

STATE OF MINNESOTA  
IN SUPREME COURT

ADM10-8046

**FILED**

April 22, 2016

**OFFICE OF  
APPELLATE COURTS**

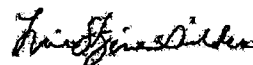
**ORDER REGARDING PROPOSED AMENDMENTS TO  
THE RULES OF PROCEDURE GOVERNING PROCEEDINGS UNDER THE  
MINNESOTA COMMITMENT AND TREATMENT ACT**

The Minnesota Supreme Court Advisory Committee on the Rules of Procedure under the Minnesota Commitment and Treatment Act has recommended additional amendments to those rules to further facilitate the judicial branch's electronic filing, service, and distribution of case materials. The Committee's report with the proposed amendments to the rules that govern civil commitment proceedings is attached to this order. The Committee's report can also be accessed on P-MACS, the public access site for the Minnesota appellate courts, under case number ADM10-8046 *Recommendations of Minnesota Supreme Court Advisory Committee on the Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Acts* (filed Apr. 1, 2016). The court will consider the proposed amendments to the Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Act after receiving and considering any written comments.

IT IS HEREBY ORDERED that any person or organization wishing to provide written comments in support of or opposition to the proposed amendments shall file one copy of those comments with AnnMarie O'Neill, Clerk of the Appellate Courts, 25 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, Minnesota 55155. The written comments shall be filed so as to be received no later than June 20, 2016.

Dated: April 22, 2016

BY THE COURT:



Lorie S. Gildea  
Chief Justice



STATE OF MINNESOTA  
IN SUPREME COURT  
ADM10-8046

In re:

Supreme Court Advisory Committee  
on the Rules of Procedure Governing Proceedings  
Under the Minnesota Commitment and Treatment Acts

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Recommendations of Minnesota Supreme Court  
Advisory Committee on the Rules of Procedure Governing Proceedings  
Under the Minnesota Commitment and Treatment Acts

Final Report

April 1, 2016

Hon. Jamie L. Anderson, Minneapolis  
Chair

Hon. G. Barry Anderson, Saint Paul  
Supreme Court Liaison

Robin C. Benson, Saint Paul, Minnesota  
Donald Betzold, Fridley, Minnesota  
Matthew Frank, Saint Paul, Minnesota  
Hon. Stoney Hiljus, Mora, Minnesota  
John L. Kirwin, Minneapolis, Minnesota  
Marilyn B. Knudsen, St. Paul, Minnesota  
Ryan B. Magnus, Mankato, Minnesota  
Douglas F. McGuire, Richfield, Minnesota  
Katie Nolting, Bemidji, Minnesota  
Joel C. Olson, Saint Paul, Minnesota  
James C. Snyder, Saint Paul, Minnesota  
James C. Zuleger, Stillwater, Minnesota  
Rita Coyle DeMeules, Saint Paul, Minnesota  
Cynthia L. Lehr, Saint Paul, Minnesota

Deanna J. Dohrmann, Saint Paul  
Staff Attorney

## **Introduction**

Pursuant to the Minnesota Supreme Court Order issued April 22, 2015, the Advisory Committee continued its work of monitoring the rules that govern civil commitment proceedings under Minnesota Statutes chapters 253B and 253D. The committee met three times in 2015 and once in 2016 to review and reconsider comments received from Kurt Anderson during the public comment period in 2015, and continued its discussions on issues that arise in the process of mental-health evaluations under Rule 20 of the Criminal Rules and the judicial appeal panel process. The committee is to report to the court by April 1, 2016 on any additional or new amendments to the Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Acts as deemed necessary by the committee.

Concerns raised by Kurt Anderson regarding access to records and interactions with providers were discussed and the committee agreed rule amendments were not the way to resolve most of his concerns. The civil commitment process requires developing a working relationship between county attorneys, defense attorneys, medical providers and hospitals. The consensus is that current processes for accessing respondents' medical records and communications with business partners are generally working statewide. A rule change would not be the solution for developing these relationships. Consideration was given to amending the rules to establish a statewide process, however, for the most part, many counties have developed individual processes that work and recommending a uniform statewide process could lead to unintended consequences.

The committee recognizes there continue to be disparate practices regarding the signing and filing of a petition for civil commitment when a person is found incompetent based on a Rule 20 evaluation. There are several substantive and policy issues and the committee acknowledges that the overall systemic problems related to those found mentally incompetent to stand trial might require action beyond rule changes. The committee recommends a sub-committee be convened, consisting of both members from this committee and the criminal rules committee, to evaluate the current processes and whether rule changes, if any, may be a starting point in clarifying and resolving some of the gaps with Rule 20 evaluations and civil commitment processes.

The current civil commitment rules do not address the unique proceedings before the judicial appeal panel. There is a small number of people who practice before the judicial appeal panel, although everyone is generally familiar with established practice. However, the committee agrees it is important that the rules should accurately and clearly reflect the judicial appeal panel process. The committee proposed amendments to various rules to provide clarity to the caption of these proceedings, the role and duration of court-appointed counsel for the respondent, and the compensation and role of the examiner, and a new rule to clarify the disclosure of commitment records to treatment providers.

72 This report contains six recommendations for substantive changes that provide  
73 clarification concerning the compensation for examiners, the content and delivery of the  
74 examiner's report, proceedings regarding the judicial appeal panel process, and the duration of  
75 court-appointed counsel. Because the current rules do not address the process for judicial appeal  
76 panel proceedings, the committee recommends the rules include more direction and guidance for  
77 court users. To avoid confusion regarding the duration of court-appointed counsel for a  
78 respondent, the advisory committee recommends adding language to the rules to clarify the role  
79 of appointed counsel is on-going until the petition is dismissed or the respondent is discharged  
80 from civil commitment.

### 81 **Effective Date**

82  
83  
84 The committee recommends an effective date of July 1, 2016. This would allow time for  
85 a public hearing or notice-and-comment period, while providing sufficient advance notice to the  
86 bench and bar and time to make any necessary adjustments to various court forms.

### 87 **Style of Report**

88  
89  
90 Recommendations as to existing rules are depicted in traditional legislative format,  
91 underscored to indicate new language and ~~lined through~~ to show deletions. Markings are  
92 omitted for the new advisory committee comments, regardless of their derivation.

93  
94  
95 Respectfully submitted,

96  
97 MINNESOTA SUPREME COURT  
98 ADVISORY COMMITTEE ON  
99 RULES OF PROCEDURE GOVERNING  
100 PROCEEDINGS UNDER THE  
101 MINNESOTA COMMITMENT AND  
102 TREATMENT ACTS  
103

**Recommendation 1:**        **The Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Acts should be amended to provide guidance for court users on the judicial appeal panel process in civil commitment cases, and to provide clarification on the duration of appointment of counsel for respondents who are civilly committed.**

## **Introduction**

These recommended amendments address several rules, all of which provide guidance and clarification on the judicial appeal panel process and the duration of court-appointed counsel for a civilly committed respondent

## **Specific Recommendation**

Rules 5, 9, 11, 12, 13, and 20 should be amended as follows:

### **SPECIAL RULES OF PROCEDURE GOVERNING PROCEEDINGS UNDER THE MINNESOTA COMMITMENT AND TREATMENT ACT**

\* \* \*

#### **Rule 5. Case Captions**

Civil commitment proceedings shall be captioned in the name of the person subject to the petition as follows: *In the Matter of the Civil Commitment of: (Full Name of Respondent), Respondent.*

The same caption shall be used in proceedings before the judicial appeal panel established under Minnesota Statutes, section 253B.19, except that the designation in the caption of the committed individual as “Respondent” shall be omitted.

#### **Advisory Committee Comment – 2016**

An individual who is committed as mentally ill and dangerous, as a sexually dangerous person, or as a sexual psychopathic personality is committed indeterminately. In these cases, the process for a reduction in custody begins with a petition filed with the Commissioner of Human Services and heard by the special review board, which makes a recommendation to the Commissioner or the judicial appeal panel. To avoid confusion or inaccurate party designations in judicial appeal panel proceedings, the rule is amended to clarify that the party designation of respondent is removed from captions related to judicial appeal panel proceedings.

#### **Rule 9. Appointment and Role of Counsel**

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149 **(a) Appointment by the Committing Court.** Immediately upon the filing of a  
150 petition for commitment or early intervention the court shall appoint a qualified attorney to  
151 represent the respondent at public expense at any subsequent proceeding under Minnesota  
152 Statutes, chapter 253B or 253D. ~~The An~~ attorneys shall represent the respondent until the court  
153 dismisses the petition ~~or the commitment and discharges the attorney or the respondent is~~  
154 discharged from commitment, and the conclusion of any related appeal.  
155

156 **(b) Private Counsel.** The respondent may employ private counsel at the respondent's  
157 expense. If private counsel is employed, the court shall discharge the appointed attorney.  
158

159 **(c) Withdrawal.** In order to withdraw, counsel must file a motion and obtain the  
160 appointing court's approval. Upon approval of withdrawal, the court shall appoint substitute  
161 counsel for respondent.  
162

163 **(d) Duty of Counsel.** Counsel for the respondent is not required to file an appeal, ~~or~~  
164 commence any proceeding, or advance a position asserted in a filing made by the respondent  
165 under Minnesota Statutes, chapter 253B or 253D, if, in the opinion of counsel, there is an  
166 insufficient basis for proceeding, except counsel shall represent a committed person who  
167 requests discharge from commitment or a reduction in custody in compliance with section  
168 253B.18 or chapter 253D.  
169

#### 170 **Advisory Committee Comment – 2016 Amendments**

171 The amendments regarding appointment of counsel ensure that  
172 committed individuals are continuously represented by counsel during  
173 commitment proceedings and during all times the individual is under  
174 commitment. No individual should be without counsel while under  
175 commitment.  
176

177 The amendments regarding the duty of counsel recognize the challenges  
178 at times faced by counsel in representing individuals proposed for or subject to  
179 commitment by balancing counsel's ethical responsibility to ensure that  
180 arguments, positions, and pleadings are meritorious with the responsibility to be  
181 a vigorous advocate for the individual. When an individual is indeterminately  
182 committed, an important responsibility of counsel is to assist the individual in  
183 periodically petitioning for a reduction in custody to ensure neutral review of the  
184 individual's commitment status.  
185

186 \* \* \*

#### 187 **Rule 11. Examiner's List**

188 The court administrator shall prepare and maintain a list of examiners. A statement of the  
189 manner and rate of compensation of examiners shall be attached to the list. Examiners shall be  
190 paid at a rate of compensation fixed by the court. If a party seeks appointment of an examiner  
191  
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not on the list, or at a rate of compensation exceeding that fixed by the court, the party shall seek approval of the court prior to appointment. Examiners in judicial appeal panel proceedings shall be appointed and compensated as provided in Minnesota Statutes, section 253B.19.

## **Rule 12. Examiner Reports**

Each court-appointed examiner shall examine the respondent and prepare and file with the court a separate report stating the examiner's opinion and the facts upon which the opinion is based. The report shall address:

(a) Whether the respondent is mentally ill, developmentally disabled, chemically dependent, mentally ill and dangerous to the public, a sexually dangerous person, or a sexual psychopathic personality;

(b) Whether the examiner recommends commitment;

(c) The appropriate form, location, and conditions of treatment, including likelihood of the need for treatment with neuroleptic medication; and

(d) The respondent's capacity to make decisions about neuroleptic medication, if needed.

If the petition alleges that the respondent is mentally ill and dangerous to the public, the report shall also address whether there is a substantial likelihood that respondent will engage in acts capable of inflicting serious physical harm on another.

If the petition alleges that the respondent is a sexual psychopathic personality and/or a sexually dangerous person, the report shall address each element set out in Minn. Stat. § 253D.02, subds. 15 and 16, respectively, including an opinion as to the likelihood that the respondent will engage in future dangerous behavior.

In proceedings before the judicial appeal panel, the examiner report shall address the criteria relating to the type or types of reduction in custody requested in the petition for reduction in custody.

The court shall distribute or electronically transmit through the E-Filing System a copy of the examiner's report to the county attorney, the respondent, and respondent's attorney immediately upon receiving the report. In judicial appeal panel proceedings, the report shall also be distributed to the attorney for the commissioner of human services.

## **Rule 13. Medical Records**

(a) **Medical Records - Defined.** For purposes of these rules, "medical records" are records and reports prepared by medical, healthcare, and/or scientific professionals that relate to the past, present, or future physical or mental health or condition of an individual including, but not limited to, medical histories, examinations, diagnoses and treatment, pre-petition screening

reports, court-appointed examiner's reports prepared pursuant to Rule 12 of these rules, and any other records designated by the presiding judge as medical records for purposes of this rule.

**(b) Access to Respondent's Medical Records.** The county attorney, respondent, respondent's attorney, court-appointed examiner, guardian ad litem, substitute decision-maker, and their agents and experts retained by them shall have access to all of the respondent's medical records and the reports of the court-appointed examiners. The records and reports may not be disclosed to any other person without court authorization or the respondent's signed consent. Except for a preliminary hearing, each party shall disclose to the other party or parties as soon as possible in advance of the hearing which of the respondent's medical records the party intends to introduce at the hearing. In judicial appeal panel proceedings, such disclosure shall be no later than three business days before a scheduled hearing or as provided in the panel's scheduling order.

\* \* \*

## Rule 20. Termination of Commitment

The court shall order termination of the commitment when the commitment expires, or upon a direct discharge by the treatment facility, or upon a discharge by the Commissioner of Human Services. Terminations of indeterminate commitments are governed by Minnesota Statutes, section 253B.18 (persons who are mentally ill and dangerous) and chapter 253D (persons who are sexually dangerous or with sexual psychopathic personalities).

The order shall also discharge the court-appointed attorney.

\* \* \*



**Recommendation 2:**            **The committee recommends a new rule be adopted to clarify the county attorney may provide medical records received into evidence and transcripts of the proceedings to treatment providers.**

**Introduction**

Rule 21 of these rules and public access rule 8, subdivision 5(b) prevents public access to medical records absent a court order authorizing such release. The committee recommends a new rule be adopted so it is clear that treatment providers may have access to a respondent's medical records without needing to seek a court order, as these medical records may be beneficial when deciding treatment options. The committee recommends that the county attorney should have the authority and the discretion to disclose a respondent's medical records received into evidence to treatment providers.

**Specific Recommendation**

Rule 26 should be adopted as follows:

**Rule 26. Treatment Provider Access to Records**

Following an order for commitment and during the pendency of that commitment, at the request of the head of a treatment facility or program to which a respondent is committed, the county attorney may provide to the facility or program electronic or paper copies of any documents received into evidence as part of the commitment proceedings and, if requested and it exists, the transcript of those proceedings. Any costs associated with obtaining the transcript shall be paid by the treatment facility or program.

**Recommendation 3:**           **The committee recommends a sub-committee be convened to review and evaluate current criminal and civil commitment processes when courts find criminal defendants incompetent to stand trial.**

**Introduction**

Defendants found incompetent by a criminal court to stand trial due to mental illness must undergo a separate civil commitment process to receive treatment to restore their capacity. Minnesota Rules of Criminal Procedure, Rule 20.01, subdivision 6 provides that if the defendant is not under commitment, the court must cause a civil commitment proceeding to be instituted against the defendant. A civil commitment proceeding is commenced by petition. The committee discussed whether the civil commitment rules should be amended to include a uniform process for commencing a civil commitment proceeding when a criminal court finds a defendant incompetent. The committee recognizes there continue to be disparate practices regarding the signing and filing of a petition for civil commitment when a person is found incompetent based on a Rule 20 evaluation. There are several substantive and policy issues and the committee acknowledges that the overall systemic problems related to those found mentally incompetent to stand trial might require action beyond rule changes. However, rule changes may be a starting point in clarifying and resolving some of the gaps with Rule 20 evaluations and civil commitment processes. Several members from this committee have already volunteered to serve on a sub-committee.

**Specific Recommendation**

The committee recommends a sub-committee be convened, consisting of both members from this committee and the criminal rules committee, to evaluate the current processes and consider rule changes that will provide more clarity and structure.