Minnesota Rules Of Public Access To Records Of The Judicial Branch

Effective July 1, 1988
With amendments effective March 1, 2008

Rule 1. Scope of Rules.

These rules govern access to the records of all courts and court administrators of the judicial branch of the state of Minnesota. They do not govern access to records of the Tax Court or the Workers' Compensation Court of Appeals, which are part of the executive branch of the state. In addition, these rules do not govern access to 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 any successor, and other applicable court rules and statutes.

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.

Rule 2. General Policy.

Records of all courts and court administrators in the state of Minnesota are presumed to be open to any member of the public for inspection or copying at all times during the regular office hours of the custodian of the records. Some records, however, are not accessible to the public, at least in the absence of a court order, and these exceptions to the general policy are set out in Rules 4, 5, 6, and 8.

Rule 3. Definitions.

Subd. 1. Custodian. The custodian is the person responsible for the safekeeping of any records held by any court, court administrator, or clerk of court. In the absence of the person usually responsible, the person who is temporarily responsible for the records is the custodian. For purposes of remote and bulk electronic access under Rule 8, the state court administrator shall be the custodian for case records that are maintained in computer systems administered by the state court administrator.

Subd. 2. Judge. "Judge" means any justice, judge, judicial officer, referee, magistrate, court-appointed arbitrator or other person exercising adjudicatory powers.

Subd. 3. Court. "Court" means the Supreme Court, the Court of Appeals, District Court, and any other court established as part of the judicial branch of the state.

Subd. 4. Court Administrator. "Court administrator" means a person employed or appointed for the purpose of administering the operations of any court or court system, including the clerk of the appellate courts, state court administrator, judicial district administrator, and court administrator of district court.

Subd. 5. Records. "Records" means any recorded information that is collected, created, received, maintained, or disseminated by a court or court administrator, regardless of physical form or method of storage. A "record" does not necessarily constitute an entire file, as a file may contain several "records." Court reporters' notes shall be available to the court for the preparation of a transcript.

(a) Case Records. "Case records" means all records of a particular case or controversy.

(b) Administrative Records. "Administrative records" means all records pertaining to the administration of the courts or court systems.

(c) Vital Statistics Records. "Vital statistics records" means all certificates or reports of birth, death, fetal death, induced abortion, marriage, dissolution and annulment, and related records.

Rule 4. Accessibility to Case Records.

Subd. 1. Accessibility. All case records are accessible to the public except the following:

(a) *Domestic Abuse Records*. 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 518B.01 is executed or served upon the record subject who is the respondent to the action;

(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,

(2) assist in assigning an appropriate sentence or other disposition in a case,

(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 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.

(c) *Judicial Work Product and Drafts*. All notes and memoranda or drafts thereof prepared by a judge or by a court employed attorney, law clerk, legal assistant or secretary and used in the process of preparing a final decision or order, except the official minutes prepared in accordance with MINN. STAT. §§ 546.24-.25.

(d) *Juvenile Appeal Cases*. Case records arising from an appeal from juvenile court proceedings that are not open to the public, except the appellate court's written opinion or unless otherwise provided by rule or order of the appellate court.

(e) *Race Records.* The contents of completed race census forms obtained from participants in criminal, traffic, juvenile and other matters, and the contents of race data fields in any judicial branch computerized information system, except that:

(1) the records may be disclosed in bulk format if the recipient of the records:

(A) executes a nondisclosure agreement in a form approved by the state court administrator in which the recipient of the records agrees not to disclose to any third party any information in the records from which either the identity of any participant or other characteristic that could uniquely identify any participant is ascertainable; and

(B) obtains an order from the supreme court authorizing the disclosure;

(2) A juror's race may be disclosed to the parties or their attorneys as part of the juror profile information unless otherwise provided by law or court rule.

Nothing in this section (e) shall prevent public access to source documents such as complaints or petitions that are otherwise accessible to the public.

(f) *Genetic Information.* Records on genetic information, other than records that have been admitted into evidence in a hearing or trial, that are from medical or scientific professionals, including but not limited to reports and affidavits. 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) *Other*. Case records that are made inaccessible to the public under:

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

(2) court rules or orders; or

(3) 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.

Subd. 3. Access to Recordings. This subdivision governs access to recordings of proceedings in the district court:

(a) **General**. Recordings of proceedings in the district court, including without limitation those used as a back-up to a stenographically recorded proceeding or as the electronic recording, are intended to assist in the preparation of a transcript. The transcript, and not the recording, is the

official record of the proceedings. Recordings of proceedings in the district court may only be used as authorized in this or other applicable rules or orders promulgated by the Supreme Court.

(b) **Off the Record Remarks**. Any spoken words in the courtroom that are not a part of a proceeding, hearing or trial of a specific case are not intended to be recorded. Recordings of such words may not be listened to or used in any way other than by authorized operators of the recording equipment to orient themselves on recording content.

(c) **Playback**. Playback of any part of the recording of a proceeding, hearing, or trial of a specific case is authorized in only the following situations:

(1) during the proceeding, hearing or trial at the direction of the court;

(2) by authorized operators of the recording equipment or an official court reporter or other authorized reporting service employee for the purpose of creating a transcript as the official record; and

(3) at the direction of the court for the use of the court.

(d) **Disseminate by Transcript Only**. Except as provided in part (c) of this rule, the contents of the recording shall be disseminated by transcript only, which transcript, and not the recording, shall be the official record.

(e) **No Transcripts in Conciliation Court**. Nothing in this rule shall permit the transcription of conciliation court proceedings, hearings or trials. Playback of any part of the recordings of conciliation court proceeding, hearing or trial is authorized only at the direction of the court for the use of the court.

Advisory Committee Comment-2005

The 2005 deletion of the word "temporary" in Rule 4, subd. 1(a), reflects statutory changes that allow the initial, ex parte order to be the permanent order of the court if no hearing is requested. See 1995 MINN. LAWS ch. 142, §§ 4, 5 (amending MINN. STAT. § 518B.01, subds. 5, 7).

The 2005 reorganization of Rule 4, subd. 1, parts (d) and (f) is not substantive in nature. Trial level juvenile court proceedings that are not accessible to the public include adoption (MINN. STAT. § 259.61 (2004); MINN. R. ADOPT. PROC. 8.01 (effective 1-1-2005), delinquency and extended jurisdiction juveniles (except where there are felony level charges and the juvenile was at least 16 years old at the time of the offense)

(MINN. STAT. § 260B.163, subd. 1(c)(2004); MINN. R. JUV. DEL. PROC. 2.01), and other proceedings closed to the public by order of the court on a case-by-case basis (*see, e.g.*, MINN. R. JUV. PROT. PROC. 27.01 (permitting closure of child protection proceeding only in exceptional circumstances, and requiring public access to closure order)). If a trial level juvenile court proceeding is not accessible to the public, then Rule 4, subd. 1(d) precludes public access to the appellate records related to that proceeding except the written opinion of the appellate court or unless otherwise ordered by the court.

The 2005 addition of race records in Rule 4, subd. 1(e) is based on the understanding that race and ethnicity information is not solicited from participants for the purpose of reselling race status of individuals to commercial enterprises. The goal is to ensure fair resolution of cases, and the rule attempts to provide a limited right of public access consistent with that goal. Access to race records, e.g., for research purposes, can be obtained under a nondisclosure agreement that limits ultimate public disclosure to aggregate statistics that do not identify individual participants. The Supreme Court has a longstanding tradition of authorizing disclosure of juvenile court records for scholarly research using nondisclosure agreements. *See, e.g., Order Authorizing Disclosure of Juvenile Court Database for Research Purposes*, No. C4-85-1848 (Minn. S. Ct. filed May 14, 2001).

The substitution of a periodically updated list of inaccessible case records for the former Appendix B in Rule 4, subd. 1(f) recognizes that the state court administrator maintains an updated list of statutes (and court rules and other legal authority) that identify case records that are not accessible to the public. The list is updated as necessary, whereas the former Appendix B quickly became obsolete soon after it was first published. It is contemplated that the list will be posted on the main state court website (www.courts.state.mn.us) for access by the general public.

The 2005 changes to Rule 4, subd. 2, recognize that a number of rules address restrictive orders. The factors to consider in seeking a protective order in regard to criminal case records are discussed in Rule 25, Rules of Criminal Procedure, *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 civil cases, see Rule 26.03, Rules of Civil Procedure and *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197 (Minn. 1986). For child in need of protective services cases, see Rule 8.07, Rules of Juvenile Protection Procedure. For juvenile delinquency cases, see Rule 10.06, subd. 5, Rules of Juvenile Delinquency Procedure.

Advisory Committee Comment-2007

The 2007 addition of Rule 4, subd. 1(f), is designed to provide some privacy protection for genetic information about individuals. The definition of "genetic information" is based in part on the privacy law governing executive branch genetic information. Act of June 1, 2006, ch. 253 § 4, 2006 MINN. LAWS 424, 426 (codified at MINN. STAT. § 13.386 (2006)). Genetic information can affect not only a party, witness or victim, but also his or her genetic relatives. Courts and parties need to consider the scope of this information when admitting and offering to admit such information into evidence. Rule 4, subd. 2, recognizes that, when necessary, protective orders can be issued under applicable procedural rules. The factors to consider in seeking a protective order in regard to criminal case records are discussed in Rule 25, Rules of Criminal Procedure, *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 civil cases, see Rule 26.03, Rules of Civil Procedure, and *Minneapolis Star & Tribune v. Schumacher*, 392 N.W.2d 197 (Minn. 1986).

Advisory Committee Comment-2008

The 2008 addition of Rule 4, subd. 1(e)(2), is designed to recognize that race data is routinely disclosed to parties as part of juror profile information for purposes of voir dire.

The 2008 addition of Rule 4, subd. 3, is based in part on IL. 18th CIR. R. 1.03. Rule 4, subd. 3, attempts to clarify the application of the Rules to recordings of testimony in light of Supreme Court policy limiting audio and video coverage of trial court proceedings, and to clarify the proper scope and role of recordings in preparing and preserving the official record.

The broad definition of "records" in Rule 3, subd. 1, appears to include recordings of court proceedings, but arguably may not include court reporter's notes. Assuming that recordings are included, it is not clear whether recordings would then be subject to the work product exception to public access (Rule 4, subd. 1(c)) or the presumption of public access (Rule 2). Assuming the presumption applies, public access creates significant administrative burdens, unresolved issues regarding what constitutes the official record, and conflicts with the Supreme Court's policy limiting audio and video coverage of trial court proceedings. MINN. GEN. R. PRAC. 4; MN. CODE JUD. CONDUCT CANON 3A(11); MINN. S. CT. ORDER, IN RE MODIFICATION OF SECTION 3A(10) OF THE MINNESOTA CODE OF JUDICIAL CONDUCT, # C7-81-300 (filed Jan. 11, 1996) (reinstating experimental program for audio and video coverage

of trial court proceedings). Although the conflict might be partially reduced by permitting public access but no public dissemination of copies of the recordings, this conflicts with the policy in Rule 2 permitting both inspection and copying. Rule 4, subd. 3, provides a straightforward resolution of all conflicts and it includes controlled playback access in appropriate circumstances.

Rule 4, subd. 3(a), recognizes that the transcript is the official record and that recordings are intended to support the creation of that record. Use of recordings is limited as provided in the rule or in other rules or orders promulgated by the Supreme Court.

Rule 4, subd. 3(b), recognizes that courtroom microphones may inadvertently pick up conversation that is intended to be protected by the attorney client privilege or is simply intended to be private conversation. The rule does not permit public access to portions of recordings that contain this material.

The controlled playback access in Rule 4, subd. 3(c), reflects what typically occurs in practice. To the extent that any abuses occur, actions of the court in controlling playback are subject to appellate review. *See, e.g.*, *Blanchard v. Golden*, No. C8-95-2390 (Minn. App. filed Feb. 29, 1996) (unpublished interim order) (denying appellant's motion for correction of transcript where trial court provided opportunity to listen to backup tape).

Rule 4, subd. 3(e), reflects the requirement of MINN. GEN. R. PRAC. 504(c) which provides that conciliation court proceedings and trials shall not be reported. Judges presiding in conciliation court often use recordings to supplement their notes. Access to the recordings of conciliation court proceedings, hearings or trials is treated in the same manner as judge's notes under Rule 4, subd. 1(c), and their playback is subject to the control of the court.

Rule 4, subd. 3, does not address the procedures for requesting and obtaining transcripts, or for correcting or modifying the same. These matters are addressed in other appropriate rules and statutes. *See, e.g.*, MINN. R. CIV. APP. P. 110; MINN. R. CRIM. P. 28.02, subds. 8, 9; MINN. STAT. §§ 486.02-.03 (2006).

Rule 5. Accessibility to Administrative Records.

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

Subd. 1. Personnel Records. Records on individuals collected because the individual is or was an employee of, performs services on a voluntary basis for, or acts as an independent contractor with the judicial branch, provided, however, that the following information is accessible to the public: name; actual gross salary; salary range; contract fees; actual gross pension; the value and nature of employer-paid fringe benefits; the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary; job title and bargaining unit; job description; education and training background; previous work experience; date of first and last employment; the status of any complaints or charges against the employee, whether or not the complaint or charge resulted in a disciplinary action; the final disposition of any disciplinary action and supporting documentation, excluding information that would identify confidential sources who are employees of the judicial branch; the terms of any agreement settling any dispute arising out of an employment relationship; work location; a work telephone number; honors and awards received; payroll time sheets or other comparable data, that are only used to account for employee's work time for payroll purposes, to the extent that they do not reveal the employee's reasons for the use of sick or other medical leave or other information that is not public; and county of residence.

(a) For purposes of this subdivision, a final disposition occurs when the person or group that is authorized to take the disciplinary action makes its final decision about the disciplinary action, regardless of the possibility of any later court proceedings or other proceedings. In the case of arbitration proceedings arising under collective bargaining agreements, a final disposition occurs at the conclusion of the arbitration proceedings, or upon the failure of the employee to elect arbitration within the time provided by the collective bargaining agreement. Final disposition includes a resignation by an individual when the resignation occurs after the final decision of the person, group, or arbitrator that is authorized to take disciplinary action.

(b) Notwithstanding contrary provisions in these rules, a photograph of a current or former employee may be displayed to a prospective witness as part of an investigation of any complaint or charge against the employee.

(c) Notwithstanding contrary provisions in these rules, if an appointed officer resigns or is terminated from employment while the complaint or charge is pending, all information relating to the complaint or charge is public, unless access to the information would jeopardize an active investigation or reveal confidential sources. For purposes of this paragraph, "appointed officer" means the clerk of the appellate courts, the state court administrator, a judicial district administrator, and a court administrator of district court.

(d) Records under subdivision 1 may be disseminated to a law enforcement agency for the purpose of reporting a crime or alleged crime committed by an employee, volunteer or independent contractor, or for the purpose of assisting law enforcement in the investigation of a crime committed or allegedly committed by an employee, volunteer, or independent contractor.

(e) Records under subdivision 1 must be disclosed to the Department of Employment and Economic Development for the purpose of administration of an unemployment benefits program under state law including without limitation the investigation, prosecution, settlement or defense of a claim related thereto.

(f) Records under subdivision 1 must be disclosed to the Department of Employee Relations and the Department of Labor and Industry for the purpose of administering workers compensation programs including without limitation the investigation, prosecution, settlement or defense of a claim related thereto.

(g) Records under subdivision 1 may be disseminated to labor organizations to the extent that the custodian determines that the dissemination is necessary to conduct elections, notify employees of fair share fee assessments, and implement the provisions of MINN. STAT. §§ 179 and 179A. Records under subdivision 1 shall be disseminated to labor organizations and to the Bureau of Mediation Services to the extent the dissemination is ordered or authorized by the Commissioner of the Bureau of Mediation Services.

(h) If the custodian determines that the release of records under subdivision 1 is necessary to protect an employee, volunteer or independent contractor from harm to self or to protect another person who may be harmed by the employee, volunteer, or independent contractor, records that are relevant to the concerns for safety may be released to: the person who may be harmed and to that person's attorney when the records are relevant to obtaining a restraining order; to a prepetition screening team conducting an investigation under section 253B.07, subdivision 1; or to a court, law enforcement agency, or prosecuting authority. If the person who may be harmed or that person's attorney receives records under this subdivision, the records may be used or released further only to the extent necessary to protect that person from harm.

Subd. 2. Personnel Related Records

(a) *Collective Bargaining Planning Records.* Management positions on economic and noneconomic labor relations items that have not been presented during the collective bargaining process or interest arbitration, including information specifically collected or created to prepare the management position.

(b) *Applicant Records***.** Records on individuals collected because the individual is or was an applicant for employment with the judicial branch, provided, however, that the following information is accessible to the public: veteran status; relevant test scores; rank on eligible lists; job history; education and training; work availability; and, after the applicant has been certified by the appointing authority to be a finalist for a position in public employment, the name of the applicant.

Subd. 3. Correspondence. Correspondence between individuals and judges; but such correspondence may be made accessible to the public by the sender or the recipient.

Subd. 4. Schedules and Assignments. The identity of appellate judges or justices assigned to or participating in the preparation of a written decision or opinion, until the decision or opinion is released.

Subd. 5. Security Records. Records that would be likely to substantially jeopardize the security of information, possessions, individuals, or property in the possession or custody of the courts against theft, tampering, improper use, illegal disclosure, trespass, or physical injury, such as security plans or codes.

Subd. 6. State Owned or Licensed Trade Secrets. Records revealing a common law trade secret or a trade secret as defined in MINN. STAT. § 325C.01 that is owned or licensed by the state and is maintained by a court or court administrator; provided, that the following are accessible to the public: the existence of any contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work.

Subd. 7. Copyrighted Material. Computer programs and related records, including but not limited to technical and user manuals, for which the judicial branch has acquired or is in the process of acquiring, a patent or copyright, or a license to use the same; provided, that the following are accessible to the public: the existence of any contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work.

Subd. 8. Competitive Bidding Records.

(a) *Sealed Bids.* Sealed bids and responses to judicial branch bid or procurement requests or solicitations, including the number of bids

or responses received, before the opening of the bids or responses at the time specified in the judicial branch request or solicitation.

(b) *Submission of Trade Secret*. Except as provided in subparagraph (c) of this subdivision, a common law trade secret or a trade secret as defined in MINN. STAT. § 325C.01 that is required to be submitted in accordance with a judicial branch bid or procurement request provided that:

(1) the submitting party marks the document(s) containing the trade secret "CONFIDENTIAL;"

(2) the submitting party submits as part of the bid or response a written request to maintain confidentiality; and

(3) the trade secret information is not publicly available, already in the possession of the judicial branch, or known to or ascertainable by the judicial branch from third parties.

(c) *Contract*. The existence of any resulting contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work, shall be accessible to the public.

Subd. 9. Compliance Records. Records and reports and drafts thereof maintained by the judicial branch information systems for purposes of compliance with MINN. STAT. § 546.27.

Subd. 10. Library Records. Records maintained by the State Law Library which: (a) link a patron's name with materials requested or borrowed by the patron or which links a patron's name with a specific subject about which the patron has requested information or materials; or (b) are submitted by a person applying for a borrower's card, other than the name of the person to whom a borrower's card has been issued.

Subd. 11. Passport Records. Passport applications and accompanying documents received by court administrators, and lists of applications that have been transmitted to the United States Passport Services Office.

Subd. 12. Attorney Work Product. The work product of any attorney or law clerk employed by or representing the judicial branch that is produced in the regular course of business or representation of the judicial branch.

Subd. 13. Judicial Branch Internal Audit Records. Information, notes, and preliminary drafts of reports relating to an audit or investigation, created, collected, and maintained by the internal auditor or audit committee of the judicial branch, or persons performing audits for the judicial branch; provided that upon the release of a final audit report by the judicial branch auditor or if the audit or investigation is no longer being

pursued actively, such audit records shall be accessible to the public except as otherwise provided by applicable law or rule.

(a) *Auditor access; personnel records*. This subdivision does not limit in any way disclosures required under MINN. STAT. §§ 609.456 or 3.978, or public access to records classified as accessible to the public by Rule 5, subd. 1.

(b) *Confidential sources*. Records on an individual who supplies information for an audit or investigation, that could reasonably be used to determine the individual's identity, are not accessible to the public if the information supplied was needed for an audit or investigation and would not have been provided to the internal auditor or person performing audits without an assurance to the individual that the individual's identity would remain not accessible to the public.

(c) *Access to records by audit committee members*. Members of an audit committee have access to records that are collected or used by the judicial branch auditor and that have been classified as not accessible to the public only as authorized by resolution of the committee.

(d) *Unreleased records*. Records related to an audit but not released in a final audit report and that the judicial branch auditor reasonably believes will be used in litigation are not accessible to the public until the litigation has been completed or is no longer being actively pursued.

(e) R*eview of Records*. If, before releasing a final audit report, the judicial branch auditor provides a person with records relating to the audit for the purpose of review and verification of the records, that person shall not disclose the records to anyone else unless and until the information becomes accessible to the public under these rules.

(f) *Duties Concerning Misuse of Public Money or Other Resources*. If the judicial branch auditor's examination discloses misuse of public money or other public resources, the judicial branch auditor may disclose records relating to the examination to the attorney general to assist in the recovery of money and other resources and to the appropriate prosecuting authority to assist in the prosecution of criminal proceedings as the evidence may warrant.

Subd. 14. Other. Matters that are made inaccessible to the public under:

(a) state statute, other than MINN. STAT. ch. 13, or

(b) federal law; or

(c) rule or order of the Supreme Court.

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

Advisory Committee Comment-2007

The 2005 changes to Rule 5, subd. 1, are based on policy applicable to employee records held by the executive branch. MINN. STAT. § 13.43 (2004). There are, however, some subtle differences from executive branch policy, including the fact that judicial employee discipline is governed by a separate set of procedures and access provisions. *See* RULES OF THE BOARD ON JUDICIAL STANDARDS. In addition, judicial branch e-mail addresses are not accessible to the public unless individual employees authorize disclosure. Limiting access helps minimize the potential for ex parte contact prohibited by law. *See* MINN. CODE JUD. CONDUCT, CANON § 3A(7).

The 2007 addition of Rule 5, subd. 2(a), is based on policy applicable to collective bargaining records held by the executive branch. MINN. STAT. § 13.37, subd. 1(c) (2006).

The 2005 changes to Rule 5, subds. 6, 7 and 8, reflect the existing practice. Trade secrets and copyrights are subject to state and federal law, and the specifics are generally clarified in procurement documents, from requests for bids to contracts, in the manner set forth in the rule. Once a vendor enters into a contract, the basic parameters of the contract relationship become accessible under Rule 5, subd. 1. These revisions provide notice to potential vendors of what to expect and are intended to ensure consistent results.

The 2005 changes to Rule 5, subd. 10, regarding State Law Library records provides consistent protection to information held by the library.

The 2005 addition of Rule 5, subd. 13, is based on policy applicable to executive branch audit records. *See* MINN. STAT. §§ 3.979, 13.392 (2004). An internal audit function is being implemented by the judicial branch as part of the transition to state funding of district court administrative costs. The scope of the audit function is currently limited to financial audits but program audits could be added later. Subdivision 13 encompasses both types of audits.

Subdivision 13 is not intended to provide a safe harbor to deny public access to records that would otherwise be accessible to the public. If an audit involves personnel records, for example, to the extent that those personnel records are accessible to the public in the hands of a supervisor or human resources office, they will continue to be accessible only from that source and would not be accessible from the auditor until a final audit report is released. Conversely, to the extent that any personnel records are not accessible to the public from the supervisor or human resources office, the records would remain off limits to the public even after the auditor releases a final report. Subdivision 13, clause (a) includes an express reference to personnel records under Rule 5, subd. 1, as audits often involve personnel records.

Implementation of the audit function includes establishment of an audit committee to provide oversight and advice to the auditor. Although the structure of that committee has not yet been finalized, subdivision 13(c) assumes that such a committee would exist and would have some access to the auditor's records via formal resolutions adopted by the committee. The requirement of a resolution prevents individual audit committee members from independently obtaining access to the auditor's records and places consistent limitations on re-disclosure to the extent that audit committee members obtain such records.

A confidential source clause is included under subd. 13(b) to protect individuals who want to cooperate with an audit or investigation. Subdivision 13(d) addresses unreleased records when litigation is a concern. Subdivision 13(e) allows the auditor to control the distribution of draft reports or record summaries to a specified "person." This process allows for verification of facts before the release of the final audit report.

The 2005 substitution of a periodically updated list for the former Appendix C in Rule 5, subd. 14 recognizes that the state court administrator maintains an updated list of statutes (and court rules and other legal authority) that identify administrative records that are not accessible to the public. The list is updated as necessary, whereas the former Appendix C became obsolete soon after it was first published. It is contemplated that the list will be posted on the main state court website (www.courts.state.mn.us) for access by the general public.

Advisory Committee Comment-2008

The 2008 addition of subd. 13(f) is based on policy applicable to records of the legislative auditor. *See* MINN. STAT. § 3.975 (2006) (legislative auditor). To the extent that misuse is uncovered as part of a personnel investigation, Rule 5, subd. 1(d), authorizes disclosure of the pertinent personnel records to law enforcement. Subd. 13(f) extends the same authority to the judicial branch auditor, who may be in a better position to report and assist law enforcement, particularly when misuse occurs in a court office that does not have the staff or technical ability to thoroughly investigate and report on the matter.

Rule 6. Vital Statistics Records.

Vital statistics records held by any court or court administrator shall be accessible to the public except as provided by statute. The state court administrator shall maintain, publish and periodically update a partial list of vital statistics records that are not accessible to the public.

Advisory Committee Comment –2005

The 2005 substitution of a periodically updated list for the former Appendix D in Rule 6 recognizes that the state court administrator maintains an updated list of statutes (and court rules and other legal authority) that identify vital statistics records that are not accessible to the public. The list is updated as necessary, whereas the former Appendix D became obsolete soon after it was first published. It is contemplated that the list will be posted on the main state court website (www.courts.state.mn.us) for access by the general public.

Rule 7. Procedure for Requesting Record Access or Case Record Correction.

Subd. 1. To Whom Request is Made. A request to inspect or obtain copies of records that are accessible to the public shall be made to the custodian and may be made orally or in writing. The custodian may insist on a written request only if the complexity of the request or the volume of records requested would jeopardize the efficiency and accuracy of the response to an oral request. All requests must include sufficient information to reasonably identify the data being sought, but the requesting person shall not be required to have detailed knowledge of the agency's filing system or procedures, nor shall the requesting person be required to disclose the purpose of the request.

Subd. 2. Response. The custodian shall respond to the request as promptly as practical.

Subd. 3. Delay or Denial; Explanation. If a request cannot be granted promptly, or at all, an explanation shall be given to the requesting person as soon as possible. The requesting person has the right to at least the following information: the nature of any problem preventing access, and the specific statute, federal law, or court or administrative rule that is the basis of the denial. The explanation shall be in writing if desired by the requesting person. Appeals are governed by Rule 9 of these rules.

Subd. 4. Referral in Certain Cases. If the custodian is uncertain of the status of a record, the custodian may ask for a status determination from the state court administrator. The state court administrator shall promptly make a determination and forward it either orally or in writing to the custodian.

Subd. 5. Correction of Case Records. An individual who believes that a case record contains clerical errors may submit a written request for correction to the court administrator of the court that maintains the record, with a copy served on all parties to the case. Such request shall be no longer than two pages in length. The court administrator shall promptly do one of the following: (a) correct a clerical error for which no court order is required; (b) forward the request to the court to be considered informally; or (c) forward the request to the party or participant who submitted the record containing the alleged clerical error who in turn may seek appropriate relief from the court. Upon forwarding under clause (b), the court may either correct the error on its own initiative or direct that the request will only be considered pursuant to a motion requesting correction. The court's directive may also establish appropriate notice requirements for a motion. The request for correction authorized in this subdivision need not be exhausted before other relief is requested.

Advisory Committee Comment-2005

The 2005 addition in Rule 7, subd. 3, of a cross reference to appeals under Rule 9 is added as a convenience to counterbalance the growing complexity of these rules. The 2005 deletion of the phrase "by phone or by mail" in Rule 7, subd. 4, recognizes that a determination is often issued in electronic format, such as e-mail or facsimile transmission.

The 2005 addition of subdivision 5 regarding correction of case records is based in part on MINN. GEN. R. PRAC. 115.11 (motions to reconsider). In the context of Internet publication of court records, a streamlined process is particularly appropriate for clerical-type errors, and should allow for prompt resolution of oversights and omissions. For example, to the extent that the register of actions, court calendar, or index in a court's case management system incorrectly incorporates provisions of a court order, judgment, or pleading, such data entry inaccuracies are typically corrected without a court order by court administration staff promptly upon learning of the inaccuracy.

> A party is not required to utilize the procedure set forth in subdivision 5 before making a formal motion for correction of a case record in the first instance. Alleged inaccuracies in orders and judgments themselves must be brought to the attention of the court in accordance with procedures established for that purpose. Clerical errors in judgments and orders typically can be addressed by motion. *See, e.g.*, MINN. GEN. R. PRAC. 375 (expedited child support process: clerical mistakes, typographical errors, and errors in mathematical calculations in orders …arising from oversight or omission may be corrected by the child support magistrate at any time upon the magistrate's own initiative or upon motion of any party after notice to all parties); MINN. R. CIV. P. 60.01 (civil cases: clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party after such notice, if any, the court orders); MINN. R. CRIM. P. 27.03, subds. 8, 9 (criminal cases: clerical mistakes in judgments, orders, or other parts of the record or errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders; the court may at any time correct a sentence not authorized by law); MINN. R. JUV. PROT. P. 46.01 (juvenile protection cases: clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time upon its own initiative or upon motion of any party and after such notice, if any, as the court orders; during the pendency of an appeal, such mistakes can be corrected with leave of the appellate court); MINN. R. CIV. APP. P. 110.05 (differences as to whether the transcript or other parts of the record on appeal truly disclose what occurred in the trial court are to be submitted to and determined by the trial court; material omissions or misstatements may be resolved by the trial court, stipulation of the parties, or by the appellate court on motion by a party or on its own initiative).
>
> Alleged inaccuracies in the records submitted by the parties and other participants in the litigation must also be brought to the attention of the court through existing procedures for introducing and challenging evidence. These procedures typically have deadlines associated with the progress of the case and failure to act in a timely fashion may preclude relief.

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

Subd. 1. Access to Original Records. Upon request to a custodian, a person shall be allowed to inspect or to obtain copies of original versions of records that are accessible to the public in the place where such records are normally kept, during regular working hours. However, copies, edited copies, reasonable facsimiles or other appropriate formats may be produced for inspection if access to the original records would: result in disclosure of

information to which access is not permitted; provide remote or bulk access that is not permitted under this rule; jeopardize the security of the records; or prove otherwise impractical. Unless expressly allowed by the custodian, records shall not be removed from the area where they are normally kept.

Subd. 2. Remote Access to Electronic Records.

(a) *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 (a register or list of the title, origination, activities, proceedings and filings in each case [MINN. STAT. § 485.07(1)]);

(2) calendars (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 (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 (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) judgments, orders, appellate opinions, and notices prepared by the court.

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 Disclosed.* Notwithstanding Rule 8, subd. 2 (a), 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 Criminal Records*. The Information Technology Division of the Supreme Court shall make reasonable efforts and expend reasonable and proportionate resources to prevent preconviction criminal records and preconviction or preadjudication juvenile records from being electronically searched by defendant name by the majority of known, mainstream automated tools, including but not limited to the court's own tools. A "preconviction criminal record" is a record, other than an appellate court record, for which there is no conviction as defined in MINN. STAT. § 609.02, subd. 5 (2004), 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) *"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.

(e) *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 records of a particular case that would not otherwise be remotely accessible under parts (a), (b) or (c) 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.

(3) *E-mail and Facsimile Transmission*. Any record custodian may, in the custodian's discretion and subject to applicable fees, provide public access by e-mail or facsimile transmission to publicly accessible records that would not otherwise be remotely accessible under parts (a), (b) or (c) of this rule.

(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 electronic case records as follows:

(a) 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.

(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. Except 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.

Subd. 6. Fees. When copies are requested, the custodian may charge the copy fee established by statute but, unless permitted by statute, the custodian shall not require a person to pay a fee to inspect a record. When a request involves any person's receipt of copies of publicly accessible information that has commercial value and is an entire formula, pattern, compilation, program, device, method, technique, process, data base, or system developed with a significant expenditure of public funds by the judicial branch, the custodian may charge a reasonable fee for the information in addition to costs of making, certifying, and compiling the copies. The custodian may grant a person's request to permit the person to make copies, and may specify the condition under which this copying will be permitted.

Advisory Committee Comment-2005

The 2005 addition of a new Rule 8, subd. 2, on remote access establishes a distinction between public access at a court facility and remote access over the Internet. Subdivision 2 attempts to take a measured step into Internet access that provides the best chance of successful implementation given current technology and competing interests at stake. The rule limits Internet access to records that are created by the courts as this is the only practical method of ensuring that necessary redaction will occur. Redaction is necessary to prevent Internet access to clear identity theft risks such as social security numbers and financial account numbers. The rule recognizes a privacy concern with respect to remote access to telephone and street addresses, or the identities of witnesses or jurors or crime victims. The identity of victims of a criminal or delinquent act are already accorded confidentiality in certain contexts [MINN. STAT. § 609.3471 (2004) (victims of criminal sexual conduct)], and the difficulty of distinguishing such contexts from all others even in a data warehouse environment may establish practical barriers to Internet access.

Internet access to preconviction criminal records may have significant social and racial implications, and the requirements of Rule 8, subd. 2(c) are intended to minimize the potential impact on persons of color who may be disproportionately represented in criminal cases, including dismissals. The rule contemplates the use of log-ins and other technology that require human interaction to prevent automated information harvesting by software programs. One such technology is referred to as a "Turing test" named after British mathematician Alan Turing. The "test" consists of a small

distorted picture of a word and if the viewer can correctly type in the word, access or log in to the system is granted. Presently, software programs do not read clearly enough to identify such pictures. The rule contemplates that the courts will commit resources to staying ahead of technology developments and implementing necessary new barriers to data harvesting off the courts' web site, where feasible.

Some district courts currently allow public access to records of other courts within their district through any public access terminal located at a court facility in that district. The definition of "remote access" has been drafted to accommodate this practice. The scope of the definition allows statewide access to the records in Rule 8, subd. 2, from any single courthouse terminal in the state, which is the current design of the new district court computer system referred to as MNCIS.

The exception in Rule 8, subd. 2(e), for allowing remote access to additional documents, is intended for individual cases when Internet access to documents will significantly reduce the administrative burdens associated with responding to multiple or voluminous access requests. Examples include high-volume or high-profile cases. The exception is intended to apply to a specific case and does not authorize a standing order that would otherwise swallow the rule.

The 2005 addition of a new Rule 8, subd. 3, on bulk distribution, complements the remote access established under the preceding subdivision. Courts have been providing this type of bulk data to the public for the past ten years, although distribution has mainly been limited to noncommercial entities and the media. The bulk data would not include the data set forth in Rule 8, subd. 2(b), or any case records that are not accessible to the public. The bulk data accessible to the public would, however, include preconviction criminal records as long as the individual or entity requesting the data enters into an agreement in the form approved by the state court administrator that provides 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.

The 2005 addition of new Rule 8, subd. 4(a), regarding criminal justice and other governmental agencies, recognizes that the courts are required to report certain information to other agencies and that the courts are participating in integration efforts (e.g., CriMNet) with other agencies. The access is provided remotely or via regular (e.g., nightly or even annually) bulk data exchanges. The provisions on remote and bulk record access are not intended to affect these interagency disclosures. Additional discretionary disclosures are authorized under subd. 4(b).

The 2005 changes to Rule 8, subd. 5, regarding access to certain evidence, are intended to address the situation in which the provisions appear to completely cut off public access to a particular document or parts of it even when the item is formally admitted into evidence (*i.e*., marked as an exhibit and the record indicates that its admission was approved by the court) in a publicly accessible court proceeding. *See, e.g.*, MINN. STAT. § 518.146 (2004) (prohibiting public access to, among other things, tax returns submitted in dissolution cases). The process for formally admitting evidence provides an opportunity to address privacy interests affected by an evidentiary item. Formal admission into evidence has been the standard for determining when most court services records become accessible to the public under Rule 4, subd. 1(b), and this should apply across the board to documents that are admitted into evidence.

The changes also recognize that evidentiary items may be subject to protective orders or retention schedules or other orders. As indicated in Rule 4, subd. 2, and its accompanying advisory committee comment, the procedures for obtaining a protective order are addressed in other rules. Similarly, as indicated in Rule 1, the disposition, retention and return of records and objects is addressed elsewhere.

Advisory Committee Comment-2007

The 2007 modifications to Rule 8, subd. 2(b), recognize the feasibility of controlling remote access to identifiers in data fields and the impracticability of controlling them in text fields such as documents. Data fields in court computer systems are designed to isolate specific data elements such as social security numbers, addresses, and names of victims. Access to these isolated elements can be systematically controlled by proper computer programming. Identifiers that appear in text fields in documents are more difficult to isolate. In addition, certain documents completed by court personnel occasionally require the insertion of names, addresses and/or telephone numbers of parties, victims, witnesses or jurors. Examples include but are not limited to appellate opinions where victim or witness names may be necessary for purposes of clarity or comprehensibility, "no-contact" orders that require identification of victims or locations for purposes of enforceability, orders directing seizure of property, and various notices issued by the court.

The use of the term "recommends" intentionally makes the last sentence of the rule hortatory in nature, and is designed to avoid creating a basis for appeals. The reference to other applicable laws and rules recognizes that there are particular provisions that may control the disclosure of certain information in certain documents. For example, the disclosure of restricted

identifiers (which includes social security numbers, employer identification numbers, and financial account numbers) on judgments, orders, decisions and notices is governed by MINN. GEN. R. PRAC. 11. Rules governing juror-related records include MINN. GEN. R. PRAC. 814, MINN. R. CRIM. P. 26.02, subd. 2, and MINN. R. CIV. P. 47.01.

The 2007 modifications to Rule 8, subd. 2(c), recognize that criminal cases often involve a conviction on less than all counts charged, and that appellate records that have long been remotely accessible have included pretrial and preconviction appeals. The clarification regarding automated tools recognizes that the participant index on the court's case management system is included in the scope of the limits on remote searching of preconviction records.

The 2007 modification to Rule 8, subd. 2(d), authorizes the state court administrator to designate additional locations as court facilities for purposes of remote access. For example, a government service center, registrar of titles office or similar location that is not in the same building as the court's offices could be designated as a location where the public could have access to court records without the limitations on remote access. In some counties, these types of offices are located in the courthouse and in other counties they are in a separate building. This change allows such offices to provide the same level of access to court records regardless of where they are located.

The 2007 addition of Rule 8, subd. 2(e)(3), is intended to reinstate the routine disclosure, by facsimile transmission or e-mail, of criminal complaints, pleadings, orders, disposition bulletins, and other documents to the general public. These disclosures were unintentionally cut off by the definition of remote access under Rule 8, subd. 2(d), which technically includes facsimile and e-mail transmissions. Limiting disclosures to the discretion of the court administrator relies on the common sense of court staff to ensure that this exception does not swallow the limits on remote and bulk data access. The rule also recognizes that copy fees may apply. Some but not all courts are able to process electronic (i.e., credit card) fee payments.

ACCESS RULE 8, subd. 4(b), authorizes disclosure of certain records to executive branch entities pursuant to a nondisclosure agreement. Minnesota Statutes § 13.03, subd. 4(a) (2006), provides a basis for an executive branch entity to comply with the nondisclosure requirements. It is recommended that this basis be expressly recognized in the nondisclosure agreement and that the agreement limit the executive branch agency's use of the nonpublicly-accessible court records to that necessary to carry out its duties as required by law in connection with any

civil, criminal, administrative, or arbitral proceeding in any federal or state court, or local court or agency or before any self-regulated body.

Advisory Committee Comment-2008

The 2008 modifications to Rule 8, subd. 2(a), recognize that privacy concerns in regard to remote access, such as identity theft, subside over time while the historical value of certain records may increase. The rule permits remote access to otherwise publicly accessible records as long as the records have been in existence for 90 years or more. This provision is based in part on the executive branch data practices policy of allowing broader access to records that are approximately a lifetime in age. *See* Minn. Stat. § 13.10, subd. 2 (2006) (private and confidential data on decedents becomes public when ten years have elapsed from the actual or presumed death of the individual and 30 years have elapsed from the creation of the data; "an individual is presumed to be dead if either 90 years elapsed since the creation of the data or 90 years have elapsed since the individual's birth, whichever is earlier, except that an individual is not presumed to be dead if readily available data indicate that the individual is still living").

The 2008 modifications to Rule 8, subds. 2(c) and 3, recognize that certain juvenile court records are accessible to the public and that the remote access policy for preconviction criminal records needs to be consistently applied in the juvenile context. There are both adjudications and convictions in the juvenile process. Delinquency adjudications are governed by MINN. R. JUV. DEL. P. 15.05, subd. 1(A), and MINN. STAT. § 260B.198, subd. 1 (Supp. 2007); traffic offender adjudications are governed by MINN. R. JUV. DEL. P. 17.09, subd. 2(B) and MINN. STAT. § 260B.225, subd. 9 (2006); and extended jurisdiction juvenile convictions are governed by MINN. R. JUV. DEL. P. 19.10, subd. 1(A) and MINN. STAT. § 260B.130, subd. 4 (2006). Juvenile records that are otherwise publicly accessible but have not reached the appropriate adjudication or conviction are not remotely accessible under Rule 8, subds. 2(c) and 3.

Rule 9. Appeal from Denial of Access.

If the custodian, other than a judge, denies a request to inspect records, the denial may be appealed in writing to the state court administrator. The state court administrator shall promptly make a determination and forward it in writing to the interested parties as soon as possible. This remedy need not be exhausted before other relief is sought.

Advisory Committee Comment-2005

The 2005 deletion of the phrase "by mail" in Rule 9 recognizes that a determination is often issued in electronic format, such as e-mail or facsimile transmission.

Rule 10. Contracting With Vendors for Information Technology Services.

If a court or court administrator contracts with a vendor to perform information technology related services for the judicial branch: (a) "court records" shall include all recorded information collected, created, received, maintained or disseminated by the vendor in the performance of such services, regardless of physical form or method of storage, excluding any vendor-owned or third-party-licensed intellectual property (trade secrets or copyrighted or patented materials) expressly identified as such in the contract; (b) the vendor shall not, unless expressly authorized in the contract, disclose to any third party court records that are inaccessible to the public under these rules; (c) unless assigned in the contract to the vendor in whole or in part, the court shall remain the custodian of all court records for the purpose of providing public access to publicly accessible court records in accordance with these rules, and the vendor shall provide the court with access to such records for the purpose of complying with the public access requirements of these rules.

Advisory Committee Comment-2005

The 2005 addition of Rule 10 is necessary to ensure the proper protection and use of court records when independent contractors are used to perform information technology related services for the courts. Where the service involves coding, designing, or developing software or managing a software development project for a court or court administrator, the court or court administrator would typically retain all record custodian responsibilities under these rules and the contract would, among other things: (a) require the vendor to immediately notify the court or court administrator if the vendor receives a request for release of, or access to, court records; (b) prohibit the disclosure of court records that are inaccessible to the public under these rules; (c) specify the uses the vendor may make of the court records; (d) require the vendor to take all reasonable steps to ensure the confidentiality of the court records that are not accessible to the public, including advising all vendor employees who are permitted access to the records of the limitations on use and disclosure; (e) require the vendor, other than a state agency, to indemnify and hold the court or court administrator and its agents harmless from all violations of the contract; (f) provide the court or court administrator with an explicit right to injunctive relief without the necessity of showing actual harm for any violation or threatened violation of the contract; (g) be governed by Minnesota law, without giving effect to Minnesota's choice of law provisions; (h) include the consent of the vendor to the personal jurisdiction of the state and federal

courts within Minnesota; and (i) require all disputes to be venued in a state or federal court situated within the state of Minnesota.

Rule 11. Immunity.

Absent willful or malicious conduct, the custodian of a record shall be immune from civil liability for conduct relating to the custodian's duties of providing access under these rules.

Advisory Committee Comment-2005

The 2005 addition of Rule 11 is intended to allow record custodians to promptly and effectively discharge their obligations under these rules without undue concern over liability for inadvertent errors. The burden of redacting each and every reference to specific pieces of information from voluminous records is a daunting task, and the threat of liability could turn even the more routine, daily access requests into lengthy processes involving nondisclosure/indemnity agreements. The court has established immunity for records custodians in other contexts. *See, e.g.,* R. BD. JUD. STDS. 3 (members of the Board on Judicial Standards are absolutely immune from suit for all conduct in the course of their official duties); R. LAWYERS PROF. RESP. 21(b) (Lawyers Professional Responsibility Board members, other panel members, District Committee members, the Director, and the Director's staff, and those entering agreements with the Director's office to supervise probation are immune from suit for any conduct in the course of their official duties); MINN R. ADMISSION TO THE BAR 12.A. (the Board of Law Examiners and its members, employees and agents are immune from civil liability for conduct and communications relating to their duties under the Rules of Admission to the Bar or the Board's policies and procedures); MINN. R. BD. LEGAL CERT. 120 (the Board of Legal Certification and its members, employees, and agents are immune from civil liability for any acts conducted in the course of their official duties); MINN. R. CLIENT SEC. BD. 1.05 (the Client Security Board and its staff are absolutely immune from civil liability for all acts in the course of their official capacity). Rule 11 does not, however, avoid an administrative appeal of a denial of access under Rule 9, declaratory judgment, writ of mandamus, or other similar relief that may otherwise be available for a violation of these rules.

APPENDIX A

Boards and Commissions that are governed by independent rules promulgated by the Supreme Court include, but are not limited to, the following:

Lawyers Professional Responsibility Board
Lawyer Trust Account Board
Client Security Fund Board
State Board of Legal Certification
Board of Continuing Education
State Board of Law Examiners
State Bar Advisory Council
Board on Judicial Standards
Standing Committee on No Fault Arbitration
Legal Services Advisory Committee