

**FILED**

May 13, 2019

**OFFICE OF  
APPELLATE COURTS**

**ADDENDUM B**

**AMENDMENTS TO THE RULES OF ADOPTION PROCEDURE**

*[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 3. APPLICABILITY OF OTHER RULES AND STATUTES**

- Rule 3.01. Rules of Civil Procedure
- Rule 3.02. Rules of Evidence
- Rule 3.03. Rules of Guardian Ad Litem Procedure
- Rule 3.04. Indian Child Welfare Act
- Rule 3.05. Court Interpreter Statutes, Rules, and Court Policies
- Rule 3.06. Interstate Compact on the Placement of Children
- Rule 3.07. Human Services Licensing Act
- Rule 3.08. Review of Progress Toward Adoption of Children Under State Guardianship
- Rule 3.09. General Rules of Practice for the District Courts
- ~~Rule 3.10. Rules of Public Access to Records of the Judicial Branch~~

\* \* \*

**RULE 6. REFEREES AND JUDGES**

- Rule 6.01. Referee Authorization to Hear Matter
- Rule 6.02. Objection to Referee Presiding Over Matter
- ~~Rule 6.03. Removal of Particular Referee~~
- Rule 6.043. Transmittal of Referee's Findings and Recommended Order
- Rule 6.054. Review of Referee's Findings and Recommended Order
- Rule 6.065. Order of the Court
- Rule 6.076. Removal of Judge or Referee

\* \* \*

**RULE 2. DEFINITIONS**

**Rule 2.01. Definitions**

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

- (1) **"Adjudicated father"** means an individual determined by a court, or pursuant to a Recognition of Parentage under Minnesota Statutes § 257.75, ~~subd. 3~~, to be the biological father of the child.

\* \* \*

- (14) **"Contested adoptive placement"** applies to children under the guardianship of the commissioner of human services and means that portion of procedures under ~~Rule 42.11 of the Rules of Juvenile Protection Procedure~~ and Minnesota Statutes § 260C.607, subd. 6, which provides for motion and hearing to contest the adoptive placement of a child under guardianship of the commissioner of human services.

\* \* \*

- (16) **"Electronic means"** is as defined in Rule 14.01(a)(7) of the General Rules of Practice for the District Courts.

\* \* \*

- (18) **"Indian child,"** ~~is as defined in the Minnesota Indian Family Preservation Act, Minn. Stat. § 260.755, subd. 8~~ Indian Child Welfare Act, 25 U.S.C. § 1903(1)(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) eligible for membership in an Indian tribe.

- (19) **"Indian custodian,"** ~~is as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(1)(6), at 25 C.F.R. § 23.2, and in the Minnesota Indian Family Preservation Act, Minn. Stat. and Minnesota Statutes § 260.755, subd. 10;~~ means an Indian person who has legal custody of an Indian child pursuant to tribal law or custom or under State law, or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

- (20) **"Indian tribe,"** ~~is as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(1)(8), at 25 C.F.R. § 23.2, and in the Minnesota Indian Family preservation Act, Minn. Stat. and Minnesota Statutes § 260.755, subd. 12;~~ means an Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any band under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1602(e).

\* \* \*

- (25) **"Parent"** ~~is defined in Minn. Stat. § 260C.007, subd. 25~~ means the biological or adoptive parent of a child, including an adjudicated father. Pursuant to Minnesota Statutes § 260.755, subd. 14, "parent" also means the biological parent of an Indian child, or any Indian person who has lawfully adopted an Indian child, including a person who has adopted a child by tribal law or custom. "Parent" does not mean an unmarried father whose paternity has not been acknowledged or established.

\* \* \*

- (32) **“Responsible social services agency”** means the county agency acting as agent of the commissioner of human services when the commissioner is legal guardian of the child.

\* \* \*

### **2019 Advisory Committee Comment**

*Rule 2.01(18) cites the definition of “Indian child” under the Minnesota Indian Family Preservation Act (MIFPA), Minn. Stat. § 260.755, subd. 8. Unlike the definition of Indian child under the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1903(4), MIFPA does not require a child who is eligible for tribal membership to be the biological child of a member of an Indian tribe. The Committee notes that the MIFPA definition provides a “higher standard of protection to the rights of the parent or Indian custodian” as contemplated by ICWA, 25 U.S.C. § 1921. See *In re the Adoption of M.T.S.*, 489 N.W.2d 285, 288 (Minn. Ct. App. 1992).*

*Rule 2.01(19) cites the definitions of “Indian custodian” under ICWA, 25 U.S.C. § 1903(6), the ICWA regulations, 25 C.F.R. § 23.2, and MIFPA, Minn. Stat. § 260.755, subd. 10. The ICWA regulation definition additionally provides that “[a]n Indian may demonstrate that he or she is an Indian custodian by looking to Tribal law or Tribal custom or State law.”*

*Rule 2.01(20) cites the definitions of “Indian tribe” under ICWA, 25 U.S.C. § 1903(5), the ICWA regulations, 25 C.F.R. § 23.2 and 23.109, and MIFPA, Minn. Stat. § 260.755, subd. 9. In situations where a child is a member or eligible for membership in more than one tribe, the ICWA definition states that the “Indian child’s tribe is the tribe with which the Indian child has the most significant contacts.” The MIFPA definition restates the ICWA definition, and then provides that if the tribe with which the child has the most significant contacts does not become involved with the outcome of the court actions, “any other tribe in which the child is eligible for membership that expresses an interest in the outcome may act as the Indian child’s tribe.” In contrast, 25 C.F.R. § 23.109, “How should a State court determine an Indian child’s Tribe when the child may be a member or eligible for membership in more than one Tribe?”, sets out a different procedure. The applicability and interplay of these three definitions should be determined on a case-by-case basis.*

## **RULE 3. APPLICABILITY OF OTHER RULES AND STATUTES**

\* \* \*

### **Rule 3.03. Rules of Guardian Ad Litem Procedure**

The Minnesota Rules of Guardian Ad Litem Procedure, codified as Rules 901–907 of the General Rules of Practice for the District Courts, apply to adoption matters.

#### **Rule 3.04. Indian Child Welfare Act and Other Minnesota Statutes**

Adoption matters concerning an Indian child shall be governed by the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1901 to § 1963; the ICWA regulations, 25 C.F.R. pt. 23; the Minnesota Indian Family Preservation Act (MIFPA), Minnesota Statutes § 260.751 to § 260.835; and by these rules when these rules are not inconsistent with ICWA, the ICWA regulations, or MIFPA~~the Indian Child Welfare Act or the Minnesota Indian Family Preservation Act.~~

\* \* \*

#### **Rule 3.08. Review of Progress toward Adoption of Children under State Guardianship**

The requirements for the responsible social services agency's reasonable efforts to finalize adoption and for court review of progress towards adoption of children under guardianship of the commissioner of human services are governed by ~~Rule 42.11 of the Rules of Juvenile Protection Procedure~~ and Minnesota Statutes § 260C.601-.619.

\* \* \*

#### **~~Rule 3.10. Rules of Public Access to Records of the Judicial Branch~~**

~~—The Rules of Public Access to Records of the Judicial Branch apply to adoption case records.~~

#### **~~2015 Advisory Committee Comment~~**

~~Rule 3.10 is added to clarify the applicability of the Rules of Public Access to adoption case records.~~

### **RULE 4. TIME; TIMELINES**

#### **Rule 4.01. Computation of Time**

Unless otherwise provided by statute ~~or these rules~~, the day of the act or event from which the designated period of time begins shall not be included in the computation of time. The last day of the period shall be included, unless it is a Saturday, Sunday or legal holiday, ~~in which event the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday.~~ When a period prescribed or allowed is three (3) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in these rules, "legal holiday" includes any holiday designated in Minn. Stat. § 645.44, subd. 5, as a holiday for the state or any state-wide branch of government and any day that the U.S. mail does not operate ~~New Year's Day, Martin Luther King's Birthday, Washington's Birthday (Presidents' Day), Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Day, and any other day designated as a holiday by the President, Congress of the~~

~~United States, or by the State.~~ For purposes of calculating time for the revocation of consent under Rule 33, the definition of “working day” under Rule 2.01(33~~z~~) applies.

#### **Rule 4.02. Additional Time After Service by U.S. Mail or Other Means**

Whenever a person has the right or is required to do an act within a prescribed period after the service of a notice or other document and the notice or other document is served by U.S. mail, three (3) days shall be added to the prescribed period. If service is made by any means other than U.S. mail and accomplished after 5:00 p.m. local Minnesota time on the day of service, one (1) additional day shall be added to the prescribed period.

\* \* \*

### **RULE 6. REFEREES AND JUDGES**

\* \* \*

#### **~~Rule 6.03. Removal of Particular Referee~~**

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

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

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

#### **~~2004 Advisory Committee Comment~~**

~~*A party may not remove a particular referee and then object to having the case heard by any referee.*~~

**Rule 6.043. Transmittal of Referee's Findings and Recommended Order**

\* \* \*

**Rule 6.054. Review of Referee's Findings and Recommended Order**

\* \* \*

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

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

\* \* \*

**Rule 6.065. Order of the Court**

When no review is requested, or when the right to review is waived, the findings and recommended order of the referee become the order of the court when confirmed by the judge as written or when modified by the judge sua sponte. The order shall be confirmed or modified by the court within three (3) days of the transmittal of the findings and proposed order.

**Rule 6.076. Removal of Judge or Referee**

A party or the county attorney may file with the court and serve upon all other parties a notice to remove a particular judge or referee under the procedures and standards set forth in Rule 63 of the Minnesota Rules of Civil Procedure.

~~**Subd. 1. Disability of Judge.** If by reason of death, sickness, or other disability a judge before whom a proceeding in the matter has been tried is unable to perform judicial duties after a decision is made or findings of fact and conclusions of law are filed, any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties; but if such other judge is satisfied that the duties cannot be performed because that judge did not preside at the trial, or for any other reason, that judge may exercise discretion to grant a new trial. If there is no other judge of the district who is qualified, the chief judge shall immediately notify the Chief Justice of the Minnesota Supreme Court.~~

~~**Subd. 2. Interest or Bias.** No judge shall preside over any adoption matter if that judge is interested in its determination or if that judge might be excluded for bias from acting as a juror in the matter. If there is no other judge of the district who is qualified, the chief judge shall immediately notify the Chief Justice of the Minnesota Supreme Court.~~

**Subd. 3. Notice to Remove.**

- ~~(a) — Procedure. A party or the county attorney may file with the court and serve upon all other parties a notice to remove. The notice shall be served and filed within ten (10) days of the date the party receives notice of the name of the judge who is to preside over the proceeding, but not later than the commencement of the proceeding.~~
- ~~(b) — Presiding Judge. A notice to remove shall not be filed against a judge who has presided at a motion or any other proceeding in the matter of which the party had notice. A judge who has presided at a motion or other proceeding may not be removed except upon an affirmative showing of prejudice on the part of the judge.~~
- ~~(c) — Showing of Prejudice. After a party or the county attorney has once disqualified a presiding judge as a matter of right, that party may disqualify the substitute judge, but only by making an affirmative showing of prejudice. A showing that the judge might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice.~~
- ~~(d) — Assignment of Another Judge. Upon the filing of a motion to remove, or if a party or the county attorney makes an affirmative showing of prejudice against a substitute judge, the chief judge of the judicial district shall assign any other judge of any court within the district to hear the matter. If there is no other judge of the district who is qualified, the chief judge shall immediately notify the Chief Justice of the Minnesota Supreme Court.~~

**2019 Advisory Committee Comment**

*The amendments to Rule 6 are intended to establish a consistent standard for removal of judges or referees. Former Rule 6.03 governed the process for removing a particular referee from presiding over a case, either as of right or for cause. This closely tracked the process for removing a particular judge from presiding over a case, in former Rule 6.07. Both judges and referees are governed by the Code of Judicial Conduct, and the committee believes the same process should govern removals of judges and removals of referees. Accordingly, former Rule 6.03 has been deleted, and removals of judges and referees are now governed by Rule 6.06. The rule incorporates the judicial removal procedures of Civil Procedure Rule 63, which in turn allows for a limited opportunity to remove a judge as of right, and (as of July 1, 2018) incorporates the Code of Judicial Conduct. The same standard is used in the Rules of Criminal Procedure (Minn. R. Crim. P. 26.03, subd. 14) and the Rules of Juvenile Delinquency Procedure (Minn. R. Juv. Del. P. 22).*

## **RULE 10. ORDERS**

\* \* \*

### **Rule 10.03. Service**

**Subd. 1. Court Orders-Persons to be Served and Method of Service.** Service of court orders shall be made upon each party and such other persons as the court may direct. Service may be made personally at the hearing, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court. If a party is represented by counsel, service shall be upon such counsel. Filing and service of an order by the court administrator shall be accomplished within ten ~~(10)~~ days of the date the judicial officer delivers the order to the court administrator.

**Subd. 2. Adoption Decree-Persons to be Served and Method of Service.** The findings of fact, conclusions of law, order for judgment, and adoption decree issued pursuant to Rule 45 shall be served by the court administrator personally at the hearing, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court upon:

- (a) each party;
- (b) the Commissioner of Human Services for children who are:
  - (i) under guardianship of the Commissioner or a licensed child-placing agency according to Minnesota Statutes § 260C.201, subd. 11, or § 260C.317;
  - (ii) placed by the commissioner, commissioner's agent, or licensed child-placing agency after a consent to adopt according to Minnesota Statutes § 259.24 or under an agreement conferring authority to place for adoption according to Minnesota Statutes § 259.25; or
  - (iii) adopted after a direct adoptive placement approved by the district court under Minnesota Statutes § 259.47;
- (c) the Secretary of the Interior and the child's tribal social services agency, if the child is an Indian child; and
- (d) such other persons as the court may direct.

If a party is represented by counsel, delivery or service shall be upon such counsel. Filing and service of the adoption decree by the court administrator shall be accomplished within five ~~(5)~~ days of the date the judicial officer delivers the adoption decree to the court administrator. Upon request and payment of the applicable fee, the court administrator shall provide a certified copy of the adoption decree to persons entitled to receive a copy as permitted by statute or these rules.

\* \* \*



## **RULE 11. RECORDING AND TRANSCRIPTS**

**\* \* \***

### **Rule 11.03. Expense**

~~A person who is unable to pay transcript preparation costs may apply for in forma pauperis status and a waiver of transcript costs under Minn. Stat. § 563.01. If a party requesting a transcript is unable to pay the preparation cost, the party may apply to the court for an order directing the preparation and delivery of the transcript to the party requesting it, at public expense. A party's request for a transcript shall be accompanied by an in forma pauperis application. Upon a finding of the party's ability to do so, the court may order partial reimbursement for the cost of the transcript.~~

## **RULE 12. USE OF TELEPHONE AND INTERACTIVE VIDEO**

**\* \* \***

### **Rule 12.02. Hearings and Taking Testimony**

By agreement of the parties, or in exceptional circumstances upon motion of a party or on the court's own initiative, the court may hold hearings and take testimony by telephone or interactive video.

**\* \* \***

## **RULE 13. SUBPOENAS**

### **Rule 13.01. Subpoena for a Hearing or Trial**

At the request of any party, the court administrator shall issue a subpoena for a witness in an adoption matter pending before the court. Alternatively, an attorney as an officer of the court may issue and sign a subpoena on behalf of the court where the matter is pending.

### **Rule 13.02. Form; Purpose; Notice**

**Subd. 1. Form.** Every subpoena shall ~~be issued by the court administrator under seal of the court and shall state the name of the court and the title of the action. The court administrator shall issue a subpoena signed and sealed but otherwise in blank to a party requesting it, who shall fill it in before service.~~

**\* \* \***

## **RULE 20. PARTIES**

### **Rule 20.01. Party Status**

Parties to an adoption matter shall include:

\* \* \*

- (h) the child's Indian tribe, if the child is an Indian child and the tribe is or was a party in an underlying juvenile protection matter as defined in Rule 2.01(198) of the Minnesota Rules of Juvenile Protection Procedure;

\* \* \*

## **RULE 24. GUARDIAN AD LITEM**

### **Rule 24.01. Appointment**

**Subd. 1. Generally.** A guardian ad litem appointed to serve in a juvenile protection matter, as defined in Rule 2.01(196) of the Minnesota Rules of Juvenile Protection Procedure, shall continue to serve in the adoption matter following a transfer of guardianship to the commissioner of human services. In any other adoption matter, the court may appoint a guardian ad litem. The guardian ad litem shall advocate for the best interests of the child and shall continue to serve until the adoption decree is entered pursuant to Rule 45.

\* \* \*

## **RULE 25. METHODS OF FILING AND SERVICE**

\* \* \*

### **Rule 25.02. Types of Service**

**Subd. 1. Personal Service.** Personal service means personally delivering the document to the person to be served or leaving it at the person's home or usual place of abode with a person of suitable age and discretion residing therein. Unless otherwise provided by these rules or ordered by the court, the sheriff or other person at least ~~not less than eighteen (18)~~ years of age and not a party to the action may make personal service of a summons or other process. Any social services reports or guardian ad litem reports may be served directly by the social worker and guardian ad litem. Whenever personal service is required under these rules, the court may authorize alternative personal service pursuant to Rule 25.02, subd. 5.

- (a) ~~Personal Service Outside State. Personal service of a summons outside the state, proved by the affidavit of the person making the same, shall have the same effect as the published notice.~~

(b) ~~Service Outside United States.~~ Unless otherwise provided by law, service upon an individual, other than an infant or an incompetent person, may be effected in a place outside the United States:

- (1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or
- (2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:
  - (a) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or
  - (b) as directed by the foreign authority in response to a letter rogatory or letter of request; or
  - (c) unless prohibited by the law of the foreign country, by:
    - (i) delivery to the individual personally of a copy of the summons and the complaint; or
    - (ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the court administrator to the person to be served; or
- (3) by other means not prohibited by international agreement as may be directed by the court.

\* \* \*

**Subd. 5. Waiver of Personal Service ~~Alternative Personal Service.~~**

(a) Waivers of ~~Alternative~~ personal service may be made by mailing by first-class U.S. mail, postage prepaid to the person to be served, a copy of the document to be served together with two copies of a notice and waiver acknowledgment of service by mail conforming substantially to a form to be developed by the State Court Administrator, along with a return envelope, postage prepaid, addressed to the sender.

(b) Any person served by U.S. mail who receives a notice and waiver acknowledgment of service by mail form shall, within ~~twenty~~ (20) days of the date the notice and waiver acknowledgment form is mailed, complete the waiver acknowledgment part of the form and return one copy of the completed form to the serving party.

(c) If the serving party does not receive the completed waiver acknowledgment form within ~~twenty~~ (20) days of the date it is mailed, service is not valid upon that party. The serving party shall then serve the document by any means authorized under this rule.

(d) The court may order the costs of personal service to be paid by the person served, if such person does not complete and return the notice and waiver acknowledgment form within ~~twenty~~ (20) days of the date it is mailed.

#### **Advisory Committee Comment 2012 Amendment**

*Rule 25.02, subd. 5, is added to facilitate a pilot project on electronic filing and service, but is designed to be a model for implementation of electronic filing and service if the pilot project is made permanent and statewide. The purpose of the amendment is to authorize electronic service by use of an authorized e-filing and e-service system if authorized by rule or order of the Minnesota Supreme Court. Service by electronic means is allowed for all documents except those required to be served personally or by registered mail return receipt requested.*

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

*Rule 25.02, subd. 5, is based upon alternative personal service authorized under Rule 355.02, subd. 1(e), of the General Rules of Practice for the District Courts.*

### **RULE 26. COMMENCEMENT OF ADOPTION MATTER**

#### **Rule 26.01. Commencement of an Adoption Matter**

An adoption matter is commenced by filing:

- (a) a motion for a direct placement preadoptive custody order pursuant to Rule 29;
- (b) an adoption petition; or
- (c) a motion for waiver of agency placement pursuant to Minnesota Statutes Minn. Stat. § 259.22, subd. 2(4d), when the child is not under the guardianship of the commissioner of human services.

#### **Rule 26.02. Post-Permanency Review Hearings Continue**

The filing of an adoption petition does not terminate the in-court review hearings required at least every ~~ninety~~ (90) days under Rule ~~51.0341.06~~ of the Minnesota Rules of Juvenile Protection Procedure.

### **RULE 38. POST-PLACEMENT ASSESSMENT REPORT**

\* \* \*

#### **Rule 38.05. Contested Adoptive Placement for Children Under Guardianship of the Commissioner of Human Services**

~~Subd. 1. Rule Does Not Apply to Children under Guardianship of the Commissioner.~~ The provisions of This rule Rules 38.01 to 38.04 does not apply to children under the guardianship of the commissioner of human services. Procedures for contested adoptive placements of children under the guardianship of the commissioner of human services are governed by Minn. Stat. § 260C.607, subd. 6.

**~~Subd. 2. Contested Adoptive Placements Governed by Rules of Juvenile Protection Procedure and Minnesota Statutes Chapter 260C. Procedures for contested adoptive placements of children under the guardianship of the commissioner of human services are governed by Rule 42.11 of the Rules of Juvenile Protection Procedure and Minnesota Statutes § 260C.607, subd. 6.~~**

***2014 Advisory Committee Comment***

*Rule 38.05 provides that contests over the adoptive placement of children under state guardianship are governed by the Rules of Juvenile Protection Procedure and Minnesota Statutes § 260C.607, subd. 6. A contested adoptive placement hearing for a child under guardianship of the commissioner of human services occurs when an individual not selected by the agency for adoptive placement and who has an adoptive home study makes a prima facie showing that the responsible social services agency was unreasonable in making the adoptive placement. The individual files a motion, which is heard by the judge conducting the reviews required under Minnesota Statutes § 260C.607 on the agency's reasonable efforts to in finalize adoption of the child.*

*If the court finds there is a prima facie showing, it will conduct further hearing on the motion and may order the agency to make an adoptive placement with the individual bringing the motion. A petition for adoption of a child under guardianship of the commissioner cannot be filed unless there is an adoptive placement by the responsible agency made by fully executed adoptive placement agreement. So, the process is not for contested adoption but, rather, for contested adoptive placement.*

**RULE 42. CONSOLIDATION; BIFURCATION**

**\* \* \***

**Rule 42.04. Rule Does Not Apply to Children under Guardianship of the Commissioner of Human Services**

The provisions of Rules 42.01 to 42.03 do not apply to children under the guardianship of the commissioner of human services. Procedures for contested adoptive placement of children under the guardianship of the commissioner of human services are governed by ~~Rule 42.11 of the Rules of Juvenile Protection Procedure and Minnesota Statutes~~ Minn. Stat. § 260C.607, subd. 6.

***2014 Advisory Committee Comment***

*Rule 42.04 provides that contests over the adoptive placement of children under state guardianship are governed by the Rules of Juvenile Protection Procedure and Minnesota Statutes § 260C.607, subd. 6. A contested adoptive placement hearing for a child under the guardianship of the commissioner of human services occurs when an individual not selected by the agency for adoptive placement and who has an adoptive home study makes a prima facie showing that the responsible social services agency was unreasonable in making the adoptive placement. The individual files a motion which is*

*heard by the judge conducting the reviews required under Minnesota Statutes § 260C.607 on the agency's reasonable efforts to in finalize adoption of the child.*

*If the court finds there is a prima facie showing, it will conduct a further hearing on the motion and may order the agency to make an adoptive placement with the individual bringing the motion. A petition for adoption of a child under guardianship of the commissioner cannot be filed unless there is an adoptive placement by the responsible agency made by fully executed adoptive placement agreement. So the process is not for contested adoption, but rather for contested adoptive placement.*