeking closure in a criminal case is greater than that in civil cases. See MINN. R. CRIM. P. 25; *Minneapolis Star & Tribune v. Kammeyer*, 341 N.W.2d 550 (Minn. 1983).

Rule 4, subd. 4, is added in 2015 to minimize the redaction burdens on all participants. It is based in part on existing MINN. SPEC. R. COMMITMENT & TREATMENT ACT 21(b) (2014). It recognizes that although certain documents, such as medical records in a commitment case or a presentence investigation report in a criminal case, are not accessible to the public, their contents are necessarily routinely discussed in various pleadings and orders and at open hearings and trials with or without the report being admitted into evidence. Disclosure must be both necessary and relevant to the particular issues or legal argument being addressed as otherwise the rule would be a loophole for violating privacy interests of various individuals. Certain exceptions are necessary to ensure that certain data elements, such as social security numbers, remain non-public.

Rule 4, subd. 4, will have one noteworthy impact on the application of MINN. R. CIV. APP. P. 112.03, which requires the parties to “take reasonable steps to prevent the disclosure of confidential information” in otherwise publicly accessible documents submitted on appeal. It is likely that most issues and facts discussed in publicly accessible appellate court documents have also been discussed in publicly accessible pleadings, affidavits, motions, etc., at the trial court such that under MINN. R. PUB. ACCESS TO RECS. OF JUD. BRANCH 4, subd. 4, the discussion itself is not “confidential” information within the scope of MINN. R. CIV. APP. P. 112.03. This is a complex issue, however, and one that may not be readily grasped if MINN. R. PUB. ACCESS TO RECS. OF JUD. BRANCH 4, subd. 4, and MINN. R. CIV. APP. P. 112.03 are not read together.

## **Rule 5. Accessibility to Administrative Records.**

All administrative records are accessible to the public except the following:

\* \* \*

**Subd. 5. Security Records.** Records in the possession or custody of the courts that may ~~would be likely to~~ substantially jeopardize the security of information, possessions, individuals, or property in the possession or custody of the courts against if subject to theft, tampering, improper use, illegal disclosure, trespass, or physical injury, such as security plans or codes, checks and checking account numbers submitted as part of a transaction with the courts, and unofficial fiscal notes and related bill drafts thereof in the custody of the court provided that: (a) the request for an unofficial fiscal note is accompanied by a directive from the requester that the data be classified as not accessible to the public; and (b) the note and bill drafts have not become public through subsequent use in an introduced bill or any legislation, including amendments or a proposed bill offered by any legislator. As used in this rule, an “unofficial fiscal note” has the meaning set forth in MINN. STAT. § 13.64.

### **Advisory Committee Comment – 2015**

Rule 5, subd. 5, is amended in 2015 to recognize that checks and checking account numbers submitted as part of a transaction with the courts contain sensitive financial information, the disclosure of which could lead to identity theft. Similar information such as credit card numbers and social security numbers are protected from public view either by statute or court rules. See MINN. STAT. § 480.237 (2014) (account numbers collected by the judicial branch in connection with credit cards, charge cards, debit cards or other methods of electronic funds transfer for government fees and payments ordered by the court); MINN. GEN. R. PRAC. 11 (social security numbers and financial account numbers).

Rule 5, subd. 5, is also amended in 2015 to recognize that, as a state entity, the judicial branch participates in the creation of fiscal notes on proposed legislation. The amendment is intended to provide a uniform level of public access across all branches of government to fiscal notes and related legislative bill drafts. See MINN. STAT. § 13.64, subd. 3 (2014) (governing public access to unofficial fiscal notes and related bill drafts held by executive branch agencies).

\* \* \*

## Rule 8. Inspection, Copying, Bulk Distribution and Remote Access.

\* \* \*

### Subd. 2. Remote Access to Electronic Records.

(a) ~~*Definitions. Remotely Accessible Electronic Records.*—Except as otherwise provided in Rule 4 and parts (b) and (c) of this subdivision 2, a custodian that maintains the following electronic case records must provide remote electronic access to those records to the extent that the custodian has the resources and technical capacity to do so.~~

- (1) ~~“Register of actions” means~~ (a register or list of the title, origination, activities, proceedings and filings in each case [MINN. STAT. § 485.07(1)]);
- (2) ~~“Cealendars” means~~ (lists or searchable compilations of the cases to be heard or tried at a particular court house or court division [MINN. STAT. § 485.11]);
- (3) ~~“Indexes” means~~ (alphabetical lists or searchable compilations for plaintiffs and for defendants for all cases including the names of the parties, date commenced, case file number, and such other data as the court directs [MINN. STAT. § 485.08]);
- (4) ~~“Judgment docket” means an~~ (alphabetical list or searchable compilation including name of each judgment debtor, amount of the judgment, and precise time of its entry [MINN. STAT. § 485.07(3)]);

- (5) “Remote access” and “remotely accessible” mean that information in a court record can be electronically searched, inspected, or copied without the need to physically visit a court facility. The state court administrator may designate publicly accessible facilities other than court facilities as official locations for public access to court records where records can be electronically searched, inspected, or copied without the need to physically visit a court facility. This access shall not be considered remote access for purposes of these rules. judgments, orders, appellate opinions, and notices prepared by the court.
- (6) “Appellate court record” means the case records of the Minnesota Court of Appeals and the Minnesota Supreme Court, including without limitation opinions, orders, judgments, notices, motions, and briefs.

~~All other electronic case records that are accessible to the public under Rule 4, and that have been in existence for not more than ninety (90) years, shall not be made remotely accessible but shall be made accessible in either electronic or in paper form at the court facility.~~

- (b) *Certain Data Not To Be Remotely Disclosed.* Notwithstanding Rule 8, subd. 2 ~~(a), (c), (e), (f), and (g)~~ for case records other than appellate court records, the public shall not have remote access to the following data fields in the register of actions, calendars, index, and judgment docket, with regard to parties or their family members,

jurors, witnesses (other than expert witnesses), or victims of a criminal or delinquent act:

- (1) social security numbers and employer identification numbers;
- (2) street addresses except that street addresses of parties may be made available by access agreement in a form prepared by the state court administrator and approved by the Judicial Council;
- (3) telephone numbers;
- (4) financial account numbers; and
- (5) in the case of a juror, witness, or victim of a criminal or delinquent act, information that either specifically identifies the individual or from which the identity of the individual could be ascertained.

Without limiting any other applicable laws or court rules, and in order to address privacy concerns created by remote access, it is recommended that court personnel preparing judgments, orders, appellate opinions and notices limit the disclosure of items (2), (3) and (5) above to what is necessary and relevant for the purposes of the document. Under MINN. GEN. R. PRAC. 11, inclusion of items (1) and (4) in judgments, orders, appellate opinions and notices is to be made using the confidential information form 11.1. Disclosure of juror information is also subject to MINN. GEN. R. PRAC. 814, MINN. R. CRIM. P. 26.02, subd. 2, and MINN. R. CIV. P. 47.01.

(c) ~~*Preconviction Pending Criminal Records.*~~ The Information Technology Division of ~~the Supreme Court~~ State Court Administration shall make reasonable efforts and expend reasonable and proportionate resources to prevent records of pending~~preconviction~~ criminal matters~~records and preconviction or preadjudication juvenile records~~ from being electronically searched by defendant name by the majority of known, mainstream electronic search ~~automated~~ tools, including but not limited to the court's own electronic search tools. "Records of pending~~A "preconviction criminal matters~~record" is ~~a~~ are records, other than ~~an~~ appellate court records, for which there is no conviction as defined in MINN. STAT. § 609.02, subd. 5 ~~(2004)~~ (2014), on any of the charges. ~~A "preconviction or preadjudication juvenile record" is a record, other than an appellate court record, for which there is no adjudication of delinquency, adjudication of traffic offender, or extended jurisdiction juvenile conviction as provided in the applicable Rules of Juvenile Delinquency Procedure and related Minnesota Statutes, on any of the charges. For purposes of this rule, an "appellate court record" means the appellate court's opinions, orders, judgments, notices and case management system records, but not the trial court record related to an appeal.~~

(d) *District Court Case Types With No Remote Access.* There shall be no remote access to publicly accessible district court case records in the following case types:

(1) Domestic abuse (proceedings for orders for protection under MINN. STAT. § 518B.01);

(2) Harassment (proceedings for harassment restraining orders under MINN. STAT. § 609.748);

(3) Delinquency felony (felony-level juvenile delinquency proceedings involving a juvenile at least 16 years old under MINN. R. JUV. DEL. P.);

(4) CHIPS, CHIPS-Permanency; CHIPS-Runaway; CHIPS-Truancy; CHIPS-Voluntary Placement; and Child in Voluntary Foster Care for Treatment (encompasses publicly accessible records of all child protection proceedings under the MINN. R. JUV. PROT. P.).

(e) District Court Case Types With No Remote Access to Documents.

~~“Remotely Accessible” Defined. “Remotely accessible” means that information in a court record can be electronically searched, inspected, or copied without the need to physically visit a court facility. The state court administrator may designate publicly accessible facilities other than court facilities as official locations for public access to court records where records can be electronically searched, inspected or copied without the need to physically visit a court. This shall not be remote access for purposes of these rules. To the extent that the custodian has the resources and technical capacity to do so, the custodian shall provide remote access to the publicly accessible portions of the district court register of actions, calendars, indexes, and judgments dockets, but excluding any other documents in the following case types:~~

(1) All Commitment case types (encompasses all proceedings under MINN. SPEC. R. COMMITMENT & TREATMENT ACT).

(f) District Court Case Types With No Remote Access to Party/Participant-Submitted Documents. To the extent that the custodian has the resources and technical capacity to do so, the custodian shall provide remote access to the publicly accessible portions of the district court register of actions, calendars, indexes, judgment dockets, judgments, orders, appellate opinions, and notices prepared by the court, but excluding any other documents, in the following case types:

(1) Custody, Dissolution With Child, Dissolution Without Children, Other Family, and Support (encompasses all family case types);

(2) Post-Adjudication Paternity Proceedings.

(g) District Court Case Types with Remote Access to Documents. To the extent that the custodian has the resources and technical capacity to do so, the custodian shall provide remote access to the publicly accessible portions of the district court register of actions, calendars, indexes, judgments dockets, judgments, orders, appellate opinions, notices prepared by the court, and any other documents, in the following case types:

(1) All Major and Minor Civil Case Types (Torrens, Tort, Consumer Credit, Contract, Employment, Forfeiture, Condemnation, Civil Other/Miscellaneous, Other Major Civil, Personal Injury, Conciliation, Implied Consent, Minor Civil Judgments, and Unlawful Detainer);

(2) Formal Probate, Other Probate, Guardianship and Conservatorship, and Trust;

(3) All Major and Minor Criminal Case Types; and

(4) All electronic case records that are accessible to the public under Rule 4 and that have been in existence for more than 90 years.

(h) *Remote Access to Appellate Court Records.* The Clerk of the Appellate Courts will provide remote access to publicly accessible appellate court records filed on or after July 1, 2015, except:

(1) The record on appeal as defined in MINN. R. CIV. APP. P. 110.01;

(2) Data elements listed in clause (b)(1) – (5) of this rule contained in the appellate court records case management system (currently known as “PMACS”);

(3) Appellate briefs, provided that the State Law Library may, to the extent that it has the resources and technical capacity to do so, provide remote access to appellate court briefs provided that the following are redacted: appendices or addenda to briefs, data listed in clause (b)(1) – (5) of this rule, and other records that are not accessible to the public.

To the extent that the Clerk of the Appellate Courts has the resources and technical capacity to do so, the Clerk of Appellate Courts may provide remote access to appellate records filed between January 1, 2013 and June 30, 2015. Public appellate records for which remote access is not available may be accessible at public terminals in the state law library.

(ei) *Exceptions.*

(1) *Particular Case.* After notice to the parties and an opportunity to be heard, the presiding judge may by order

direct the court administrator to provide remote electronic access to publicly accessible records of a particular case that would not otherwise be remotely accessible under parts (a), (b) ~~or (c)~~ through (h) of this rule.

~~(2) *Appellate Briefs.* The State Law Library may, to the extent that it has the resources and technical capacity to do so, provide remote access to appellate court briefs provided that the following are redacted: appendices to briefs, data listed in Rule 8, subd. 2(b) of these rules, and other records that are not accessible to the public.~~

~~(32) *E-mail and Faesimile Other Means of Transmission.* Any record custodian may, in the custodian's discretion and subject to applicable fees, provide public access by e-mail or faesimile other means of transmission to publicly accessible records that would not otherwise be remotely accessible under parts (a), (b) through (h) ~~or (c)~~ of this rule.~~

~~(43) *E-filed Records.* Documents electronically filed or served using the E-Filing System designated by the state court administrator shall be remotely accessible to the person filing or serving them and the recipient of them, on the E-Filing System for the period designated by the court, and on the court's case management system to the extent technically feasible.~~

~~(f) *Delayed Application.* To reduce the burden and costs of modifying existing case management systems scheduled to be replaced by MNCIS,~~

~~the remote access provisions of Rule 8, subd. 2, shall only apply to the individual district courts to the extent that they have transferred case management to MNCIS, provided that: (1) such courts shall not modify the remote access to case records that they are providing as of the issuance of this order other than to comply with any other rules or laws limiting access to records or in preparation of compliance with Rule 8, subd. 2; and (2) such courts shall comply with Rule 8, subd. 3, as if Rule 8, subd. 2, were in effect.~~

**Subd. 3. Bulk Distribution of Court Records.** A custodian shall, to the extent that the custodian has the resources and technical capacity to do so, provide bulk distribution of its publicly accessible electronic case records as follows:

- (a) Records subject to remote access limitations in Rule 8, subd. 2, shall not be provided in bulk to any individual or entity except as authorized by order or directive of the Supreme Court or its designee. ~~Preconviction criminal records and preconviction or preadjudication juvenile records shall be provided only to an individual or entity which enters into an agreement in the form approved by the state court administrator providing that the individual or entity will not disclose or disseminate the data in a manner that identifies specific individuals who are the subject of such data. If the state court administrator determines that a bulk data recipient has utilized data in a manner inconsistent with such agreement, the state court administrator shall not allow further release of bulk data to that individual or entity except upon order of a court.~~

- (b) All other electronic case records that are remotely accessible to the public under Rule 8, subd. 2 shall be provided to any individual or entity.

**Subd. 4. Criminal Justice and Other Government Agencies.** Notwithstanding other rules, access to non-publicly accessible records and remote and bulk access to publicly accessible records by criminal justice and other government agencies shall be governed by order or directive of the Supreme Court or its designees.

~~(a) *Authorized by Law.* Criminal justice agencies, including public defense agencies, and other state or local government agencies may obtain remote and bulk case record access where access to the records in any format by such agency is authorized by law.~~

~~(b) *Discretionary Authorization for Statewide Access to Certain Case Records.* Except with respect to race data under Rule 4, subd. 1(e), Minnesota County attorneys, Minnesota state public defenders, Minnesota state and local corrections agencies, and Minnesota state and local social services agencies may obtain remote and bulk access to statewide case records in MNCIS that are not accessible to the public and are classified as Civil Domestic Violence, Juvenile, and Parent/Child Relationship case records, if the recipient of the records:~~

~~(1) executes a nondisclosure agreement in form and content approved by the state court administrator; and~~

~~(2) the custodian of the records reasonably determines that the recipient has a legitimate business need for the records and~~

~~disclosure to the recipient will not compromise the confidentiality of any of the records.~~

**Subd. 5. Access to Certain Evidence.**

(a) General. Except for medical records under part (b) of this rule, or where access is restricted by court order or the evidence is no longer retained by the court under a court rule, order or retention schedule, documents and physical objects admitted into evidence in a proceeding that is open to the public shall be available for public inspection under such conditions as the court administrator may deem appropriate to protect the security of the evidence.

(b) Medical Record Exhibits. Medical records under Rule 4, subd. 1(f), of these rules that are admitted into evidence in a commitment proceeding that is open to the public shall be available for public inspection only as ordered by the presiding judge.

(c) No Remote Access to Trial or Hearing Exhibits. Evidentiary exhibits from a hearing or trial shall not be remotely accessible, but this shall not preclude remote access to full or partial versions of such records that are or were otherwise submitted to the court as a publicly accessible record.

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**Advisory Committee Comment – 2015**

Rule 8, subd. 2, is amended in 2015 to allow for expanded remote public access to certain court records. Subdivision 2(a) has become a definition section. Subdivision 2(b) continues existing limits on remote access to certain data elements contained in the district court case management system.

Rule 8, subd. 2(c) is amended to replace “preconviction” with “pending” as the latter is more consistent with the presumption of innocence. No substantive change is being made in this rule in regard to pending criminal matters. References in the rule to juvenile delinquency proceedings have been removed as they are no longer necessary in light of the Court’s May 14, 2014, order amending MINN. R. JUV. DEL. P. 30.02 to preclude all remote public access to delinquency cases involving felony level conduct by a juvenile at least 16 years old.

Rule 8, subd. 2(d) - (g), establishes a tiered approach to remote public access to district court records. Case types with no remote access are listed in clause (d), which merely continues existing practice for these case types. Proceedings for orders for protection and harassment restraining orders are already maintained with no remote access as required by the federal Violence Against Women Act, 18 U.S.C.A. § 2265(d)(3). Felony-level juvenile delinquency proceedings involving a juvenile at least 16 years old are also already maintained with no remote access under MINN. R. JUV. DEL. P. 30.02. All proceedings governed by MINN. R. JUV. PROT. P. are also currently maintained with no remote or courthouse electronic access, although publicly accessible records will not be accessible at a courthouse terminal.

Rule 8, subd. 2(e), continues the existing level of remote access, which currently includes no documents, for all proceedings under MINN. SPEC. R. COMMITMENT & TREATMENT ACT. This approach is consistent with the recommendation of the Court’s advisory committee on those commitment rules, and attempts to maintain current level of remote public access (register of actions, name index, and calendars) but not create additional undue hardship for litigants in such cases by making the detailed documents remotely accessible. Medical records in commitment matters also receive additional protections in Rule 8, subd. 5.

Rule 8, subd. 2(f), provides for remote public access to court-generated documents, along with the register of actions, index, calendars, and judgment docket, for all family law case types and post-adjudication paternity matters. There is no remote access to documents submitted by parties or participants. This means, for example, that there is no remote access in dissolution and child support matters to affidavits, which may contain highly sensitive information or, in some cases, unfounded allegations. Affidavits can be accessed at the courthouse to the extent that they are publicly accessible.

Rule 8, subd. 2(g), provides remote access to all publicly accessible documents in all major and minor civil and criminal cases, and all probate matters. It also continues the existing provision in these rules regarding remote access in all case types to publicly accessible case records that have been in existence for at least 90 years.

Rule 8, subd. 2(h), attempts to clarify remote access to appellate court records. The appellate courts are able to implement remote access to party-submitted documents on a day forward basis as the appellate court case management system and case types are different than those of the district court. The exceptions to remote access are consistent with those for district court records and recognize that district court records make their way into the appellate record.

Rule 8, subd. 3, as amended in 2015, retains consistent treatment for bulk and remote access. Inconsistent treatment would allow one to defeat the purpose of the other.

Rule 8, subd. 4, is amended in 2015 to recognize that the judicial branch has developed access policies to address systemic, computerized access by various government agencies. Such policy development properly belongs outside the public access rules.

Rule 8, subd. 5, is amended in 2015 to establish an exception to public access for medical records admitted into evidence in commitment proceedings. These records tend to be voluminous and redaction on an individual basis is impractical. The Supreme Court Advisory Committee on Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act felt strongly about this approach and that committee has also codified this approach in its recommended changes to the commitment rules. A number of district courts also have standing orders accomplishing the same result. This rule change would obviate the need for such standing orders.

Rule 8, subd. 5, is also amended to clarify that trial exhibits are not remotely accessible. Many exhibits because of their physical nature cannot be digitized, and therefore would not be remotely accessible. This clarification attempts to provide consistency for remote public access treatment of exhibits.