Amendments to CHIPS Rules: Changing YOUR Practice

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To provide justice through a system that assures equal access for the fair and timely resolution of cases and controversies.

MJB Mission Statement

Overview of Presentation

- Why the rules were changed
- Transition to electronic access
- Responsibility of filers to segregate confidential documents and confidential information
- Electronic filing and service
- Notarization and signatures under penalty of perjury

Why the CHIPS Rules Were Changed

- To authorize electronic access to juvenile protection court records
- To expand use of electronic filing and service to juvenile protection cases
- To adjust the requirement for notarization of documents and allow signatures under penalty of perjury pursuant to Minn. Stat. § 358.116

Timing of Rules Changes

- **Segregate confidential documents and information**
  - ✓ Effective 7/1/2015
  - ✓ For CHIPS cases in all counties
  - ✓ All CHIPS filers must segregate confidential documents and confidential information
- **Mandatory eFiling and eService (eFS)**
  - ✓ 7/1/15 for all case types in pilot counties
  - ✓ 7/1/16 for all case types in all counties

Transition to Electronic Access

- **Electronic access at courthouse terminals to public case records, register of actions, and calendars**
- **Public CHIPS documents filed before 7/1/15 not available to public in electronic format**
- **Public CHIPS documents filed on or after 7/1/15 are available to public in electronic format**

Minn. Juv. Prot. P. R. 8.03, 8.06; Minn. Pub. Acc. R. 8, subd. 2(d)

Exceptions to Electronic Access

- **These records will not be electronically accessible:**
  - ✓ **Records in cases where a child is a party**
  - ✓ **Confidential information and documents listed in Rule 8.04**

Minn. Juv. Prot. P. R. 8.01, 8.04, subds. 2 and 4(c); Minn. Pub. Acc. R. 4, subd. 1(o)(2)(D)

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Three Tiers of Access

- **There are three tiers of access to CHIPS records:**
  - ✓ **Access by the public**
  - ✓ **Access by parties**
  - ✓ **Access by participants**

Minn. Juv. Prot. P. R. 8.04, subds. 2, 3, 4

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Access by the Public

- **The public will have immediate access to public CHIPS records at courthouse terminals, including social worker and GAL reports**
- **The public will not have access to confidential documents and confidential information**
- **Judges can order public access to confidential documents *if* exceptional circumstance exists**

Minn. Juv. P. R. 8.04, subds. 3(a) & 4

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Access by Parties

- **Parties have access to all public and most confidential records**
- **Exceptions:**
  - ✓ **Recordings of children reporting abuse**
  - ✓ **Reporters of abuse or neglect**
  - ✓ **Information about HIV testing**
  - ✓ **Records subject to protective orders**

Minn. Juv. Prot. P. R. 8.04, subd. 3(b)

Access by Participants

- **Participants have access to public court records**
- **Participants may request access to confidential records orally or in writing – they are not required to file motions for access**
- **If the judge grants access, participants will have the same access as parties**

Minn. Juv. Prot. P. R. 8.04(c)

Segregation of Confidential Information

- Electronic access to CHIPS records will mean that the records are available at every courthouse in the state as soon as they are filed
- Currently, court staff review CHIPS records for confidential information before providing access
- Redaction is not practical with the switch to electronic filing

Filers Must Segregate Information

- Filers already responsible for segregating restricted identifiers and financial source documents under General Rule of Practice 11
- Starting 7/1/15 a similar process will apply to CHIPS cases
- Filers will be responsible for segregating confidential information and confidential documents

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Confidential Documents and Information

Confidential Documents and Confidential Information in CHIPS Proceedings
Juvenile Protection Rule 8.04, subd. 2

Confidential Documents *Must Use Confidential Document Cover Sheet Form 11.3*	**Confidential Information** *Must Use Confidential Information Form 11.4*
(a) Official transcript of testimony taken during portions of proceedings that are closed by the presiding judge	(d) Identity of reporter of abuse or neglect
(b) Audio or video recordings of a child alleging or describing physical abuse, sexual abuse, or neglect of any child[1]	(e) Portions of records that reveal a person has undergone HIV testing and/or HIV test results
(c) Victims' statements[1]	(j) Identity of a minor victim of an alleged or adjudicated sexual assault[2]
(e) Records or portions of records that reveal a person has undergone HIV testing and/or HIV test results	(m) Name, address, home, or location of any shelter care or foster care facility in which a child is placed pursuant to emergency protective care placement, foster care placement, pre-adoptive placement, adoptive placement, or any other type of court ordered placement
(f) Medical records, chemical dependency evaluations and records, psychological evaluations and records, and psychiatric evaluations and records	
(g) Sexual offender treatment program reports	
(h) Photographs that identify a child	
(i) Applications for ex parte emergency protective custody orders, and any resulting orders, until the hearing where all parties have an opportunity to be heard on the custody issue, provided that, if the order is requested in a Child in Need of Protection or Services (CHIPS) petition, only that portion of the petition that requests the order shall be deemed to be the application for purposes of confidentiality	
(k) Notice of pending court proceedings provided to an	

Filers Must Segregate Information

- **Confidential documents under "Confidential Documents Cover Sheet Form 11.3"**
- **Confidential information on "Confidential Information Form 11.4"**
- **This is a major change for filers, including county attorneys, GALs, and social workers**

Minn. Juv. Prot. P. R. 8.04, subd. 5

Confidential Information – Form 11.4

State of Minnesota **District Court**

County	Judicial District:	
	Court File Number:	
	Case Type:	Juvenile

In the Matter of the Welfare of the Child(ren) of:

_____

☐ Parent(s) ☐ Legal Custodian(s)

Confidential Information Form
(Form 11.4)
Minn. R. Juv. Prot. P. 8.04, subd. 5

This form shall not be accessible to the public except by court order. This form shall be accessible to case participants as authorized by the court. This form shall be accessible to case parties unless it contains information in sections 3 (identity of reporter of abuse) or 4 (HIV-related information), in which case it shall be accessible to the parties as authorized by the court.

1. Name, address, home, or location of any shelter care or foster care facility in which a child is placed under a court order.

Reference in Document	Name of Shelter/Foster Care Facility or Parent	Shelter/Foster Care Address	Child in Shelter/Foster Care
Shelter / Foster Parent 1			

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Example: Segregation of Child and Foster Parent Name

SAMPLE CHIPS PETITION PRIOR TO JULY 1, 2015

1. The name, date of birth, gender, race, current address, and county of residence of the above- named children are as follows:

Name:	Robert Anderson
Date of Birth:	01/01/2001
Gender:	Male
Address:	c/o Smith Foster Home, 123 Elm Street, Woodbury, MN 55125
County of Residence:	Washington

Name:	Sally Anderson
Date of Birth:	01/01/2004
Gender:	Female
Address:	c/o Jones Foster Home, 456 Maple Street, Woodbury, MN 55125
County of Residence:	Washington

Example: Segregation of Child and Foster Parent Name

SAMPLE CHIPS PETITION AFTER JULY 1, 2015

1. The name, date of birth, gender, race, current address, and county of residence of the above- named children are as follows:

Name:	[See Confidential Information Form 11.4
Date of Birth:	for identification information on **Child 1**]
Gender:	
Address:	[See Confidential Information Form 11.4 for
County of Residence:	for foster care information for **Child 1**]]

Child alleged victim of sexual abuse and child in foster care, so child identifying information and foster care information segregated

Name:	Sally Anderson
Date of Birth:	01/01/2004
Gender:	Female
Address:	[See Confidential Information Form 11.4 for
County of Residence:	for foster care information for **Sally Anderson**]

Child not alleged victim of sexual assault, but child in foster care, so foster care address segregated

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Sample Confidential Information – Form 11.4

case parties unless it contains information in sections 3 (identity of reporter of abuse) or 4 (HIV-related information), in which case it shall be accessible to the parties as authorized by the court.

1. **Name, address, home, or location of any shelter care or foster care facility in which a child is placed under a court order.**

Reference in Document	Name of Shelter/Foster Care Facility or Parent	Shelter/Foster Care Address	Child in Shelter/Foster Care
Shelter / Foster Parent 1	Smith Foster Home	123 Elm Street, Woodbury, MN 55125	Child 1
Shelter / Foster Parent 2	Jones Foster Home	456 Maple Street, Woodbury, MN 55125	Child 2
Shelter / Foster Parent 3			

2. **Information that identifies a child as a victim of an alleged or adjudicated sexual assault.**

Reference in document	Child's First and Last Name	Child's Date of Birth (mm/dd/yyyy)
Child 1	Robert Anderson	01/01/2001

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Failure to Comply

- **If court staff see confidential information in a public document:**
  - ✓ **Court staff place the document on confidential status**
  - ✓ **Court staff will direct the filer to submit a properly prepared version along with form 11.4**

Minn. Juv. Prot. P. R. 8.04, subd. 5

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Confidential Documents – Form 11.3

State of Minnesota **District Court**

County	Judicial District:	
	Court File Number:	
	Case Type:	Juvenile

In the Matter of the Welfare of the Child(ren) of:

_____

☐ Parent(s) ☐ Legal Custodian(s)

Confidential Document Cover Sheet
(Form 11.3)
Minn. R. Juv. Prot. P. 8.04, subd. 5

This Confidential Document Cover Sheet is accessible to the public. The documents referenced in this Cover Sheet shall not be accessible to the public except by court order.

INSTRUCTIONS: Check only the boxes that apply.

☐ Official transcripts of testimony taken during portions of proceedings that are closed by the presiding judge

☐ Audio or video recordings of a child alleging or describing physical abuse, sexual abuse, or neglect of any child

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Sample Confidential Document – Form 11.3

TEST RESULTS

Legal Name: **Robert Anderson**
Date of Birth: **January 1, 2001**
Identification: **SSN 123-45-6789**

TEST RESULTS	RESULT	TEST DATE
HIV-1 DNA, by PCR	Positive	August 20, 2015

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Example Form 11.3

- ☐ Audio or video recordings of a child alleging or describing physical abuse, sexual abuse, or neglect of any child
- ☐ Victims' statements
- ☒ Medical records (such as medical bills, lab results, or any document that refers to HIV)
- ☐ Chemical dependency evaluations and records
- ☐ Psychological evaluations and records
- ☐ Psychiatric evaluations and records
- ☐ Sexual offender treatment program reports

Failure to Comply

- **If court staff see confidential documents that have not been designated as confidential:**
  - ✓ **Court staff place the document on confidential status**
  - ✓ **Court staff will direct the filer to submit a confidential document cover sheet**

Minn. Juv. Prot. P. R. 8.04, subd. 5

Filers' Duty to Comply

- **Court staff are NOT responsible for screening for confidential information and confidential documents**
- **Filers must segregate information with Forms 11.3 and 11.4**
- **Judges can sanction filers for non-compliance**

Minn. Juv. Prot. P. R. 8.04, subd. 5.

Social Workers and Guardians ad Litem

- Social worker and guardian ad litem reports shall not contain confidential information
- Social workers and guardians ad litem are responsible for complying with the court rules
- Social workers and guardians ad litem must use Forms 11.3 and 11.4

Social Worker Report – Current Practice

SAMPLE SOCIAL WORKER REPORT PRIOR TO JULY 1, 2015

1. On August 10, 2015, Mother brought children Robert Anderson and Sally Anderson to Children's Hospital in St. Paul after Robert said "David hurt my privates." David Peterson is Mother's significant other. Mother questioned Sally and she did not report any touching by David.

2. On August 10, 2015, Dr. David Smith from Children's Hospital conducted an examination of both Robert and Sally and found evidence of sexual penetration of Robert. There was no evidence of sexual penetration of Sally.

3. On August 10, 2015, Dr. Smith contacted Washington County Child Protection and reported the sexual abuse of Robert.

Social Worker Report – New Practice

SAMPLE SOCIAL WORKER REPORT AFTER JULY 1, 2015

1. On August 10, 2015, Mother brought children Child 1 and Sally Anderson to the hospital after Child 1 said "David hurt my privates." David Peterson is Mother's significant other. Mother questioned Sally and she did not report any touching by David. [See Confidential Information Form 11.4 for identification of **Child 1**]

2. On August 10, 2015, a physician examined both Child 1 and Sally and found evidence of sexual penetration of Child 1. There was no evidence of sexual penetration of Sally.

3. On August 10, 2015, Washington County Child Protection received a report of sexual abuse of Child 1. [See Confidential Information Form 11.4 for identification information of reporter of abuse]

4. On August 15, 2015, David Peterson reported information to this worker. [See Confidential Information Form 11.4 form]

Social Worker – Form 11.4

3. Portions of juvenile protection case records that identify reporters of abuse or neglect

Reporter 1: Dr. David Smith, Children's Hospital, St. Paul, Minnesota
Reporter 2: _____
Reporter 3: _____

4. Information that a person has undergone HIV testing and/or HIV test results

On August 15, 2015, David Peterson, mother's significant other and the alleged abuser of Child 1, reported that he was HIV positive.

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Implications for Court Staff and Judges

- **Court staff cannot include confidential information in records they create – hearing notices, registers of actions, calendars**
- **Judges have discretion to include confidential information in orders they create, but should do so cautiously**
- **Orders need to incorporate confidential attachments containing children's names**

Minn. Juv. Prot. P. R. 8.05

Example of a Publicly Accessible Order

THE BEST INTERESTS OF THE CHILDREN ARE AS FOLLOWS:

A. Child's current functioning and behaviors: Robert displayed appropriate functioning and behaviors for his age. Robert asked questions about his placement. Robert expressed fear of his mother's live-in boyfriend.

Sally displayed appropriate functioning and behaviors for her age. Sally asked questions about her placement. Sally also expressed fear of her mother's live-in boyfriend.

B. Medical, educational, and developmental needs of the child: On August 10, 2015, Robert said, "David hurt my privates." David Peterson is Mother's live-in boyfriend. Mother brought both children to the hospital for a medical examination. Robert was tested for sexually transmitted diseases, and tested positive for HIV.

Order with Segregated Information

THE BEST INTERESTS OF THE CHILDREN ARE AS FOLLOWS:

A. Child's current functioning and behaviors: Child 1 displayed appropriate functioning and behaviors for his age. Child 1 asked questions about his placement. Child 1 expressed fear of his mother's live-in boyfriend.

Sally displayed appropriate functioning and behaviors for her age. Sally asked questions about her placement. Sally also expressed fear of her mother's live-in boyfriend.

B. Medical, educational, and developmental needs of the child: On August 10, 2015, Child 1 said, "David hurt my privates." David Peterson is Mother's live-in boyfriend. Mother brought both children to the hospital for a medical examination. Child 1 was tested for sexually transmitted diseases, and tested positive for a sexually transmitted disease.

Attachment with Child's Name

CONFIDENTIAL ATTACHMENT

In this order, "Child 1" refers to Robert Anderson, whose date of birth is January 1, 2001.

Electronic Filing of Documents

- **General Rule of Practice 14, which applies to CHIPS and adoption cases, requires electronic filing of documents for "Select Users"**
  - ✓ **This starts 7/1/15 in the eCourtMN pilot counties, and 7/1/16 in the remaining 76 counties**
- **Excused only by order of Chief Judge upon good cause shown**

Minn. Gen. R. Prac. 14.01(b); Minn. Juv. Prot. P. R. 31.01, subd. 1; Minn. Adop. P. R. 25.01, subd. 1.

Who is a "Select User"?

- **"Select Users" are:**
  - ✓ **Attorneys**
  - ✓ **Guardians ad litem**
  - ✓ **Government agencies**
    - **Social workers are Select Users because they are employees of government agencies**

Minn. Gen. R. Prac. 14.01(a)(10).

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Voluntary Electronic Filing

- **Once electronic filing is available to Select Users, all other filers (including self-represented litigants) have the option of filing electronically**
- **Anyone who chooses to file electronically must continue to file electronically for the rest of the case, unless excused by order of the presiding judge**

Minn. Gen. R. Prac. 14.01(b).

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Exceptions to Electronic Filing: ICWA

- **Attorneys representing Indian tribes are not required to use the electronic filing system, but may do so voluntarily**
- **This exception is made to ensure the tribes can fully exercise their rights under the Indian Child Welfare Act.**

Minn. Juv. Prot. P. R. 3.06; Minn. Adop. P. R. 3.09

Exceptions to Electronic Filing: *In camera*

- **Documents submitted for *in camera* review are submitted in the manner directed by the presiding judge**
- **Court staff retain the documents as part of the record, unless the judge directs otherwise**

Minn. Gen. R. Prac. 14.01(b); 14.03(h); 14.06.

Electronic Service

- **All electronic filers must use the eFS System to serve other electronic filers**
- **The record of service in the eFS System is sufficient proof of service and no affidavit of service is required**
- **Discovery can be served using the eFS system, but should not be filed**

Minn. Gen. R. Prac. 14.03(d); Minn. Juv. Prot. P. R. 31.02, subd. 4; Minn. Adop. P. R. 25.02, subd. 4.

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Non-Electronic Service

- All service that is not between electronic filers must be done outside the eFS System.
- This includes service by electronic filers on non-electronic filers, and all service by non-electronic filers.
- Affidavits of service are required for service outside the eFS System.

Service by Court Staff

- **Court staff have discretion to serve documents by the most appropriate means, including:**
  - ✓ **Through eFS System**
  - ✓ **Personal service at the hearing**
  - ✓ **Service by e-mail**
  - ✓ **Service by mail**
  - ✓ **Alternative personal service**
  - ✓ **Service by publication**

Minn. Gen. P. R. 14.02(f); Minn. Juv. P. R. 10.03, subd. 1

Notarization and Perjury

- **The Supreme Court has nearly eliminated the requirement of notarization**
- **Under General Rule of Practice 15, filers may choose to sign documents under penalty of perjury or under notarization**
- **Two exceptions: admissions and settlement agreements**

Minn. Gen. R. Prac. 15; Minn. Stat. § 358.116. Minn. Juv. Prot. P. R. 35.03, subds. 1, 2; Minn. Adop. P. R. 19.03.

Time to Appeal

- **Supreme Court clarified time to petition for further review from Court of Appeals:**
  - ✓ **Petition for further review filed and served within 15 days**
  - ✓ **Response filed and served with 10 days**

Minn. Juv. Prot. P. R. 47.01, 47.07

Additional Resources

- **Public Website: www.mncourts.gov**

  Court Rules: www.mncourts.gov/rules

  E-Filing: www.mncourts.gov/efile

  Children's Justice Initiative:

  http://www.mncourts.gov/?page=148

- **Contact Ann Ahlstrom or Judy Nord at:**

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Questions?