RULES OF JUVENILE PROTECTION PROCEDURE

with amendments effective July 1, 2015

A. SCOPE AND PURPOSE

RULE 1. SCOPE AND PURPOSE

Rule 1.01. Scope

These rules govern the procedure for juvenile protection matters in the juvenile courts in Minnesota. Juvenile protection matters include all matters defined in Rule 2.01(16).

Rule 1.02. Purpose

These rules establish uniform practice and procedure for juvenile protection matters in the juvenile courts of Minnesota. The purpose of these rules is to:

(a) secure for each child under the jurisdiction of the court a home that is safe and permanent;

(b) secure for each child under the jurisdiction of the court the care and guidance, preferably in the child's own home, that will best serve the physical, emotional, spiritual, and mental welfare of the child;

(c) provide judicial procedures which protect and promote the safety and welfare of the child;

(d) whenever possible and in the best interests of the child, preserve and strengthen the child's family ties, removing the child from the custody of the child's parent or legal custodian only when the child's safety and welfare cannot otherwise be adequately safeguarded;

(e) secure for the child such custody, care, and discipline, as nearly as possible equivalent to that which should have been given by the child's parent or legal custodian, when removal from the child's parent or legal custodian is necessary and in the child's best interests;

(f) provide a just, thorough, speedy, and efficient determination of each juvenile protection matter before the court and ensure due process for all persons involved in the proceedings;

(g) establish a uniform system for judicial oversight of case planning and reasonable efforts, or active efforts in the case of an Indian child, aimed at preventing or eliminating the need for removal of the child from the care of the child's parent or legal custodian;

(h) ensure a coordinated decision-making process;

(i) reduce unnecessary delays in court proceedings; and

(j) encourage the involvement of parents and children in the proceedings.

1999 Advisory Committee Comment (amended 2014)

The purpose statement is not intended to be a rule of construction. Rather, it is intended as a guide for judges, attorneys, social services personnel, families, and other judicial system stakeholders to articulate that the overall objective of juvenile court is to move expeditiously toward a resolution of the matter in such a way as to secure that which is in the best interests of the child while ensuring due process for all of the parties.

The purpose statement reflects the policy set forth in the federal Adoption and Safe Families Act of 1997, 42 U.S.C. § § 601, 603, 622, 629, 653, 675, 670-679, and 1320, which emphasizes that the overriding objective in any juvenile protection matter is to timely provide a safe, permanent home for the child. The purpose statement also reflects the policy set forth in Minnesota Statutes § 260C.001, subd. 2, which provides, in pertinent part, as follows:

The paramount consideration in all juvenile protection proceedings is the health, safety, and best interests of the child . . .

The purpose of the laws relating to juvenile protection proceedings is to:

(1) secure for each child under the jurisdiction of the court, the care and guidance, preferably in the child's own home, as will best serve the spiritual, emotional, mental, and physical welfare of the child;

(2) to provide judicial procedures that protect the welfare of the child;

(3) to preserve and strengthen the child's family ties whenever possible and in the child's best interests, removing the child from the custody of parents only when the child's welfare or safety cannot be adequately safeguarded without removal;

(4) to ensure that when removal from the child's own family is necessary and in the child's best interests, the responsible social services agency has legal responsibility for the child's removal . . . ;

(5) to ensure that, when placement is pursuant to court order, the court order removing the child or continuing the child in foster care contains an individualized determination that placement is in the best interests of the child that coincides with the actual removal of the child,

(6) to ensure that when the child is removed, the child's care and discipline is, as nearly as possible, equivalent to that which should have been given by the parents . . . ; and

(7) to ensure appropriate permanency planning for children in foster care . . . .

Rule 1.02(h) calls for coordinated decision-making in those cases where one family is involved in simultaneous juvenile, criminal, and family court matters. The parties and the court should coordinate the separate proceedings to assure a consistent outcome that is in the best interests of the child.

RULE 2. DEFINITIONS

Rule 2.01. Definitions.

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

(1) **"Adjudicated father"** means an individual determined by a court, or pursuant to a recognition of parentage under Minnesota Statutes § 257.75 to be the biological father of the child.

(2) **"Affidavit"** is defined in Rule 15 of the General Rules of Practice for the District Courts.

(3) **"Alleged father"** means an individual claimed by a party or participant to be the biological father of a child.

(4) "**Child"** means an individual under 18 years of age. "Child" also includes individuals under age 21 who are in foster care pursuant to Minnesota Statutes § 260C.451.

(5) "**Child placing agency**" means any agency licensed pursuant to Minnesota Statutes § 245A.02–.16 or § 252.28, subd. 2.

(6) **"Child custody proceeding,"** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(1), and Minnesota Statutes § 260.755, subd. 3, and means and includes:

(a) "foster care placement" which means any action removing an Indian child from the child's parent or Indian custodian for temporary placement in a foster home, institution, or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(b) "termination of parental rights" which means any action resulting in the termination of the parent-child relationship;

(c) "preadoptive placement" which means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(d) "adoptive placement" which means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime, or an award of custody to one of the parents in a divorce proceeding.

(7) **"Child support"** means an amount for basic support, child care support, and medical support pursuant to:

(a) the duty of support ordered in a parentage proceeding under Minnesota Statutes §§ 257.51–.74;

(b) a contribution by parents ordered under Minnesota Statutes § 256.87; or

(c) support ordered under Minnesota Statutes chapters 518B or 518C.

(8) **"Electronic Means"** is defined in Rule 14.01 of the General Rules of Practice for the District Courts.

(9) **"Emergency protective care"** means the placement status of a child when:

(a) taken into custody by a peace officer pursuant to Minnesota Statutes § 260C.151, subd. 6; § 260C.154; or § 260C.175; or

(b) returned home before an emergency protective care hearing pursuant to Rule 30 with court ordered conditions of release.

(10) **"Extended family member,"** is defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(2), which provides that the term is defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen (18) and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

(11) **"Foster care"** means the 24-hour-a-day substitute care for a child placed away from the child's parents or guardian and for whom a responsible social services agency has placement and care responsibilities under Minnesota Statutes § 260C.007, subd. 18. "Foster care" includes, but is not limited to, placement in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities not excluded in this subdivision, child care institutions, and preadoptive homes. A child is in foster care under this definition regardless of whether the facility is licensed and payments are made for the cost of care. Nothing in this definition creates any authority to place a child in a home or facility that is required to be licensed which is not licensed. "Foster care" does not include placement in any of the following facilities: hospitals, inpatient chemical dependency treatment facilities, facilities that are primarily for delinquent children, any corrections facility or program within a particular correction's facility not meeting requirements for Title IV-E facilities as determined by the commissioner, facilities to which a child is committed under the provision of chapter 253B, forestry camps, or jails. Foster care is intended to provide for a child's safety or access to treatment. Foster care must not be used as a punishment or consequence for a child's behavior.

(12) **"Independent living plan"** is a plan for a child age sixteen (16) or older who is in placement as a result of a permanency disposition which includes the objectives set forth in Minnesota Statutes § 260C.212, subd. 1(c)(11).

(13) **"Indian child,"** is defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(4), and modified by Minnesota Statutes § 260.755, subd. 8, and means any unmarried person who is under age eighteen (18) and is either (a) a member of an Indian tribe or (b) eligible for membership in an Indian tribe.

(14) **"Indian custodian,"** is defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(6), and Minnesota Statutes § 260.755, subd. 10, and means an Indian person who has legal custody of an Indian child under tribal law or custom or under state law, or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

(15) **"Indian child's tribe,"** is defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(5), and Minnesota Statutes § 260.755, subd. 9, and means:

(a) the Indian tribe in which an Indian child is a member or eligible for membership; or

(b) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the most significant contacts.

(16) **"Indian tribe,"** is defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(8), and Minnesota Statutes § 260.755, subd. 12, and means an Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. § 1602(c), and exercising tribal governmental powers.

(17) **"Juvenile protection case records"** means all records regarding a particular juvenile protection matter filed with or generated by the court, including orders, notices, the register of actions, the index, the calendar, and the official transcript. See also "records" defined in subdivision (31).

(18) **"Juvenile protection matter"** means any of the following types of matters:

(a) child in need of protection or services matters as defined in Minnesota Statutes § 260C.007, subd. 6, including habitual truant and runaway matters;

(b) neglected and in foster care matters as defined in Minnesota Statutes § 260C.007, subd. 24;

(c) review of voluntary foster care matters as defined in Minnesota Statutes § 260C.141, subd. 2;

(d) review of out-of-home placement matters as defined in Minnesota Statutes § 260C.212;

(e) termination of parental rights matters as defined in Minnesota Statutes § 260C.301–.328; and

(f) permanent placement matters as defined in Minnesota Statutes § 260C.503–.521, including matters involving termination of parental rights, guardianship to the commissioner of human services, transfer of permanent legal and physical custody to a relative, permanent custody to the agency, and temporary legal custody to the agency, and matters involving voluntary placement pursuant to Minnesota Statutes 260D.07.

(19) **"Legal custodian"** means a person, including a legal guardian, who by court order or statute has sole or joint legal or physical custody of the child.

(20) **"Nonresident parent"** means a parent who was not residing with the child at the time the child was removed from the home.

(21) **"Parent"** is defined in Minnesota Statutes § 260C.007, subd. 25.

(22) **"Parentage matter"** means an action under Minnesota Statutes § 257.51–.74 to:
- (a) establish a parent and child relationship, including determination of paternity or maternity, the name of the child, legal and physical custody, parenting time, and child support; or
- (b) declare the nonexistence of the parent and child relationship.

(23) **"Person,"** is defined in Minnesota Statutes § 260C.007, subd. 26, and includes any individual, association, corporation, partnership, and the state or any of its political subdivisions, departments, or agencies.

(24) **"Presumed father"** means an individual who is presumed to be the biological father of a child under Minnesota Statutes § 257.55, subd. 1, or § 260C.150, subd. 2.

(25) **"Protective care"** means the right of the responsible social services agency or child-placing agency to temporary physical custody and control of a child for purposes of foster care placement, and the right and duty of the responsible social services agency or child-placing agency to provide the care, food, lodging, training, education, supervision, and treatment the child needs.

(26) **"Protective supervision,"** as referenced in Minnesota Statutes § 260C.201, subd. 1(a)(1), means the right and duty of the responsible social services agency or child-placing agency to monitor the conditions imposed by the court directed to the correction of the child's need for protection or services while in the care of the child's parent or legal custodian.

(27) **"Putative Father"** is defined in Minnesota Statutes § 259.21.

(28) "**Qualified expert witness**," is defined in Minnesota Administrative Rule 9560.0221, subp. 3G, and means:
- (a) a member of an Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs of family organization and child rearing;
- (b) a lay expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe; or
- (c) a professional person having substantial education and experience in the area of the professional person's specialty, along with substantial knowledge of prevailing social and cultural standards and child-rearing practices within the Indian community.

(29) **"Reasonable efforts to prevent placement,"** is defined in Minnesota Statutes § 260.012(d) and means:

(a) the agency has made reasonable efforts to prevent the placement of the child in foster care; or
(b) given the particular circumstances of the child and family at the time of the child's removal, there are no service or efforts available which could allow the child to safely remain in the home.

"Reasonable efforts" are made upon the exercise of due diligence by the responsible social services agency to use culturally appropriate and available services to meet the needs of the child and the child's family.

(30) **"Reasonable efforts to finalize a permanent plan for the child,"** is defined in Minnesota Statutes § 260.012(e) and (f), and means due diligence by the responsible social services agency:
(a) to reunify the child with the parent or guardian from whom the child was removed;
(b) to assess a noncustodial parent's ability to provide day-to-day care for the child and, where appropriate, provide services necessary to enable the noncustodial parent to safely provide the care, as required by Minnesota Statutes § 260C.212, subd. 4;
(c) to conduct a relative search as required under Minnesota Statutes § 260C.212, subd. 5;
(d) to place siblings removed from their home in the same home for foster care or adoption, or transfer permanent legal and physical custody to a relative. Visitation between siblings who are not in the same foster care, adoption, or custodial placement or facility shall be consistent with Minnesota Statutes § 260C.212, subd. 2; and
(e) when the child cannot return to the parent or guardian from whom the child was removed, to plan for and finalize a safe and legally permanent alternative home for the child, and consider permanent alternative homes for the child inside or outside of the state, preferably through adoption or transfer of permanent legal and physical custody of the child.

"Reasonable efforts" are made upon the exercise of due diligence by the responsible social services agency to use culturally appropriate and available services to meet the needs of the child and the child's family.

(31) **"Records"** is defined in Rule 3 of the Rules of Public Access to Records of the Judicial Branch. See also "juvenile protection case records" defined in subdivision (17).

(30) **"Relative"** is defined in Minnesota Statutes § 260C.007, subd. 27, and means a person related to the child by blood, marriage, or adoption, or an individual who is an important friend with whom the child has resided or had significant contact. For an Indian child, "relative" includes members of the extended family as defined by the law or custom of the Indian child's tribe or, in the absence of laws

or custom, nieces, nephews, or first or second cousins, as provided in the Indian Child Welfare Act of 1978, 25 U.S.C. § 1903(2).

(33) **"Removed from home"** means the child has been taken out of the care of the parent or legal custodian, including a substitute caregiver, and placed in foster care or in a shelter care facility.

(34) **"Reservation,"** is defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(10), and means Indian country as defined in 18 U.S.C. § 1151 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.

(35) **"Shelter care facility,"** as adapted from Minnesota Statutes § 260C.007, subd. 30, means a physically unrestricting facility, including but not limited to, a hospital, a group home, or a facility licensed for foster care pursuant to Minnesota Statutes Chapter 245A, used for the temporary care of a child during the pendency of a juvenile protection matter.

(36) **"Trial home visit,"** is defined in Minnesota Statutes § 260C.201, subd. 1(a)(3), and means the child is returned to the care of the parent or legal custodian from whom the child was removed for a period not to exceed six months, with agency authority and responsibilities set forth in the statute.

(37) **"Tribal court,"** is defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(12), and means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(38) **"Voluntary foster care"** means placement of a child in foster care based on a written agreement between the responsible social services agency or child placing agency and the child's parent, guardian, or legal custodian or the child, when the child is age 18 or older. The voluntary foster care agreement gives the agency legal responsibility for the placement of the child. The voluntary foster care agreement is based on both the agency's and the parent's, guardian's, or legal custodian's assessment that placement is necessary and in the child's best interests. See Minnesota Statutes § 260C.227, § 260C.229, and § 260D.02, subd. 5.

(39) **"Voluntary foster care of an Indian child,**" is defined in Minnesota Statutes § 260.755, subd. 22, and means a decision in which there has been participation by a local social services agency or private child-placing agency resulting in the temporary placement of an Indian child away from the home of the child's parent or Indian custodian in a foster home, institution, or the home of a guardian, and the parent or Indian custodian may have the child returned upon demand.

RULE 3. APPLICABILITY OF OTHER RULES AND STATUTES

Rule 3.01. Rules of Civil Procedure

Except as otherwise provided by statute or these rules, the Minnesota Rules of Civil Procedure do not apply to juvenile protection matters.

Rule 3.02. Rules of Evidence

Subd. 1. Generally. Except as otherwise provided by statute or these rules, in a juvenile protection matter the court shall only admit evidence that would be admissible in a civil trial pursuant to the Minnesota Rules of Evidence.

Subd. 2. Certain Out-of-Court Statements Admissible. An out-of-court statement not otherwise admissible by statute or rule of evidence is admissible as evidence in a juvenile protection matter if:

(a) the statement was made by a child under ten (10) years of age or by a child ten (10) years of age or older who is mentally impaired as defined in Minnesota Statutes § 609.341, subd. 6;

(b) the statement alleges, explains, denies, or describes:

(1) any act of sexual penetration or contact performed with or on the child;

(2) any act of sexual penetration or contact with or on another child observed by the child making the statement;

(3) any act of physical abuse or neglect of the child by another; or

(4) any act of physical abuse or neglect of another child observed by the child making the statement;

(c) the court finds that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability; and

(d) the proponent of the statement notifies all other parties of the particulars of the statement and the intent to offer the statement sufficiently in advance of the proceeding at which the proponent intends to offer the statement into evidence to provide the parties with a fair opportunity to respond to the statement.

For purposes of this subdivision, an out-of-court statement includes a video, audio, or other recorded statement.

Subd. 3. Judicial Notice. In addition to the judicial notice permitted under the Rules of Evidence, the court, upon its own motion or the motion of any party or the county attorney, may take judicial notice only of findings of fact and court orders in the juvenile protection court file and in any other proceeding in any other court file involving the child or the child's parent or legal custodian.

Rule 3.03. Indian Child Welfare Act

Juvenile protection matters concerning an Indian child shall be governed by the Indian Child Welfare Act, 25 U.S.C. § 1901 to § 1963; the Minnesota Indian Family Preservation Act, Minnesota Statutes § 260.751 to § 260.835; and by these rules when these rules are not inconsistent with the Indian Child Welfare Act or the Minnesota Indian Family Preservation Act.

Rule 3.04. Rules of Guardian Ad Litem Procedure

The Rules of Guardian Ad Litem Procedure apply to juvenile protection matters.

Rule 3.05. Court Interpreter Statutes, Rules, and Court Policies

The statutes, court rules, and court policies regarding appointment of court interpreters apply to juvenile protection matters. The court may appoint an interpreter of its own selection and may fix reasonable compensation pursuant to such statues, court rules and court policies.

Rule 3.06. General Rules Practice for the District Courts

Except as otherwise provided by statute or these rules, Rules 1-2, 4-14, and 901-907 of the General Rules of Practice for the District Courts apply to juvenile protection matters. Rules 3 and 101-814 of the General Rules of Practice for the District Courts do not apply to juvenile protection matters. Rule 5 of the General Rules of Practice for the District Courts does not apply to attorneys who represent Indian tribes in juvenile protection matters.

2008 Advisory Committee Comment

Consistent with the Indian Child Welfare Act, 25 U.S.C. § 1911(d), Rule 10 of the General Rules of Practice for the District Courts addresses recognition of tribal court orders, judgments, and other judicial acts.

2015 Advisory Committee Comment

Rule 3.06 is amended to specify the applicability of the General Rules of Practice for the District Courts to juvenile protection matters.

Rule 5 of the General Rules of Practice provides, in part: "Lawyers who are admitted to practice in the trial courts of any other jurisdiction may appear in any of the courts of this state provided (a) the pleadings are also signed by a lawyer duly admitted to practice in the State of Minnesota, and (b) such lawyer admitted in Minnesota is also present before the court, in chambers or in the courtroom or participates by telephone in any hearing conducted by telephone." General Rule 5 is being amended in 2015 to provide an "out-of-state lawyer is subject to all rules that apply to lawyers admitted in Minnesota, including rules related to e-filing." Consistent with the letter and spirit of the Indian Child Welfare Act, the Juvenile Protection Rules Committee does not want to place any barriers to participation by Indian tribes in juvenile protection matters. For that reason, Rule 3.06 is amended to provide that the requirements of Rule 5 dealing with

pro hac vice and electronic filing are not applicable to attorneys who represent Indian tribes.

Rule 3.07. Rules of Public Access to Records of the Judicial Branch

The Rules of Public Access to Records of the Judicial Branch apply to juvenile protection case records.

B. GENERAL OPERATING RULES

RULE 4. TIME; TIMELINE

Rule 4.01. Computation of Time

Unless otherwise provided by statute, the day of the act or event from which the designated period of time begins to run shall not be included in the computation of time. The last day of the period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. When a period of time prescribed or allowed is three (3) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in these rules, "legal holiday" includes New Year's Day, Martin Luther King's Birthday, Washington's Birthday (Presidents' Day), Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Day, and any other day designated as a holiday by the President, Congress of the United States, or by the State.

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

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

Rule 4.03. Timeline

Subd. 1. Child in Need of Protection or Services Matters.

(a) **Emergency Protective Care Hearing.** If a child has been removed from the home of the parent or legal custodian pursuant to Rule 28.01, the court shall hold an emergency protective care hearing within seventy-two (72) hours of the child's removal pursuant to Rule 30.01.

(b) **Admit/Deny Hearing.** Pursuant to Rule 34.02, subd. 1(a), when the child is removed from home by court order, an admit/deny hearing shall be held within ten (10) days of the date of the emergency protective care hearing. Pursuant to Rule 34.02, subd. 2(a), when the child is not removed from home by court order, an admit/deny hearing shall be held no sooner than three (3), and no later than twenty (20) days after the parties have been served with the summons and petition.

(1) **Parent's, Indian Custodian's or Tribe's Identity Known**. In matters governed by the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., the admit/deny hearing on a petition requesting the foster care placement of an Indian child, the permanent placement of an Indian child, or the termination of parental rights to an Indian child shall not be held until at least ten (10) days after receipt of the notice required under Rule 32.06, 25 U.S.C. § 1912(a), and Minnesota Statutes § 260.761, subd. 3. The parent, Indian custodian, or child's tribe shall, upon request, be granted up to twenty (20) additional days from receipt of the notice to prepare for the admit/deny hearing.

(2) **Parent's, Indian Custodian's, or Child's Tribe's Identity Unknown**. If the identity or location of the parent, Indian custodian, or child's tribe cannot be determined, the notice required under Rule 32.06, 25 U.S.C. § 1912(a), and Minnesota Statutes § 260.761, subd. 3, shall be sent to the Secretary of the Interior who shall have fifteen (15) days to provide the requisite notice to the parent or Indian custodian and the tribe. The admit/deny hearing shall be held at least twenty-five (25) days after receipt of the notice by the Secretary. The parent, Indian custodian, or child's tribe shall, upon request, be granted up to twenty (20) additional days from receipt of the notice to prepare for the admit/deny hearing.

(c) **Scheduling Order.** Pursuant to Rule 6.02, the court shall issue a scheduling order at the admit/deny hearing held pursuant to Rule 34 or within fifteen (15) days of the admit/deny hearing.

(d) **Pretrial Hearing.** Pursuant to Rule 36.01, the court shall convene a pretrial hearing at least ten (10) days prior to trial.

(e) **Trial.** Pursuant to Rule 39.02, subd. 1(a), when the statutory grounds set forth in the petition are denied, a trial regarding a child in need of protection or services matter shall commence within sixty (60) days from the date of the emergency protective care hearing or the admit/deny hearing, whichever is earlier, and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and whenever possible should be over consecutive days.

(f) **Findings/Adjudication.** Pursuant to Rule 39.05, subd. 1, within fifteen (15) days of the conclusion of the testimony, during which time the court may require simultaneous written arguments to be filed and served, the court shall issue its findings and order regarding whether one or more statutory grounds set forth in the petition have been proved. The court may extend the period for issuing an order for an additional fifteen (15) days if the court finds that an extension of time is required in the interests of justice and the best interests of the child.

(g) **Disposition.** Pursuant to Rule 41.02, to the extent practicable, the court shall conduct a disposition hearing and enter a disposition order the same day it makes a finding that the statutory grounds set forth in the petition have been proved. In the event disposition is not ordered at the same time as the adjudication, the disposition order shall be issued within ten (10) days of the date the court finds the statutory grounds set forth in the petition have been proved.

(h) **Review of Legal Custody.** When the disposition is transfer of legal custody to the responsible social services agency pursuant to Rule 41.06, the court shall conduct a review hearing at least every ninety (90) days to review whether foster care is necessary and continues to be appropriate or whether the child should be returned to the home of the parent or legal custodian from whom the child was removed. Any party or the county attorney may request a review hearing before ninety (90) days.

(i) **Review of Protective Supervision.** When the disposition is protective supervision pursuant to Rule 41.06, subd. 1, the court shall review the disposition in court at least every six (6) months from the date of the disposition.

Subd. 2. Permanent Placement Matters – Notice of Timeline for Permanency Proceedings. In the case of a child who is alleged or found to be in need of protection or services and ordered into foster care or the home of a noncustodial or nonresident parent, and where reasonable efforts for reunification are required, pursuant to Rule 42.01, subd. 1, the court in its first order placing the child in foster care or the home of a noncustodial or nonresident parent shall set the date or deadline for the admit/deny hearing commencing permanent placement determination proceedings and the permanency progress review hearing. Pursuant to Rule 42.01, subd. 5, not later than when the court sets the date or deadline for the admit/deny hearing commencing the permanent placement determination proceedings and the permanency progress review hearing, the court shall notify the parties and participants of the following requirements:

(a) **Requirement of Six (6) Month Permanency Progress Review Hearing.** Pursuant to Rule 42.01, subd. 5(a), and Minnesota Statute § 260C.204, the court shall conduct a permanency progress review hearing not later than six (6) months after the child is placed in foster care or in the home of a noncustodial or nonresident parent to review the progress of the case, the parent's progress on the out-of-home placement plan, and the provision of services.

(b) **Requirement of Twelve (12) Month Hearing.** Pursuant to Rule 42.01, subd. 5(b), and Minnesota Statutes § 260C.503, the court shall commence permanent placement determination proceedings to determine the permanent status of the child not later than twelve (12) months after the child is placed in foster care or in the home of a noncustodial or nonresident parent.

Subd. 3. Termination of Parental Rights and Other Permanent Placement Matters at Twelve (12) Months.

(a) **Admit/Deny Hearing.** Pursuant to Rule 34.02 subd. 1(b), an admit/deny hearing shall be held not less than ten (10) days after service of the summons and petition upon the parties.

(1) **Parent's, Indian Custodian's, or Child's Tribe's Identity Known**. In matters governed by the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., the admit/deny hearing on a petition requesting the foster care placement of an Indian child, the permanent placement of an Indian child, or the termination of parental rights to an Indian child shall not be held until at least ten (10) days after receipt of the notice required under Rule 32.06, 25 U.S.C. § 1912(a), and Minnesota Statutes § 260.761, subd. 3. The parent, Indian custodian, or child's tribe shall, upon request, be granted up to twenty (20) additional days from receipt of the notice to prepare for the admit/deny hearing.

(2) **Parent's, Indian Custodian's, or Child's Tribe's Identity Unknown**. If the identity or location of the parent, Indian custodian, or child's tribe cannot be determined, the notice required under Rule 32.06, 25 U.S.C. § 1912(a), and Minnesota Statutes § 260.761, subd. 3, shall be sent to the Secretary of the Interior who shall have fifteen (15) days to provide the requisite notice to the parent or Indian custodian and the tribe. The admit/deny hearing shall be held at least twenty-five (25) days after receipt of the notice by the Secretary. The parent, Indian custodian, or child's tribe shall, upon request, be granted up to twenty (20) additional days from receipt of the notice to prepare for the admit/deny hearing.

(b) **Pretrial Hearing.** Pursuant to Rule 36.01, the court shall convene a pretrial hearing at least ten (10) days prior to trial.

(c) **Trial.** Pursuant to Rule 39.02, subd. 1(c), a trial regarding a termination of parental rights matter or other permanent placement matter shall commence within sixty (60) days of the first scheduled admit/deny hearing and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and whenever possible should be over consecutive days.

(d) **Findings/Adjudication.** Pursuant to Rule 39.05 subd. 1, within fifteen (15) days of the conclusion of the testimony, during which time the court may require

simultaneous written arguments to be filed and served, the court shall issue its findings and order regarding whether the statutory grounds set forth in the petition have or have not been proved. The court may extend the period for issuing an order for an additional fifteen (15) days if the court finds that an extension of time is required in the interests of justice and the best interests of the child.

(e) **Post-Permanency Review Hearings.**

(1) If the court orders termination of parental rights and adoption as the permanency plan, pursuant to Rule 42.08, subd. 5, the court shall conduct a review hearing ninety (90) days from the date of the termination of parental rights order is filed, and at least every ninety (90) days thereafter, for the purpose of reviewing the progress towards finalization of the adoption.

(2) If the court orders transfer of permanent legal and physical custody to a relative, pursuant to Rule 42.07, subds. 3 and 7, the court may order further in-court review hearings at such intervals as it determines to be in the best interests of the child to ensure that the appropriate services are being delivered to the child and permanent legal physical custodian or that conditions ordered by the court relating to the care and custody of the child are met.

(3) If the court orders permanent custody to the agency, pursuant to Rule 42.12, subd. 3, the court shall review the matter in court at least every twelve (12) months to consider whether long term foster care continues to be the best permanent plan for the child.

(4) If the court orders temporary custody to the agency, pursuant to Rule 42.13, subd. 3, not later than twelve (12) months after the child was ordered into foster care for a specified period of time the matter shall be returned to court for a review of the appropriateness of continuing the child in foster care and of the responsible social service agency's reasonable efforts to finalize a permanent plan for the child.

(f) **Review When Child Removed from Permanent Placement Within One (1) Year.** Pursuant to Rule 42.15, subd. 1, if a child is removed from a permanent placement disposition within one year after the placement was made:

(a) the child shall be returned to the foster home where the child was placed immediately preceding the permanent placement; or

(b) the court shall conduct a hearing within ten (10) days after the child is removed from the permanent placement to determine where the child is to be placed.

Subd. 4. Hearing for Child on a Trial Home Visit. Pursuant to Rule 42.01, subd. 2, when the child has been ordered on a trial home visit which continues at the time the court is

required to commence permanent placement determination proceedings under Rule 42.01, within twelve (12) months of the date a child is placed in foster care the court shall hold a hearing pursuant to Rule 42.13 to determine the continued status of the child.

Subd. 5. Cases Where Reasonable Efforts For Reunification Are Not Required. Pursuant to Rule 42.01, subd. 6, when the court finds that the petition states a prima facie case that at least one of the circumstances under Minnesota Statutes § 260.012(a) and Rule 30.09, subd. 3, exists where reasonable efforts for reunification are not required, the court shall order that an admit/deny hearing under Rule 34 be conducted within thirty (30) days and a trial be conducted within ninety (90) days of its prima facie finding. Unless a permanency or termination of parental rights petition under Rule 33 has already been filed, the county attorney requesting the prima facie determination shall file a permanency or termination of parental rights petition that permits the completion of service by the court at least ten (10) days prior to the admit/deny hearing.

1999 Advisory Committee Comment (amended 2003 and 2009)

The timeline set forth in Rule 4.03 is intended as an overall guide for juvenile protection matters and is based upon the requirements of Minnesota Statutes § 260C.176; § 260C.201, subds. 10 and 11; § 260C.178, subd. 6; the Indian Child Welfare Act, 25 U.S.C. § 1901 to § 1963; and the Adoption and Safe Families Act of 1997, 42 U.S.C. § § 601, 603, 622, 629, 653, 675, 670-679, and 1320. Specific time requirements are set forth in each individual rule.

Rule 4.03, subd. 1, sets forth the timeline for child in need of protection or services matters. The following timeline is an example of how a case would proceed if it related to a non-Indian child who has been removed from the child's home:

Day	***Event***
1	*Child removed from home*
3	*Emergency Protective Care Hearing*
3-13	*Admit/Deny Hearing*
14-53	*Pretrial Hearing*
63	*Trial*
79	*Findings/Adjudication*
79-88	*Disposition Hearing*
168-178	*Disposition Review Hearing*
180	*Permanency Progress Review Hearing*
258-268	*Disposition Review Hearing*
335	*Permanency Petition Filed*
348-358	*Disposition Review Hearing*
365	*Admit/Deny Hearing on Permanency Petition*
455+	Post-Permanency Review Hearings (if appropriate)

Rule 4.04. Sanctions for Violation

The court may impose sanctions upon any county attorney, party, or counsel for a party who willfully fails to follow the timelines set forth in these rules.

Rule 4.05. Application of Timing Provisions

The timing provisions set forth in this rule are subject to the continuance provisions of Rule 5 and any other timing provisions set forth in each specific rule.

RULE 5. CONTINUANCES

Rule 5.01. Findings

Subd. 1. Generally. Upon its own motion or motion of a party or the county attorney the court may continue a scheduled hearing or trial to a later date so long as the timelines for achieving permanency as set forth in these rules are not delayed. To grant a continuance, the court must make written findings or oral findings on the record that the continuance is necessary for the protection of the child, for accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown.

Subd. 2. Trials. Trials may not be continued or adjourned for more than one (1) week unless the court makes specific findings that the continuance or adjournment is in the best interests of the child.

1999 Advisory Committee Comment

Although the court may grant a continuance in appropriate circumstances, the court should not grant a continuance that would defeat the federal and state statutory time requirements for permanency determinations.

Rule 5.02. Notice of Continuance

The court shall, either in writing or orally on the record, provide notice to the parties and the county attorney of the date and time of the continued hearing or trial.

Rule 5.03. Existing Orders; Interim Orders

Unless otherwise ordered, existing orders shall remain in full force and effect during a continuance. When a continuance is ordered, the court may make any interim orders it deems to be in the best interests of the child in accordance with the provisions of Minnesota Statutes § 260C.001–.637.

RULE 6. SCHEDULING ORDER

Rule 6.01. Purpose

The purpose of this rule is to provide a uniform system for scheduling matters for trial and disposition and for achieving permanency within the timelines set forth in these rules.

Rule 6.02. Order

Subd. 1. When Issued. The court shall issue a scheduling order at the admit/deny hearing held pursuant to Rule 34 or within fifteen (15) days of the admit/deny hearing.

Subd. 2. Contents of Order. The scheduling order shall establish a deadline or specific date for:

(a) completion of discovery and other pretrial preparation;
(b) serving, filing, or hearing motions;
(c) submission of the proposed case plan;
(d) the pretrial conference;
(e) the trial;
(f) the disposition hearing;
(g) the permanency placement determination hearing; and
(h) any other events deemed necessary or appropriate.

1999 Advisory Committee Comment

Rule 6.02 does not require the court to actually calendar time for any of the events described in the order. Rather, the court may simply set deadlines without establishing a date certain. For example, without setting a specific date the court may order that discovery must be completed at least ten days prior to trial.

Rule 6.03. Amendment

The court may amend a scheduling order as necessary, so long as the permanency timelines set forth in these rules are not delayed.

RULE 7. REFEREES AND JUDGES

Rule 7.01. Referee Authorization to Hear Matter

A referee may, as authorized by the chief judge of the judicial district, hear any juvenile protection matter under the jurisdiction of the juvenile court.

Rule 7.02. Objection to Referee Presiding Over Matter

A party or the county attorney may object to having a referee preside over a matter. The right to object shall be deemed waived unless the objection is in writing, filed with the court, and served upon all other parties and the county attorney within three (3) days after being informed that the matter is to be heard by a referee. Upon the filing of an objection, a judge shall hear any motion and shall preside at all further motions and proceedings involving the matter.

Rule 7.03. Removal of Particular Referee

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

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

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

Subd. 4. Termination of Parental Rights Matters and Permanent Placement Matters. When a termination of parental rights matter or a permanent placement matter is filed in connection with a child who is the subject of a pending child in need of protection or services matter, the termination or permanency matter shall be considered a continuation of the protection matter. If the referee assigned to the protection matter is assigned to hear the termination or permanency matter, the parties and the county attorney shall not have the right to disqualify the assigned referee as a matter of right.

1999 Advisory Committee Comment

A party may not remove a particular referee and then object to having the case heard by any referee. If a judge is assigned to hear a matter after a party has objected to a particular referee hearing the matter, the party may not seek removal of the judge as a matter of right but may only seek removal of a subsequent judge for cause.

Rule 7.04. Transmittal of Referee's Findings and Recommended Order

Subd. 1. Transmittal. Upon the conclusion of a hearing, the referee shall transmit to a judge the written findings and recommended order. Notice of the findings and recommended order, along with notice of the right to review by a judge, shall be given either orally on the record or in writing to all parties, the county attorney, and to any other person as directed by the court.

Subd. 2. Effective Date. The recommended order is effective upon signing by the referee, unless stayed, reversed, or modified by a judge upon review.

Rule 7.05. Review of Referee's Findings and Recommended Order

Subd. 1. Right to Review. A matter that has been decided by a referee may be reviewed in whole or in part by a judge. Review, if any is requested, shall be from the referee's written findings and recommended order. Upon request for review, the recommended order shall remain in effect unless stayed by a judge.

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

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

Subd. 4. Timing. Failure to timely file and serve a submission may result in dismissal of the motion for review or disallowance of the submissions.

Subd. 5. Basis of Review. The review shall be based on the record before the referee and no additional evidence may be filed or considered. No personal appearances will be permitted, except upon order of the court for good cause shown.

Subd. 6. Transcripts. Any party or county attorney desiring to submit a transcript of the hearing held before the referee shall make arrangements with the court reporter at the earliest possible time. The court reporter shall advise the parties and the court of the day by which the transcript will be filed.

1999 Advisory Committee Comment

If a party or the county attorney cannot obtain the transcript in time to file it with the motion for review, the motion should set forth the date the transcript will be submitted. The motion, recommended order, and memorandum of law must still be filed within the five day time period prescribed by the rule, but the decision of the court may be delayed until the court has the opportunity to review the transcript.

Rule 7.06. Order of the Court

When no review is requested, or when the right to review is waived, the findings and recommended order of the referee become the order of the court when confirmed by the judge as written or when modified by the judge sua sponte. The order shall be confirmed or modified by the court within fifteen (15) days of the transmittal of the findings and proposed order.

Rule 7.07. Removal of Judge

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

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

Subd. 3. Notice to Remove.

(a) **Procedure.** A party or the county attorney may file with the court and serve upon all other parties a notice to remove. The notice shall be served and filed within ten (10) days of the date the party receives notice of the name of the judge who is to preside over the proceeding, but not later than the commencement of the proceeding.

(b) **Presiding Judge.** A notice to remove shall not be filed against a judge who has presided at a motion or any other proceeding in the matter of which the party or the county attorney had notice. A judge who has presided at a motion or other proceeding may not be removed except upon an affirmative showing of prejudice on the part of the judge.

(c) **Showing of Prejudice.** After a party or the county attorney has once disqualified a presiding judge as a matter of right, that party may disqualify the substitute judge, but only by making an affirmative showing of prejudice. A showing that the judge might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice.

(d) **Assignment of Another Judge.** Upon the filing of a notice to remove, or if a party or the county attorney makes an affirmative showing of prejudice against a substitute judge, the chief judge of the judicial district shall assign any other judge of any court within the district to hear the matter. If there is no other judge of the district who is qualified, the chief judge shall immediately notify the Chief Justice of the Minnesota Supreme Court.

Subd. 4. Termination of Parental Rights Matters and Permanent Placement Matters. When a termination of parental rights matter or a permanent placement matter is filed

in connection with a child who is the subject of a pending child in need of protection or services matter, the termination or permanency matter shall be considered a continuation of the protection matter. If the judge assigned to the protection matter is assigned to hear the termination or permanency matter, the parties and the county attorney shall not have the right to disqualify the assigned judge as a matter of right.

2003 Advisory Committee Comment

While there was consensus that the one-judge one-family concept should be an aspirational goal of all juvenile courts, there was also consensus that a rule mandating implementation of the one-judge one-family concept may not be practical or enforceable in all situations. Instead, the Committee recommends that courts implement the one-judge one-family concept to the greatest extent possible.

RULE 8. ACCESSIBILITY OF JUVENILE PROTECTION CASE RECORDS

Rule 8.01. Presumption of Access to Juvenile Protection Case Records

Except as otherwise provided in Rule 8.04 of these rules and the Rules on Public Access to Records of the Judicial Branch, all juvenile protection case records relating to juvenile protection matters, as those terms are defined in Rule 2.01, are presumed to be accessible to any party, participant, or member of the public for inspection, copying, or release. Any order prohibiting access to all juvenile protection case records of a particular case, or any portion of a juvenile protection case record, shall be accessible to the public, parties, and participants.

2001 Advisory Committee Comment (amended 2003)

Rule 8.01 establishes a presumption of public access to juvenile protection case records, and exceptions to this presumption are set forth in the remaining provisions of Rule 8. Rule 8.01 does not apply to any case records relating to adoption proceedings, which remain inaccessible to the public.

Rule 8.02. Effective Date

Subd. 1. Open Hearings Pilot Project Counties. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any of the twelve open hearings pilot project counties on or after June 28, 1998, shall be accessible to the public for inspection, copying, or release. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any of the twelve open hearings pilot project counties before June 28, 1998, shall not be accessible to the public for inspection, copying, or release.

Subd. 2. Non-Open Hearings Pilot Project Counties. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any non-open hearings pilot project county on or after July 1, 2002, shall be accessible to the public for inspection, copying, or release. All juvenile protection case records deemed to be accessible to the public

pursuant to this rule and filed in any non-open hearings pilot project county before to July 1, 2002, shall not be accessible to the public for inspection, copying, or release.

2001 Advisory Committee Comment

Rule 8.02 identifies different effective dates for the pilot project counties (June 1998) and non-pilot project counties (July 2002) because the twelve pilot counties already permit public access to hearings and records under the open hearings pilot project. Twelve counties participated in the open hearings pilot project from June 28, 1998, through June 30, 2002: Goodhue and LeSueur (First Judicial District); Houston (Third Judicial District); Hennepin (Fourth Judicial District); Watonwan (Fifth Judicial District); St. Louis–Virginia (Sixth Judicial District); Clay (Seventh Judicial District); Stevens (Eighth Judicial District); Marshall, Pennington, and Red Lake (Ninth Judicial District); and Chisago (Tenth Judicial District).

Rule 8.03. Access to Records Filed Prior to July 2015; Access to Records Upon Appeal

(a) **Access to Records Filed Before July 1, 2015.** For juvenile protection case records filed before July 1, 2015, confidential information to which access is restricted under Rule 8.04 shall, if necessary, be redacted by or at the direction of court administration staff prior to allowing access to any party, participant, or member of the public. In the case of a request for access to a petition filed before July 1, 2015, when a redacted petition has not been filed as required under Rule 33.01, court administration staff may notify the petitioner of the access request and direct the petitioner to promptly file a petition from which the confidential information has been redacted as required under Rule 33.01 so that access may be provided to the requesting individual.

(b) **Access to Records During Appeal.** For juvenile protection case records filed before July 1, 2015, confidential information to which access is restricted under Rule 8.04 shall not be redacted prior to transmission to the clerk of appellate courts. A request for access to a juvenile protection case record by any party, participant, or member of the public during an appeal shall be directed to the district court, and the portion of the record requested shall, if necessary, be redacted of all confidential information under Rule 8.03 by or at the direction of court administration staff before access shall be allowed.

2015 Advisory Committee Comment

Rule 8.03 is added to clarify that access to juvenile protection case records filed with or generated by the court prior to July 1, 2015, shall be denied until it is determined that the record or portion of the record requested is free of confidential information to which access is restricted under Rule 8.04. When an individual requests access to a petition filed prior to July 1, 2015, and the petition contains confidential information to which access is restricted under Rule 8.04, court administration staff may notify the petitioner of the access request and direct the petitioner to promptly file an appropriately-redacted petition so that access may be provided to the requesting individual.

Rule 8.04. Juvenile Protection Case Records Inaccessible to the Public, Parties, or Participants

Subd. 1. Definitions. The following definitions apply for purposes of this rule:

(a) "Calendar" is as defined in Rule 8, subd. 2, of the Rules of Public Access to Records of the Judicial Branch.

(b) "Register of Actions" is as defined in Rule 8, subd. 2, of the Rules of Public Access to Records of the Judicial Branch.

(c) "Remote Access" and "remotely accessible" are as defined in Rule 8, subd. 2, of the Rules of Public Access to Records of the Judicial Branch.

(d) "Confidential document" means any document that is inaccessible to the public under subdivisions 2 or 4 of this rule.

(e) "Confidential information" means any information that is inaccessible to the public under subdivision 2(d), (e), (j), (l), or (m).

Subd. 2. Confidential Documents and Confidential Information The following juvenile protection case records are confidential documents or confidential information and are accessible to the public, parties, and participants only as specified in subdivision 3:

(a) official transcript of testimony taken during portions of proceedings that are closed by the presiding judge;

(b) audio or video recordings of a child alleging or describing physical abuse, sexual abuse, or neglect of any child;

(c) victims' statements;

(d) portions of juvenile protection case records that identify reporters of abuse or neglect;

(e) records of HIV testing or portions of records that reveal a person has undergone HIV testing;

(f) medical records, chemical-dependency evaluations and records, psychological evaluations and records, and psychiatric evaluations and records;

(g) sexual offender treatment program reports;

(h) portions of 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 this section (i);

(j) records or portions of records that specifically identify a minor victim of an alleged or adjudicated sexual assault;

(k) notice of pending court proceedings provided to an Indian tribe by the responsible social services agency pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1912;

(l) records or portions of records which the court in exceptional circumstances has deemed to be inaccessible to the public;

(m) records or portions of records that identify the name, address, home, or location of any shelter care or foster care facility in which a child is placed pursuant to an

emergency protective care placement, foster care placement, pre-adoptive placement, adoptive placement, or any other type of court ordered placement; and

(n) the child's education, physical health, and mental health records contained in or attached to the case plan required under Minnesota Statutes § 260C.212, subd. 1, and identified as inaccessible under Rule 37.02, subd. 3(b).

Subd. 3. Access to Juvenile Protection Case Records by Public, Parties, and Participants.

(a) **Public.** The public shall have access to inspect and copy all juvenile protection case records in the court file, except those listed in subdivision 2 (a)-(n) and subdivision 4 of this rule.

(b) **Parties**. Unless otherwise ordered by the court, parties shall have access to inspect and copy all juvenile protection case records in the court file, except those listed in subdivision 2(b), (d), and (e) of this rule.

(c) **Participants.** Upon order of the court, participants may have access to inspect and copy all juvenile protection case records in the court file, except those listed in subdivision 2(b), (d), and (e). A participant's request for an order permitting access need not be made by written motion, but may be made orally on the record.

Subd. 4. Juvenile Protection Case Records Confidential and Presumptively Inaccessible to the Public Unless Authorized by Court Order. The following juvenile protection case records are confidential and presumptively inaccessible to the public unless otherwise ordered by the court upon a finding of an exceptional circumstance:

(a) "Confidential Documents" filed under subdivision 5;
(b) "Confidential Information Forms" filed under subdivision 5; and
(c) all juvenile protection case records where any child is a party.

Subd. 5. Submission of Confidential Documents and Confidential Information.

(a) **Confidential Documents.** No person shall file a confidential document listed in subdivision 2 unless it is submitted under a cover sheet entitled "Confidential Document" (see Form 11.3 as published by the State Court Administrator), in which case the document shall be designated as confidential and inaccessible to the public. The person filing a confidential document is solely responsible for ensuring that it is filed under a "Confidential Document" cover sheet and designated as confidential.

(b) **Confidential Information.** No person shall file a publicly accessible document, including without limitation, petitions and social services or guardian ad litem reports, that contains any confidential information listed in subdivision 2. Confidential information shall be omitted from the public document and filed on a separate document entitled "Confidential Information Form" (see Form 11.4 as published by the State Court Administrator), in which case the Confidential Information Form shall be designated as confidential and inaccessible to the public. The person filing a publicly accessible document is solely responsible for

ensuring that all confidential information is omitted from the document and filed on a separate "Confidential Information Form."

(c) **Records Generated by the Court.** Confidential information generated by the court in its register of actions, calendars, indexes, and other records shall not be accessible to the public. Paragraphs (a) and (b) of this subdivision do not apply to orders or other documents filed by judicial officers.

(d) **Noncompliance.**

(1) **Confidential Document**. If it is brought to the attention of court administration staff that a confidential document has not been filed under a "Confidential Document" cover sheet and/or has not been designated as confidential, court administration staff shall designate the document as confidential and notify the filer of the change in designation.

(2) **Confidential Information.** If it is brought to the attention of court administration staff that a publicly accessible document includes confidential information that has not been filed under a "Confidential Information Form" and/or has not been designated as confidential, court administration staff shall designate the document as confidential and direct the filer to promptly file a document in compliance with subdivision 5(b) of this rule.

(3) **Sanctions**. If a person fails to comply with the requirements of this rule, the court may upon motion or its own initiative impose appropriate sanctions, including any monetary fee to the court or costs necessary to prepare a document for filing that complies with this rule.

2001 Advisory Committee Comment (amended 2015)

Rule 8.04, subd. 2(a) prohibits public access to testimony of anyone taken during portions of a proceeding that are closed to the public by the presiding judge. Hearings or portions of hearings may be closed by the presiding judge only in exceptional circumstances.

Rule 8.04, subd. 2(b) prohibits public access to audio and video recordings of a child alleging or describing physical abuse, sexual abuse, or neglect of any child. This includes all recordings made pursuant to Minn. Stat. § 626.561, subd. 3, during the course of a child abuse assessment, criminal investigation, or prosecution. This is consistent with Minn. Stat. § 13.821, which prohibits an individual who is a subject of the tape from obtaining a copy of the tape without a court order. See also In re Application of KSTP Television v. Ming Sen Shiue, 504 F. Supp. 360 (D. Minn. 1980) (television station not entitled to view and copy three hours of video tapes received in evidence in criminal trial). Similarly, Rule 8.04(c) prohibits public access to victims' statements, and this includes written records of interviews of victims made pursuant to Minn. Stat. § 626.561, subd. 3. This is consistent with Minn. Stat. §§ 609.115, subds. 1, 5; 609.2244; and 611A.037 (pre-sentence investigations to include victim impact statements; no public access; domestic abuse victim impact statement confidential).

Although victims' statements and audio and video recordings of a child alleging or describing abuse or neglect of any child are inaccessible to the public under Rule 8.04, subd. 2(b) and (c), this does not prohibit the attorneys for the parties or the court

from including summaries or quotes from the statements or tapes in the petition, court orders, and other documents that are otherwise accessible to the public. In contrast, Rule 8.04, subd. 2(d) prohibits public access to "portions of juvenile protection case records that identify reporters of abuse or neglect." By precluding public access to "portions of records that identify reporters of abuse or neglect," the Advisory Committee did not intend to preclude public access to any other information included in the same document. Instead, filers are required to omit from their documents the identify of reporters of abuse or neglect, thus allowing the remainder of the document to be publicly accessible. If it is brought to the attention of court administration staff that a filer failed to omit the information, court administration staff are required to designate the otherwise public document as confidential and inaccessible to the public. Similarly, under Rule 8.04, subd. 2(e), filers are required to omit from their documents any reference to HIV testing. If it is brought to the attention of court administration staff that a filer failed to omit the information, court administration staff are required to designate the otherwise public document as confidential and inaccessible to the public.

The prohibition of public access to the identity of reporters of abuse or neglect under Rule 8.04, subd. 2(d) is consistent with state law governing access to this information in the hands of social services, law enforcement, court services, schools, and other agencies. Minn. Stat. § 626.556. Rule 8.04, subd. 2(d) is also intended to help preserve federal funds for child abuse prevention and treatment programs. See 42 U.S.C. § 5106a(b)(2)(A) and § 5106a(b)(3) (1998); 45 C.F.R. §§ 1340.1 to 1340.20 (1997). Rule 8.04, subd. 2(d) does not, however, apply to testimony of a witness taken during a proceeding that is open to the public.

Rule 8.04, subd. 2(e), is amended in 2015 to prohibit public access not only to HIV test results, but also to any records of HIV testing or portions of records that reveal a person has undergone HIV testing. This is consistent with state and federal laws regarding court ordered testing for HIV. Minn. Stat. § 611A.19 (defendant convicted for criminal sexual conduct; no reference to the test, the motion requesting the test, the test order, or the test results may appear in the criminal record or be maintained in any record of the court or court services); 42 U.S.C. § 14011 (1998) (defendant charged with crime; test result may be disclosed to victim only). The Committee is also aware that federal funding for early intervention services requires confidential treatment of this information. 42 U.S.C. § 300ff-61(a); § 300ff-63 (1998).

Rule 8.04, subd. 2(f) and (g), prohibit public access to medical records, chemical dependency evaluations and records, psychological evaluations and records, psychiatric evaluations and records, and sexual offender treatment program reports, unless admitted into evidence under Rule 8.05. This is consistent with public access limitations in criminal and juvenile delinquency proceedings that are open to the public. See, e.g., Minn. Stat. § 609.115, subd. 6 (pre-sentence investigation reports). Practitioners and the courts must be careful not to violate applicable federal laws. Under 42 U.S.C. § 290dd-2 (1998), records of all federally assisted or regulated substance abuse treatment programs, including diagnosis and evaluation records, and all confidential communications made therein, except information required to be reported under a state mandatory child abuse reporting law, are confidential and may not be disclosed by the program unless disclosure is authorized by consent or court order. Thus, practitioners will have to obtain the relevant written consents from the parties or court orders, including protective orders, before disclosing certain medical records in their reports and submissions to the court. See 42 C.F.R. § 2.1 to 2.67 (1997) (comprehensive regulations providing procedures that must be

followed for consent and court-ordered disclosure of records and confidential communications).

Although similar requirements apply to educational records under the Federal Educational Rights and Privacy Act (FERPA), 20 U.S.C. §§ 1232g, 1417, and 11432 (1998); 34 C.F.R. §§ 99.1 to 99.67 (1997), FERPA allows schools to disclose education records without consent or court order in certain circumstances, including disclosures to state and local officials under laws in effect before November 19, 1974. 20 U.S.C. § 1232g(b)(1)(E)(i) (1998); 34 C.F.R. § 99.31(a)(5)(i)(A) (1997). Authorization to disclose truancy to the county attorney, for example, was in effect before that date and continues under current law. See Minn. Stat. § 120.12 (1974) (superintendent to notify county attorney if truancy continues after notice to parent); 1987 Minn. Laws ch. 178 § 10 (repealing § 120.12 and replacing with current § 120A.26, which adds mediation process before notice to county attorney); see also Minn. Stat. §§ 260A.06-.07 (Supp. 2001) (referral to county attorney from school attendance review boards; county attorney truancy mediation program notice includes warning that court action may be taken). Practitioners will have to review the procedures under which they receive education records from schools and, where necessary, obtain relevant written consents or protective orders before disclosing certain education records in their reports and submissions to the court. Additional information regarding FERPA may be found in Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile justice Programs (U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, Washington, D.C. 20531, June 1997) (includes hypothetical disclosure situations and complete set of federal regulations).

Rule 8.04, subd. 2(h), prohibits public access to portions of photographs that identify a child. Filers are required to designate as confidential any photograph that identifies a child's face or other features. It if is brought to the attention of court staff that a filer failed to designate as confidential a photograph that identifies a child, court administration staff are required to designate the document as confidential and inaccessible to the public. Any appropriate concern regarding public access to the remaining portions of such a photograph can be addressed through a protective order (see Rule 8.07).

Rule 8.04, subd. 2(i), precludes public access to an ex parte emergency protective custody order, until the hearing where all parties have an opportunity to be heard on the custody issue. This provision is designed to reduce the risk that a parent or legal custodian would try to hide a child before the child can be placed in protective custody or to take the child from custody before the court can hear the matter. See, e.g., Minn. R. Juv. P. 28 (order must either direct that child be brought immediately before the court or taken to a placement facility designated by the court; parent or legal custodian, if present when child is taken into custody, shall immediately be informed of existence of order and reasons why child is being taken into custody). Rule 8.04. subd. 2(i) also precludes public access to the application or request for the protective custody order, except that if the request is made in a Child In Need of Protection or Services (CHIPS) petition, only that portion of the petition that requests the order is inaccessible to the public.

Rule 8.04, subd. 2(j), precludes public access to portions of records that specifically identify a minor victim of an alleged or adjudicated sexual assault. Filers are required to omit from their documents the identity of a minor victim of an alleged or adjudicated sexual assault, including the child's name, address and references to "him,"

"her," "he," "she," etc. If it is brought to the attention of court administration staff that a filer failed to omit the information from an otherwise publicly accessible document, court administration staff are required to designate the document as confidential and inaccessible to the public. This is intended to parallel the treatment of victim identities in criminal and juvenile delinquency proceedings involving sexual assault charges under Minn. Stat. § 609.3471. Thus, the term "sexual assault" includes any act described in Minnesota Statutes § §609.342, 609.343, 609.344, and 609.345. The Committee considered using the term "sexual abuse" but felt that it was a limited subcategory of "sexual assault." See Minn. Stat. § 626.556, subd. 2(a) ("sexual abuse" includes violations of § 609.342 - .345 committed by person in a position of authority, responsible for child's care, or having a significant relationship with the child). Rule 8.04, subd. 2(j), does not require a finding that sexual assault occurred. An allegation of sexual assault is sufficient.

Rule 8.04, subd. 2(k) precludes public access to the notice of pending proceedings given by the responsible social services agency to an Indian child's tribe or to the Secretary of the Interior pursuant to 25 U.S.C. § 1912(a) (1998). The notice includes extensive personal information about the child, including all known information on direct lineal ancestors, and requires parties who receive the notice to keep it confidential. 25 C.F.R. § 23.11(d), (e) (1997). Notices are routinely given in doubtful cases because lack of notice can be fatal to a state court proceeding. See 25 U.S.C. § 1911 (1998) (exclusive jurisdiction of tribes; right to intervene; transfer of jurisdiction). The Committee believed that public access to information regarding the child's tribal heritage is appropriately given whenever a tribe intervenes or petitions for transfer of jurisdiction. Rule 8.04, subd. 2(k) does not preclude public access to intervention motions or transfer petitions.

Rule 8.04, subd. 2(l) recognizes that courts may, in exceptional circumstances, issue protective orders precluding public access to certain records or portions of records. Records of closed proceedings are inaccessible to the public under Rule 8.04, subd. 2(a). Procedures for issuing protective orders are set forth in Rule 8.07.

Rule 8.04, subd. 2(m) prohibits public access to the names, addresses, home, location, or other identifying information about the foster parents, foster care institutions, adoptive parents, and other persons and institutions providing care or pre-adoptive care of the child. This is consistent with the confidentiality accorded adoption proceedings. It is also designed to reduce the risk of continuing contact by someone whose parental rights have been terminated or who is a potentially dangerous family member. If deemed appropriate, the name, address, home, location, or other identifying information about a child's foster placement may be protected from a party through issuance of a protective order pursuant to Rule 8.07

Rule 8.04, subd. 2(n), is a new provision prohibiting public access to the child's education, physical health, and mental health records contained in or attached to the publicly accessible out-of-home health placement plan required under Minnesota Statutes § 260C.212, subd. 1.

Notwithstanding the list of inaccessible case records in Rule 8.04(a) through (n), many juvenile protection case records will typically be accessible to the public. Examples include: petitions, other than petitions for paternity; summons; affidavits of publication or service; certificates of representation; orders; hearing and trial notices; subpoenas; names of witnesses; motions and supporting affidavits and legal memoranda; transcripts; and

reports of social workers and guardians ad litem. With the exception of information that must be redacted under Rule 8.04, subd. 2(d) (e),(j), (l) and (m), these records will be accessible to the public notwithstanding that they contain a summary of information derived from another record that is not accessible to the public. For example, a petition or social services or guardian ad litem report might discuss or quote the results or other content of a chemical dependency evaluation. Although the chemical dependency evaluation itself is not accessible to the public under Rule 8.04(f), quotes from or discussion of the details of that evaluation in the petition or social services or guardian ad litem report need not be redacted before public disclosure of the document. Finally, it must be remembered that public access under this rule would not apply to records filed with the court before the effective date of this rule (see Rule 8.02) or to reports of a social worker or guardian ad litem that have not been made a part of the court file (see Rule 8.03).

2006 Advisory Committee Comment (amended 2015)

The child's name and other identifying information are not to be redacted from records that are accessible to the public, except under Rule 8.04, subd. 2(j) when the child is the victim of an alleged or adjudicated sexual assault and under Rule 8.04, subd. 2(d) where the child is specifically identified as the reporter of the abuse or neglect. In the latter instance, the child's name and other identifying information should be redacted only in those instances where it is used as the reporter of abuse or neglect but should not be redacted when referenced elsewhere in the record.

2015 Advisory Committee Comment

Rule 8.04, subd. 3, is added to clarify access authorized by parties, participants, and members of the public.

Rule 8.04, subd. 4, is a new provision listing juvenile protection case records that are confidential and presumptively inaccessible to the public, unless the court issues an order granting access on a case-by-case basis.

Rule 8.04, subd. 4(c), is a new provision providing that juvenile protection case records in cases where a child is a party are confidential and inaccessible to the public unless otherwise ordered by the court on a case-by-case basis. The Committee fully endorses the recommendation of the Advisory Committee on the Rules of Public Access to Records of the Judicial Branch to prohibit remote electronic access to juvenile protection case records, and to permit electronic access to public juvenile protection case records only through the Minnesota Public Access Courthouse portal ("MPA Courthouse") so long as records cannot be searched by a child's name. The Committee believes that restricting child name searches is a necessary barrier aimed at protecting children from harm and reducing incidences of child victimization. Because "MPA Courthouse" has no existing functionality to mask child-party names or to restrict child-party name searches, the Committee recommends that, unless otherwise ordered by the court on a case-by-case basis, all juvenile protection case records should be made confidential and electronically inaccessible to the public in any juvenile protection matter where a child is a party. This recommendation is temporary – it is the position of the Committee that the confidential classification should continue only until MPA Courthouse has the technical functionality to mask child-party names and restrict child-party name searches.

Rule 8.04, subd. 5, is a new provision intended to prevent the filing of confidential documents without the appropriate designation, or the inclusion of confidential information in publicly accessible documents. The rule emphasizes that it is the filer's responsibility to omit confidential information and perform all required redactions prior to filing. For guidance, the amendment specifies the kind of information inaccessible to the public under Rule 8.04, subd. 2, that must be omitted from publicly accessible documents. Rule 8.04, subd. 2, generally precludes public access to entire documents such as medical records and reports. The rule does not prohibit a person from referencing, quoting, or mentioning the contents of such confidential documents in other documents filed with the court. However, because Rule 8.04, subd. 2(d), (e), (j), (l), and (m) preclude public access to "portions of juvenile protection records" that contain specified types of confidential information, the filer must redact (or omit entirely) portions of a publicly accessible document that reference or disclose confidential information.

Rule 8.04, subd. 5(b), requires filers to omit confidential information, as that phrase is defined in Rule 8.04, subd. 1, from publicly accessible documents and, instead, to include that information on a "Confidential Information Form." When omitting from a petition or other document the confidential name of a child (e.g., a child who is an alleged victim of sexual abuse) or foster parent and including that information on a "Confidential Information Form," the Committee recommends the following format as a best practice:

(a) Child: In the petition or other document, do not use the child's initials but, instead, refer to the child as "Child 1," "Child 2," etc. In the "Confidential Information Form" state the child's name (e.g., "Child 1 is Jane Doe" and "Child 2 is John Doe") and then include the other information required in Rule 33.02, subd. 1(b): Child 1's date of birth, race, gender, current address (foster home address), and, if the child is believed to be an Indian child, the name of the child's tribe.

(b) Foster Parent: In the petition or other document, do not use the foster parent's initials but, instead, refer to the person as "Foster Parent 1," "Foster Parent 2", etc. In the "Confidential Information Form" state the name of the foster parent (e.g., "Foster Parent 1 is Jane Doe" and "Foster Parent 2 is John Doe") and then include address of the foster parent.

The requirement in Rule 8.04, subd. 5(b), for filers to omit confidential information from publicly accessible documents and, instead, to include such information on a "Confidential Information Form" does not apply to judicial officers pursuant to Rule 8.04, subd. 5(c). Because court orders are publicly accessible, the Committee urges judicial officers to cautiously consider what information to include in their orders. For example, judicial officers should, on a case-by-case basis, determine whether it is appropriate to include the name of a child who is an alleged victim of sexual abuse (which is confidential information) or, in the alternative, to generically reference such a child as "Child 1" and include the confidential information either in a confidential memo attached to the order or in a "Confidential Information Form." To ensure each child's placement is eligible under Title IV-E, judicial officers should be sure to include each child's name either in the order or in a confidential memo or "Confidential information Form."

Rule 8.05. Access to Exhibits

Juvenile protection case records received into evidence as exhibits during a hearing or trial shall be accessible to the public unless subject to a protective order issued pursuant to Rule 8.07.

2001 Advisory Committee Comment (amended 2015)

Rule 8.05 permits public access to records that have been received in evidence as an exhibit, unless the records are subject to a protective order (see Rule 8.07). Thus, any of the records identified in Rule 8.04, subd. 2(b) through (n) that have been admitted into evidence as an exhibit are accessible to the public, unless there is a protective order indicating otherwise. An exhibit that has been offered, but not expressly admitted by the court, does not become accessible to the public under Rule 8.05. Exhibits admitted during a trial or hearing must be distinguished from items attached as exhibits to a petition or a report of a social worker or guardian ad litem. Merely attaching something as an "exhibit" to another filed document does not render the "exhibit" accessible to the public under Rule 8.05.

Rule 8.06. Electronic Access to Juvenile Protection Case Records

Electronic access to juvenile protection case records, including remote access and access at a courthouse facility, shall be as permitted by the Rules of Public Access to Records of the Judicial Branch.

2015 Advisory Committee Comment

Rule 8.06 is amended to allow for electronic access to public juvenile protection case records in light of the Judicial Branch's transition to electronic court records and its effort to offer electronic accessibility to public court documents across all case types. Electronic access to public juvenile protection records will be available to the public only at courthouse facilities. Remote access to public records is governed by Rule 8, subd. 2, of the Rules of Public Access to Records of the Judicial Branch, which prohibits remote access to juvenile protection case records. Access to juvenile protection records by government agencies is governed by Rule 8, subd. 4, of the Rules of Public Access to Records of the Judicial Branch.

Rule 8.07. Protective Order

Subd. 1. Orders Regarding the Public. The court may sua sponte, or upon motion and hearing, issue an order prohibiting public access to juvenile protection case records that are otherwise accessible to the public only if the court finds that an exceptional circumstance exists. The protective order shall state the reason for issuance of the order. If the court issues a protective order on its own motion and without a hearing, the court shall schedule a hearing on the order as soon as possible at the request of any person. A protective order issued pursuant to this subdivision is accessible to the public.

Subd. 2. Orders Regarding Parties. The court may sua sponte, or upon motion and hearing, issue a protective order prohibiting a party's access to juvenile protection case records that are otherwise accessible to the party. The protective order shall state the reason for issuance of the order. If the court issues a protective order on its own motion and without a hearing the court shall schedule a hearing on the order as soon as possible at the request of any person. A protective order issued pursuant to this subdivision is accessible to the public.

2001 Advisory Committee Comment

Rule 8.07 establishes two categories of protective orders. One is made on motion of a party after a hearing, and the other is made on the court's own motion without a hearing, subject to a later hearing if requested by any person, including representatives of the media. In any case, a protective order may issue only in exceptional circumstances. The Advisory Committee felt that these procedures would provide adequate protection and flexibility.

Rule 8.08. Case Captions and Text of Decisions and Other Records

Subd. 1. District Court.

All juvenile protection court files opened and any petitions, pleadings, reports, orders, or other documents or records filed in any:

(i) of the twelve open hearings pilot project counties on or after June 22, 1998, or

(ii) non-open hearings pilot project county on or after July 1, 2002, shall be captioned in the name of the child's parent(s) or legal custodian(s), as follows: "*In the Matter of the Welfare of the Child(ren) of _____, Parent(s)/ Legal Custodian(s).*" The caption shall not include the child's name or initials. The body of any petitions, pleadings, reports, orders, or other documents or records filed with the court shall include the child's and parent's or legal custodian's full name, not their initials. The case caption shall not be modified upon the issuance of an order terminating parental rights.

Subd. 2. Appellate Court. All juvenile protection court files opened in any Minnesota appellate court shall be captioned in the initials of the parent(s) or legal custodian(s) as follows: "*In the Matter of the Welfare of the Child(ren) of _____, Parent(s)/Legal Custodian(s).*" The caption shall not include the child's name or initials. The body of any decision filed in any Minnesota appellate court shall use the parent's and child's initials, not their names. Upon the filing of an appeal pursuant to Rule 47.02, the appellant shall provide to the court administrator, the appellate court, and the parties and participants notice of the correct appellate case caption required under this Rule. This Rule supercedes Rule 143.01 of the Rules of Civil Appellate Procedure regarding the provisions relating to case captions upon appeal.

2001 Advisory Committee Comment

Twelve counties participated in the pilot project from June 28, 1998, through June 30, 2002: Goodhue and LeSueur (First Judicial District); Houston (Third Judicial District); Hennepin (Fourth Judicial District); Watonwan (Fifth Judicial District); St. Louis–Virginia

(Sixth Judicial District); Clay (Seventh Judicial District); Stevens (Eighth Judicial District); Marshall, Pennington, and Red Lake (Ninth Judicial District); and Chisago (Tenth Judicial District).

The change in case captions under Rule 8.08 is designed to minimize the stigma to children involved in juvenile protection matters that are accessible to the public. It is more appropriate to label these cases in the name of the adults involved, who are often the perpetrators of abuse or neglect.

Rule 8.09. Access to Juvenile Protection Record by Family Court Judicial Officer

In any family court matter involving custody or parenting time regarding a child who has been or is the subject of a juvenile protection matter, the assigned judicial officer shall, upon notice to the parties, have access to the entire juvenile protection court record. Upon request of a party made within ten (10) days of the court's notice to the parties, the parties shall have an opportunity to be heard after the court accesses the file.

Rule 8.10. Access to Juvenile Protection Record by Parties and Child's Guardian ad Litem in Family Court Matter

The parties to a family court matter involving a determination of custody or parenting time regarding a child who has been or is the subject of a juvenile protection matter, including any person established as a parent in a parentage matter and any guardian ad litem appointed in the family court matter, shall have access to the juvenile protection case record to the same extent as a party to the juvenile protection matter has access under Rule 8. If the juvenile court has issued a protective order under Rule 8.07, the portions of the juvenile protection case record subject to the protective order continue to be subject to the protective order when accessed by any party to the family court matter.

2014 Advisory Committee Comment

Rules 8.09 and 8.10 serve the child's best interests and judicial economy by permitting access by the family court judicial officer to information in the juvenile court case record when the two courts are hearing or have heard matters regarding the same child. After giving the parties notice, the family court judicial officer may have the same access to the juvenile protection file as the juvenile court judicial officer. A legal parent in a family matter has access to the juvenile protection case record to the same extent as a party to the juvenile protection matter. If the juvenile court has issued a protective order regarding the content of the juvenile protection case record, that order remains in effect regarding access by any party to the family court matter.

RULE 9. EX PARTE COMMUNICATION

Rule 9.01. Ex Parte Communication Prohibited

Ex parte communication is prohibited, except as to procedural matters not affecting the merits of the case. All communications between the court and a party or participant shall be in

the presence of all other parties or in writing with copies to the parties or, if represented, the party's attorney, except as otherwise permitted by statute or these rules. The court shall not consider any ex parte communication from anyone concerning a proceeding, including conditions of release, evidence, adjudication, disposition, or any other matter.

1999 Advisory Committee Comment

Rule 9.01 reflects the prohibition against ex parte communication set forth in Rule 3.5(g) of the Rules of Professional Conduct and Cannon 3A(7) of the Code of Judicial Conduct.

Rule 9.02. Disclosure

The court shall fully disclose to all parties any attempted prohibited ex parte communication.

RULE 10. ORDERS

Rule 10.01. Written or Oral Orders; Timing

Court orders may be written or stated on the record. An order stated on the record shall also be reduced to writing by the court. Except for orders issued following a trial pursuant to Rule 39.05, all orders shall be filed with the court administrator within fifteen (15) days of the conclusion of the testimony, unless the court finds that a fifteen (15)-day extension is required in the interests of justice or the best interests of the child. Each order issued following a hearing shall include the name and contact information of the court reporter. Failure to include the court reporter contact information does not extend the timeline for appeal. An order shall remain in full force and effect pursuant to law or until the first occurrence of one of the following:

(a) issuance of an inconsistent order; or

(b) the order ends pursuant to the terms of the order.

2008 Advisory Committee Comment

To easily identify court reporters for the purpose of timely requesting a transcript for purposes of appeal, Rule 10.01 requires each order issued follow a hearing to include the name and contact information of the court reporter.

Rule 10.02. Immediate Effect of Oral Order

Unless otherwise ordered by the court, an order stated on the record shall be effective immediately.

Rule 10.03. Method and Timing of Service; Persons to be Served

Subd. 1. Persons to be Served and Method of Service. Service of court orders shall be made by the court administrator upon each party, county attorney, and such other persons as the

court may direct, and may be made by personal service at the hearing, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be service, or as otherwise directed by the court. If a party is represented by counsel, delivery or service shall be upon counsel.

Subd. 2. Service Not Required. If service of the summons was by publication and the person has not appeared either personally or through counsel, service of court orders upon the person is not required.

Subd. 3. Timing of Service. Service of the order by the court administrator shall be accomplished within five (5) days of the date the judicial officer delivers the order to the court administrator. In a termination of parental rights matter or other permanency matter, service by the court administrator of the findings and order terminating parental rights or establishing other permanency for the child shall be accomplished within three (3) days of the date the judicial officer delivers the order to the court administrator.

Subd. 4. Notification to Family Court. If a parentage matter is pending in family court regarding a child who is the subject of a juvenile protection matter, the court administrator shall send notification to the family court administrator and the assigned family court judicial officer of the filing of an order listed in Rule 50.06, subd. 2.

2014 Advisory Committee Comment

The phrase "send notification" to the family court is used in subdivision 4 to permit flexibility at the local level in determining the "notification" used to alert both the family court administrator and the assigned family court judicial officer that the juvenile protection matter has progressed to the point where the parentage matter may be completed. It is not intended to require formal legal notice as that term is used in Rule 32 in regard to ensuring parties or participants have notice of hearings or as used in Rule 10.04 in regard to notice of filing of an order. Court administration may use "notice of filing" as set out in Rule 10.04, but may also use any other reasonable means of letting family court know the parentage matter may be completed.

Rule 10.04. Notice of Filing of Order

Each order served upon the parties and the county attorney shall be accompanied by a notice of filing of order, which shall include notice of the right to appeal a final order pursuant to Rule 47.02. The State Court Administrator shall develop a "notice of filing" form which shall be used by court administrators.

RULE 11. RECORDING AND TRANSCRIPTS

Rule 11.01. Procedure

A verbatim recording of all hearings shall be made by a stenographic reporter or by an electronic sound recording device. If the recording is made by an electronic sound recording

device, qualified personnel shall be assigned by the court to operate the device. Any required transcripts shall be prepared by personnel assigned by the court.

Rule 11.02. Availability of Transcripts

Transcripts may be requested by the county attorney, parties, and participants. The court upon a showing of good cause may grant any other person's written or on the record request for a transcript.

Rule 11.03. Expense

If a party requesting a transcript is unable to pay the preparation cost, the party may apply to the court for an order directing the preparation and delivery of the transcript to the party requesting it, at public expense. A party's request for a transcript shall be accompanied by an in forma pauperis (IFP) application. Upon a finding of the party's ability to do so, the court may order partial reimbursement for the cost of the transcript.

RULE 12. USE OF TELEPHONE AND INTERACTIVE VIDEO

Rule 12.01. Motions and Conferences

The court may hear motions and conduct conferences with counsel by telephone or interactive video.

1999 Advisory Committee Comment

Rule 12.01 authorizes the court to use telephone and interactive video to hear motions where testimony is not required and to resolve procedural matters with counsel for the parties.

Rule 12.02. Hearings and Taking Testimony

By agreement of the parties, or in exceptional circumstances upon motion of a party or the county attorney, the court may hold hearings and take testimony by telephone or interactive video.

1999 Advisory Committee Comment

Rule 12.02 authorizes the court to hold hearings and take testimony by telephone or interactive video only upon agreement of the parties or in exceptional circumstances upon motion. The intent of this rule is to ensure that parties are permitted to fully participate in hearings and to be present when testimony is offered. The rule provides that the court has the opportunity, in all but the most exceptional cases, to personally observe witnesses in order to effectively weigh credibility. However, it also gives the court some flexibility in those exceptional cases.

Rule 12.03. In Court Appearance Not Precluded

This rule shall not preclude a party or the county attorney from being present in person before the court at a hearing.

RULE 13. SUBPOENAS

Rule 13.01. Subpoena for a Hearing or Trial

At the request of any party or the county attorney, the court administrator shall issue a subpoena for a witness in a matter pending before the court.

Rule 13.02. Form; Issuance; Notice

Subd. 1. Form. Every subpoena shall be issued by the court administrator under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a specified time and place or to produce books, papers, documents, or other tangible things designated in the subpoena. The court administrator shall issue a subpoena, or a subpoena for the production of documentary evidence or tangible things, signed and sealed, but otherwise in blank, to a party or county attorney requesting it, who shall fill it in before service.

Subd. 2. Issuance. A subpoena shall be issued only for appearance at a hearing, a deposition pursuant to Rule 17, a trial pursuant to Rule 39, or to produce books, papers, documents, or other tangible things designated in the subpoena.

Subd. 3. Notice. Every subpoena shall contain a notice to the person to whom it is directed advising the person of the right to reimbursement for certain expenses pursuant to Rule 13.08.

Rule 13.03. Service

A subpoena may be served by the sheriff, a deputy sheriff, or any other person over the age of 18 who is not a party to the proceeding. Service of a subpoena upon a person named in the subpoena shall be made by delivering a copy of the subpoena to the named person or by leaving a copy at the person's usual place of abode with some person of suitable age and discretion residing at such abode. Upon written agreement of the witness, a subpoena may be served by U.S. mail, through the E-Filing System, by e-mail or by other electronic means.

Rule 13.04. Motion to Quash a Subpoena

Upon motion pursuant to Rule 15, a person served with a subpoena may move to quash or modify the subpoena. Upon hearing a motion to quash a subpoena, the court may:

(a) direct compliance with the subpoena;

(b) modify the subpoena if it is unreasonable or oppressive;

(c) deny the motion to quash the subpoena on the condition that the person requesting the subpoena prepay the reasonable cost of producing the books, papers, documents, or tangible things; or

(d) quash the subpoena.

Rule 13.05. Objection

The person to whom the subpoena is directed may, within five (5) days after service of the subpoena or on or before the time specified in the subpoena for compliance if such time is less than five (5) days after service, serve upon the party serving the subpoena a written objection to the taking of the deposition or the production, inspection, or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect or copy the materials, except pursuant to an order of the court from which the subpoena was issued. If objection is made, the party serving the subpoena may, at any time before or during the taking of the deposition, and upon notice and motion to the deponent, request an order requiring compliance with the subpoena.

Rule 13.06. Production of Documentary Evidence

A subpoena may also command the person to whom it is directed to produce books, papers, documents, or tangible things designated in the subpoena.

Rule 13.07. Subpoena for Taking Depositions; Place of Examination

Subd. 1. Proof of Service. Proof of service of notice to take a deposition, as provided in Rule 17, constitutes a sufficient authorization for the issuance of a subpoena for the person named or described in the subpoena.

Subd. 2. Location. A resident of the state may be required to attend an examination only in the county in which the resident resides or is employed or transacts business in person, or at such other convenient place as is fixed by order of the court. A nonresident of the state may be required to attend in any county of the state.

Rule 13.08. Expenses

Subdivision 1. Witnesses. If the subpoena is issued at the request of the State of Minnesota, a political subdivision of the State, or an officer or agency of the State, witness fees and mileage shall be paid by public funds. If the subpoena is issued at the request of a party who is unable to pay witness fees and mileage, these costs shall upon order of the court be paid in whole or in part at public expense, depending upon the ability of the party to pay. All other fees and mileage shall be paid by the requesting party, unless otherwise ordered by the court upon motion.

Subd. 2. Expenses of Experts. Subject to the provisions of Rule 17, a witness who is not a party to the action or an employee of a party and who is required to give testimony or produce documents relating to a profession, business, or trade, or relating to knowledge,

information, or facts obtained as a result of activities in such profession, business, or trade, is entitled to reasonable compensation for the time and expense involved in preparing for and giving such testimony or producing such documents. The party serving the subpoena shall make arrangements for such reasonable compensation prior to the time of the taking of the testimony. If such arrangements are not made, the person subpoenaed may proceed pursuant to Rule 13.04 or Rule 13.05. If the deponent has moved to quash or otherwise objected to the subpoena, the party serving the subpoena may, upon notice and motion to the deponent and all parties and the county attorney, move for an order directing the amount of such compensation at any time before the taking of the deposition.

Rule 13.09. Failure to Appear

If any person personally served with a subpoena fails, without reasonable cause, to appear or bring the child if ordered to do so, or if the court has reason to believe the person is avoiding personal service, the court may sua sponte or upon the motion of a party or the county attorney pursuant to Rule 15 proceed against the person for civil contempt of court pursuant to Rule 14 or the court may issue a warrant for the person's arrest, or both. When it appears to the court that service will be ineffectual, or that the welfare of the child requires that the child be immediately brought into the custody of the court, the court may issue a warrant for immediate custody of the child.

RULE 14. CONTEMPT

Rule 14.01. Initiation

Contempt proceedings shall be initiated by personal service upon the alleged contemnor of an order to show cause together with a motion for contempt and an affidavit supporting the motion. The order to show cause shall direct the alleged contemnor to appear and show cause why he or she should not be held in contempt of court and why the moving party should not be granted the relief requested in the motion. The order to show cause shall contain at least the following:

(a) a reference to the specific order of the court alleged to have been violated and date of filing of the order;
(b) a quotation of the specific applicable provisions ordered;
(c) a statement identifying the alleged contemnor's ability to comply with the order; and
(d) a statement identifying the alleged contemnor's failure to comply with the order.

Rule 14.02. Supporting and Responsive Affidavits

The supporting affidavit of the moving party shall set forth with particularity the facts constituting each alleged violation of the order. Any responsive affidavit shall set forth with particularity any defenses the alleged contemnor will present to the court. The supporting affidavit and the responsive affidavit shall contain paragraphs which shall be numbered to correspond to the paragraphs of the motion where possible.

Rule 14.03. Hearing

The alleged contemnor must appear in person before the court to be afforded the opportunity to oppose the motion for contempt by sworn testimony. The court shall not act upon affidavit alone, absent express waiver by the alleged contemnor of the right to offer sworn testimony.

Rule 14.04. Sentencing

Subd. 1. Default of Conditions for Stay. Where the court has entered an order for contempt with a stay of sentence and there has been a default in the performance of the condition(s) for the stay, before a writ of attachment or bench warrant may be issued, an affidavit of non-compliance and request for writ of attachment must be served upon the defaulting party, unless the person is shown to be avoiding service.

Subd. 2. Writ of Attachment. The writ of attachment shall direct law enforcement officers to bring the defaulting party before the court for a hearing to show cause why the stay of sentence should not be revoked. The moving party shall submit a proposed order for writ of attachment to the court.

Subd. 3. Sanctions. Upon evidence taken, the court shall determine the guilt or innocence of the alleged contemnor. If the court determines that the alleged contemnor is guilty, the court shall order punishment by fine or imprisonment for not more than six (6) months, or both.

Subd. 4. Authority of Court. Nothing in these rules shall be interpreted to limit the inherent authority of the court to enforce its own orders.

RULE 15. MOTIONS

Rule 15.01. Form

Subd. 1. Generally. An application to the court for an order shall be by motion.

Subd. 2. Motions to Be in Writing. Except as permitted by subdivision 3, a motion shall be in writing and shall:

(a) set forth the relief or order sought;
(b) state with particularity the grounds for the relief or order sought;
(c) be signed by the person making the motion;
(d) be filed with the court, unless it is made orally in court on the record; and
(e) be accompanied by a supporting affidavit or other supporting documentation or a memorandum of law, unless it is made orally in court on the record.

The requirement of writing is fulfilled if the motion is stated in a written notice of motion. The parties may agree to written submission to the court for decision without oral argument unless the court directs otherwise.

Subd. 3. Exception. Unless another party or the county attorney objects, a party or the county attorney may make an oral motion during a hearing. All oral motions and objections to oral motions shall be made on the record. When an objection is made, the court shall determine whether there is good cause to permit the oral motion and, before issuing an order, shall allow the objecting party reasonable time to respond.

Rule 15.02. Service and Notice of Motions

Subd. 1. Upon Whom.

(a) **Generally.** The moving party shall serve the notice of motion and motion, along with any supporting affidavit or other supporting documentation or a memorandum of law, upon all parties, the county attorney, and any other persons designated by the court. If service of the petition was by publication and the address of the person remains unknown, service of a motion shall be deemed sufficient if it is mailed to the person's last known address. The moving party shall serve only the notice of the hearing and not the motion upon all participants.

(b) **Motion to Transfer Juvenile Protection Matter to Jurisdiction of Tribal Court.** In addition to providing service as required in subdivision 1(a), a motion to transfer a juvenile protection matter to jurisdiction of the Indian child's tribal court under Rule 48.01, or a response to such motion, shall also be served upon the child's parents and any Indian child age twelve (12) or older regardless of party status.

Subd. 2. How Made. Service of a motion by a Registered User of the E-Filing System upon another Registered User shall be made in compliance with Rule 14.03 of the General Rules of Practice for the District Courts. All other service of a motion shall be made by personal service, U.S. mail, or e-mail or other electronic means agreed upon in writing by the person to be served.

Subd. 3. Time. Any written motion, along with any supporting affidavit or other supporting documentation or memorandum of law, shall be served at least five (5) days before it is to be heard, unless the court for good cause shown permits a motion to be made and served less than five (5) days before it is to be heard. The filing and service of a motion shall not extend the permanency timelines set forth in these rules.

2008 Advisory Committee Comment

Service of Motion to Transfer Juvenile Protection Matter to Jurisdiction of Tribal Court on Child Age 12 or Older. The Indian Child Welfare Act (ICWA) permits the district court to deny a request to transfer to tribal court when there is "good cause" to deny the transfer. 25 U.S.C. § 1911(b). While "good cause" to deny the transfer is not

defined in the ICWA, it is addressed in the Bureau of Indian Affairs Guidelines for State Courts: Indian Child Custody Proceedings (BIA Guidelines), which provides that "Good cause not to transfer the proceeding may exist if any of the following circumstances exists . . . [t]he Indian child is over twelve years of age and objects to the transfer." BIA Guidelines C.3 and C.3 Commentary, 44 Fed. Reg. 67584, 67591 at C.3 (Nov. 26, 1979). Requiring service of the motion to transfer jurisdiction to tribal court upon a child age twelve (12) or older permits the child to be aware of the request to transfer and to raise an objection.

Rule 15.03. Ex Parte Motion and Hearing

Subd. 1. Motion. A motion may be made ex parte when permitted by statute or these rules. Every ex parte motion shall be accompanied by an explanation of the efforts made to notify all parties and the county attorney of the motion or an explanation of why such notice would place the child in danger of imminent harm or could result in the child being hidden or removed from the court's jurisdiction.

Subd. 2. Hearing. When the court issues an ex parte order removing a child from the care of a parent or legal custodian, the court shall schedule a hearing to review the order within seventy-two (72) hours of the child's removal. Upon issuance of an ex parte order in cases of domestic child abuse, the court shall schedule a hearing pursuant to the requirements of Minnesota Statutes § 260C.148. Upon issuance of any other ex parte order, a hearing shall be scheduled on the request of a party or the county attorney at the earliest possible date.

Rule 15.04. Motion to Dismiss Petition

Any party or the county attorney may bring a motion to dismiss the petition upon any of the following grounds:

(a) lack of jurisdiction over the subject matter;
(b) lack of jurisdiction over the child; or
(c) at or prior to the admit/deny hearing, failure of the petition to state facts which, if proven, establish a prima facie case to support the statutory grounds set forth in the petition.

Rule 15.05. Motion to Strike Document

If a motion to strike a document or any portion of a document is granted, the document or portion of document shall be marked by the judge as stricken, but the document shall remain in the court file.

Rule 15.06. Obtaining Hearing Date; Notice to Parties

Upon request of a party who intends to file a notice of motion and motion, the court administrator shall schedule a hearing which shall take place within fifteen (15) days of the request. A party obtaining a date and time for a hearing on a motion shall file and serve the notice of motion and motion pursuant to Rule 15.02, subd. 3.

Rule 15.07. Timing of Decision

Orders regarding motions shall be filed with the court administrator within fifteen (15) days of the conclusion of the hearing. Orders shall be served by the court administrator pursuant to Rule 10.03.

RULE 16. SIGNING OF PLEADINGS, MOTIONS, AND OTHER DOCUMENTS; SERVICE AND FILING OF MOTIONS AND OTHER DOCUMENTS; SANCTIONS

Rule 16.01. Signature

Subd. 1. Generally. Except as otherwise provided in these rules, every pleading, written motion, and other similar document shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each document shall state the signer's name, address, telephone number, e-mail address if the document is filed or served electronically, and attorney registration number if signed by an attorney. If providing a party's or participant's address, e-mail address, or telephone number would endanger the party or participant, the address, e-mail address, or telephone number may be provided to the court in a separate information statement that shall not be accessible to the public, parties, or participants, but shall be accessible to the attorneys and the guardian ad litem. Upon notice and motion, the court may disclose the address, e-mail address, or telephone number as it deems appropriate. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned document shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party. The filing, serving, or submitting of a document through the E-Filing System constitutes certification of compliance with Rule 16.02.

Subd. 2. Exception – Social Worker and Guardian Ad Litem Reports. Reports filed by social workers and guardians ad litem under Rule 38 need not be signed.

Advisory Committee Comment-2012 Amendment

Rule 16.01, subd. 1, is amended to add the last sentence, which is intended to facilitate a pilot project on electronic filing and service, but is designed to be a model for the implementation of electronic filing and service if the pilot project is made permanent and statewide. The sole purpose of the amendment is to make explicit the status of "signatures" affixed to pleadings and other documents that are electronically filed and served. Whatever means are used to sign these documents, whether pen and ink, facsimile of a signature, or an indication that the document is signed (such as a "/s/Pat Smith" notation), each will be treated the same way and deemed to be signatures for all purposes under the rule.

Rule 16.02. Representations to Court

By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, motion, report, affidavit, or other similar document, an attorney or unrepresented party

is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that:

(a) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(b) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(c) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(d) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Rule 16.03. Service and Filing of Motions and Other Documents

Except as otherwise provided in this Rule, the party filing a motion or other document, except a pleading, shall be responsible for serving the motion or other document upon the parties or, if represented, upon the attorneys for such individuals. The court administrator shall serve the motion or other document if the address of the person being served is confidential.

Rule 16.04. Sanctions

If a pleading, motion, affidavit, or other similar document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, affidavit, or other similar document is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, affidavit, or other similar document, including reasonable attorney fees.

RULE 17. DISCOVERY

Rule 17.01. Disclosure by Petitioner Without Court Order

Upon the request of any party, the petitioner shall without court order make the following disclosures:

(a) **Documents and Tangible Items.** The petitioner shall allow access at any reasonable time to all information, material, and items within the petitioner's possession or control which relate to the case. The petitioner shall permit inspection and copying of any relevant documents, recorded statements, or other tangible items which relate to the case within the possession or control of the petitioner and shall provide any party with the substance of any oral statements which relate to the case. The copying of a videotaped statement of a child abuse victim or alleged victim shall be governed by Minnesota Statutes § 611A.90. The

petitioner shall not disclose the name of or any identifying information regarding a reporter of maltreatment except as provided in Minnesota Statutes § 626.556, subd. 11.

(b) **Witnesses.** The petitioner shall disclose to all other parties and the county attorney the names and addresses of the persons intended to be called as witnesses at trial. The county attorney or petitioner shall permit all other parties to inspect and copy such witnesses' written or recorded statements that relate to the case within the petitioner's knowledge.

(c) **Expert Witnesses.** Petitioner shall disclose to all other parties and the county attorney:

(1) the names and addresses of all persons intended to be called as expert witnesses at trial;

(2) the subject matter about which each expert witness is expected to testify; and

(3) a summary of the grounds for each opinion to be offered.

Rule 17.02. Disclosure by Other Parties Without Court Order

Upon the request of a party or the county attorney, any party who is not the petitioner shall without court order make the following disclosures:

(a) **Documents and Tangible Objects.** The party shall disclose and permit the county attorney, attorney for petitioner, or any other party to inspect and copy any book, paper, report, exam, scientific test, comparison, document, photograph, or tangible object which the party intends to introduce in evidence at the trial or concerning which the party intends to offer evidence at the trial.

(b) **Witnesses.** Each party shall disclose to every other party and the county attorney the names and addresses of the persons the party intends to call as witnesses at trial. Each party shall permit every other party and the county attorney to inspect and copy such witnesses' written or recorded statements within the party's knowledge as relates to the case.

(c) **Expert Witnesses.** Each party shall disclose to all other parties and the county attorney:

(1) the names and addresses of all persons intended to be called as expert witnesses at trial;

(2) the subject matter about which each expert witness is expected to testify; and

(3) a summary of the grounds for each opinion to be offered.

Rule 17.03. Information Not Discoverable

The following information shall not be discoverable by any party or the county attorney with or without a court order:

(a) documents containing privileged information between an attorney and client, legal research, records, correspondence, reports, or memoranda to the extent they contain the opinions, theories, or conclusions of the attorney for a party or other staff of an attorney for a party; and

(b) except as otherwise required by this rule, reports, memoranda, or internal documents made by an attorney for a party or staff of an attorney for a party.

Rule 17.04. Discovery Upon Court Order

Upon written motion of any party or the county attorney, the court may authorize other discovery methods, including, but not limited to, the following:

(a) **Physical and Mental Examinations.**

(1) **Examination by Licensed Professional**. If the physical or mental condition of a party is in controversy, the court may order the party to submit to a physical or mental examination by a licensed professional of the moving party's choice. The examination shall be at the moving party's expense. The order shall specify the time, place, manner, conditions, and the scope of the examination.

(2) **Copy of Report.** The examiner shall prepare a detailed report of the findings and conclusions of the examination and shall provide the report to the moving party who shall forward it to all other parties and the county attorney unless otherwise ordered by the court.

(b) **Depositions.**

(1) **Agreement of Parties.** A deposition may be taken upon agreement of the parties.

(2) **Order of Court.** Following the initial appearance, any party or the county attorney may move the court to order the testimony of any other person or party be taken by deposition upon oral examination, if:

(i) there is a reasonable probability that the witness will be unable to be present or to testify at the hearing or trial because of the witness' existing physical or mental illness, infirmity, or death;

(ii) the party taking the deposition cannot procure the attendance of the witness at a hearing or trial by a subpoena, order of the court, or other reasonable means: or

(iii) upon a showing that the information sought cannot be obtained by other means.

(3) **Subpoena.** Attendance of witnesses at oral deposition may be compelled by subpoena as provided by Rule 13. Attendance of parties at oral deposition shall be ordered by the court when the court grants a motion pursuant to subdivision 2(b) and shall be procured through service of the order and a notice of the time and place of the taking of the deposition on the party.

(4) **Notice.** A party or the county attorney taking a deposition shall give reasonable notice of the deposition. The deposition shall be taken before an officer authorized to administer oaths by the laws of the United States, or before a person appointed by the court in which the matter is pending. The parties shall agree on or the court shall order the manner of recording of the deposition. A stenographic transcription may be made at a party's request. Examination and cross-examination of witnesses shall be as permitted at trial. However, the deponent shall answer any otherwise objectionable question, except that which would reveal privileged material unless the privilege does not apply pursuant to Minnesota Statutes § 626.556, subd. 8, so long as it leads to or is reasonably calculated to lead to the discovery of any relevant data.

(c) **Reports or Examinations and Tests.** Upon motion and order of the court, any party shall disclose and permit the county attorney, attorney for petitioner, and other parties to inspect and copy any results or reports of physical or mental examinations, chemical dependency assessments and treatment records, scientific tests, experiments, and comparisons relating to the particular case. It is not grounds for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Privileged communications are discoverable in accordance with Minnesota Statutes § 626.556, subd. 8.

(d) **Experts.** Discovery of facts known and opinions held by experts, otherwise discoverable pursuant to these rules and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(1) Upon motion, the court may order further discovery by means other than as provided in Rules 17.01 and 17.02, subject to such restrictions as to scope and such provisions concerning fees and expenses as the court may deem appropriate.

(2) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(3) Unless manifest injustice would result,

(i) the court shall require the party seeking discovery to pay the expert a reasonable fee for time spent in responding to discovery pursuant to this rule, and

(ii) with respect to discovery obtained pursuant to this rule, the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

Rule 17.05. Time, Place, and Manner of Discovery

An order of the court granting discovery shall specify the time, place, and manner of discovery and inspection permitted and may prescribe such terms and conditions as are just.

Rule 17.06. Regulation of Discovery

Subd. 1. Continuing Duty to Disclose. Whenever a party or the county attorney discovers additional material, information, or witnesses subject to disclosure, that party or the county attorney shall promptly notify the other parties and the county attorney of the existence of the additional material or information and the identity of the witnesses.

Subd. 2. Protective Orders. The trial court may order that specified disclosures be restricted or deferred, or make such other order as is appropriate to protect the child.

Subd. 3. Timely Discovery. Unless a court order otherwise provides, all material and information to which a party or the county attorney is entitled must be disclosed within fourteen (14) days of a request for disclosure.

Subd. 4. Sanctions. If, at any time, it is brought to the attention of the court that a party or the county attorney has failed to comply with an applicable discovery rule or order, or has failed to appear pursuant to a notice of taking of deposition, be sworn, or answer questions, the court may, upon motion, order such party or the county attorney to permit the discovery or inspection, grant a continuance, or enter such order as it deems just under the circumstances including:

(a) an order that the matters regarding which the order was made, or the other designated facts, shall be taken to be established for purposes of the proceedings, in accordance with the claim of the party who obtained the order;

(b) an order refusing to allow the disobedient party to support or oppose designated claims, or prohibiting the disobedient party from introducing designated matters in evidence;

(c) an order striking the petition or parts of the petition, answer, or parts of an answer, dismissing the proceeding, or entering a finding that the petition is proved or that certain facts alleged in the petition are proved;

(d) in lieu of any of the foregoing, an order treating as a contempt of court the failure to obey any order; or

(e) the court shall require the party or county attorney failing to act or the party's counsel, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds the failure was substantially justified or that other circumstances make an award of expenses unjust.

Subd. 5. Failure to Act. Failure to act as described in this rule may not be excused on the ground that the discovery sought is objectionable unless the party or county attorney failing to act has applied for a protective order as provided in subdivision 2.

RULE 18. DEFAULT

Rule 18.01. Failure to Appear

Except as otherwise provided in Rule 35.02, subd. 1, if a parent, legal custodian, or Indian custodian fails to appear for an admit-deny hearing, a pretrial hearing, or a trial after being properly served with a summons pursuant to Rule 32.02 or a notice pursuant to Rule 32.03 or 32.04, the court may receive evidence in support of the petition or reschedule the hearing.

Rule 18.02. Default Order

If the petition is proved by the applicable standard of proof, the court may enter an order granting the relief sought in the petition as to that parent, legal custodian, or Indian custodian.

RULE 19. SETTLEMENT

Rule 19.01. Generally

Settlement discussions may be utilized to achieve one or more of the purposes set forth in Rule 1.02.

Rule 19.02. Content of Settlement Agreement

Any settlement agreement shall include a statement of:

(a) the statutory grounds to be admitted;
(b) the statutory grounds to be dismissed, if any;
(c) the factual allegations to be admitted;
(d) the factual allegations asserted by the petitioner but not admitted;
(e) whether the court will enter or withhold adjudication; and
(f) the issues to be addressed at the disposition hearing or the agreed upon disposition and case plan.

Rule 19.03. Procedure

Every settlement agreement shall be filed with the court or stated and agreed to on the record by the settling parties. Before approving a settlement agreement, the court shall

determine that the agreement is in the best interests of the child and that each party to the agreement understands the content and consequences of the admission or settlement agreement and voluntarily consents to the agreement. When a party makes an admission, the court may accept or reject the admission based upon the terms of the settlement agreement or may conditionally accept or reject the admission pending receipt of a predisposition report prepared for the disposition hearing. The court may accept a settlement agreement that resolves the issues with respect to the petitioner and one or more but not all parties, and proceed with the matter with respect to the non-settling parties. If the court approves the settlement agreement, it shall proceed pursuant to Rule 40. If the court rejects the settlement agreement, it shall advise the parties and the county attorney of this decision in writing or on the record and shall call upon the parties to either affirm or withdraw the admission. If the admission is withdrawn, the court shall make a finding that the admission is not accepted and proceed pursuant to Rule 39.

Rule 19.04. Objection to Settlement Agreement – Termination of Parental Rights Matters and Permanent Placement Matters

If a party objects to a settlement agreement in a termination of parental rights matter or a permanent placement matter, that party shall, within five (5) days of service of notice of the proposed settlement agreement, adopt the existing pleadings and assume the burden of proof or file pleadings in support of an alternative. The matter shall be set for trial within the timelines set forth in Rule 39.

RULE 20. ALTERNATIVE DISPUTE RESOLUTION

The court may authorize alternative dispute resolution pursuant to Minnesota Statutes § 260C.163, subd. 12.

C. PARTIES AND PARTICIPANTS

RULE 21. PARTIES

Rule 21.01. Party Status

Subd. 1. Parties Generally. Parties to a juvenile protection matter shall include:

(a) the child's guardian ad litem;
(b) the child's legal custodian;
(c) in the case of an Indian child, the child's parents as defined in Rule 2.01(19), the child's Indian custodian, and the Indian child's tribe through the tribal representative;
(d) the petitioner;
(e) any person who intervenes as a party pursuant to Rule 23;
(f) any person who is joined as a party pursuant to Rule 24; and

(g) any other person who is deemed by the court to be important to a resolution that is in the best interests of the child.

Subd. 2. Habitual Truant, Runaway, and Sexually Exploited Child. In addition to the parties identified in subdivision 1, in any matter alleging a child to be a habitual truant, a runaway, or a sexually exploited child, the child, regardless of age, shall also be a party. In any matter alleging a child to be a habitual truant, the child's school district may be joined as a party pursuant to Rule 24.

Subd. 3. Termination of Parental Rights Matters and Permanent Placement Matters. In addition to the parties identified in subdivision 1, in any termination of parental rights matter or permanent placement matter the parties shall also include:

(a) the child's parents, including any noncustodial parent and any adjudicated or presumed father;
(b) any person entitled to notice of any adoption proceeding involving the child;
(c) the responsible social services agency when the agency is not the petitioner; and
(d) any other person who is deemed by the court to be important to a resolution that is in the best interests of the child.

Subd. 4. Relatives Recommended as Permanent Custodians. If, in a proceeding involving a child in need of protection or services, the responsible social services agency recommends transfer of permanent legal and physical custody to a relative, the relative has a right to participate as a party and shall receive notice of all hearings and copies of all orders.

Rule 21.02. Rights of Parties

A party shall have the right to:

(a) notice pursuant to Rule 32;
(b) legal representation pursuant to Rule 25;
(c) be present at all hearings unless excluded pursuant to Rule 27;
(d) conduct discovery pursuant to Rule 17;
(e) bring motions before the court pursuant to Rule 15;
(f) participate in settlement agreements pursuant to Rule 19;
(g) subpoena witnesses pursuant to Rule 13;
(h) make argument in support of or against the petition;
(i) present evidence;
(j) cross-examine witnesses;
(k) request review of the referee's findings and recommended order pursuant to Rule 7;
(l) request review of the court's disposition upon a showing of a substantial change of circumstances or that the previous disposition was inappropriate;
(m) bring post-trial motions pursuant to Rule 45;
(n) appeal from orders of the court pursuant to Rule 47; and
(o) any other rights as set forth in statute or these rules.

1999 Advisory Committee Comment

The former rules did not distinguish between parties and participants. Rule 21 delineates the status and rights of parties, and Rule 22 delineates the status and rights of participants. There may be many individuals concerned about the best interests of a child who do not have the immediate connection to the child that justifies treating them as parties. The intent of this rule is to ensure that such individuals are aware of the proceedings and are available to provide information useful to the court in making decisions concerning that child. A person with participant status may intervene as a party pursuant to Rule 23 or may be joined as a party pursuant to Rule 24.

Rule 21.03. Parties' Names and Addresses

It shall be the responsibility of the petitioner to set forth in the petition the names and addresses of all parties if known to the petitioner after reasonable inquiry, and to specify that each such person has party status. It shall be the responsibility of each party to inform the court administrator of any change of address or e-mail address; Registered Users of the E-Filing System shall also update any change of e-mail address in the E-Filing System. If a party is endangered, the party may ask the court to keep the party's name and address confidential and, if the court grants the request, the name and address shall be provided to the court in a separate information statement that shall not be accessible to the public, parties, or participants, but shall be accessible to the attorneys and the guardian ad litem.

RULE 22. PARTICIPANTS

Rule 22.01. Participant Status

Unless already a party pursuant to Rule 21, or unless otherwise specified, participants to a juvenile protection matter shall include:

(a) the child;
(b) any parent who is not a legal custodian and any alleged, adjudicated, or presumed father;
(c) the responsible social services agency, when the responsible social services agency is not the petitioner;
(d) any guardian ad litem for the child's legal custodian;
(e) grandparents with whom the child has lived within the two (2) years preceding the filing of the petition;
(f) relatives or other persons providing care for the child and other relatives who request notice;
(g) current foster parents, persons proposed as permanent foster care parents, and persons proposed as pre-adoptive parents;
(h) the spouse of the child, if any; and
(i) any other person who is deemed by the court to be important to a resolution that is in the best interests of the child.

1999 Advisory Committee Comment

The former rules did not distinguish between parties and participants. Rule 21 delineates the status and rights of parties, and Rule 22 delineates the status and rights of participants. There may be many individuals concerned about the best interests of a child who do not have the immediate connection to the child that justifies treating them as parties. The intent of this rule is to ensure that such individuals are aware of the proceedings and are available to provide information useful to the court in making decisions concerning that child. A person with participant status may intervene as a party pursuant to Rule 23 or may be joined as a party pursuant to Rule 24.

Rule 22.02. Rights of Participants

Subd. 1. Generally. Unless a participant intervenes as a party pursuant to Rule 23, or is joined as a party pursuant to Rule 24, the rights of a participant shall be limited to:

(a) notice and a copy of the petition pursuant to Rule 32;

(b) attending hearings pursuant to Rule 27; and

(c) offering information at the discretion of the court, except as provided in subdivision 2.

Subd. 2. Foster Parents, Pre-Adoptive Parents, and Relatives Providing Care. Notwithstanding subdivision 1, any foster parent, pre-adoptive parent, relative providing care for the child, or relative to whom the responsible social services agency recommends transfer of permanent legal and physical custody of the child shall have a right to be heard in any hearing regarding the child. Any other relative may request an opportunity to be heard. This subdivision does not require that a foster parent, pre-adoptive parent, or relative providing care for the child be made a party to the matter. Each party and the county attorney shall be provided an opportunity to respond to any presentation by a foster parent, pre-adoptive parent, or relative.

Rule 22.03. Participants' Names and Addresses

It shall be the responsibility of the petitioner to set forth in the petition the names and addresses of all participants if known to the petitioner after reasonable inquiry, and to specify that each such person has participant status. It shall be the responsibility of each participant to inform the court administrator of any change of address or e-mail address; Registered Users of the E-Filing System shall also update any change of e-mail address in the E-Filing System. If a participant is endangered, the participant may ask the court to keep the participant's name and address confidential and, if the court grants the request, the name and address shall be provided to the court in a separate information statement that shall not be accessible to the public, parties, or participants, but shall be accessible to the attorneys and the guardian ad litem.

RULE 23. INTERVENTION

Rule 23.01. Intervention of Right

Subd. 1. Child. A child who is the subject of the juvenile protection matter shall have the right to intervene as a party.

Subd. 2. Grandparents. Any grandparent of the child shall have the right to intervene as a party if the child has lived with the grandparent within the two (2) years preceding the filing of the petition.

Subd. 3. Parent. Any parent who is not a legal custodian of the child shall have the right to intervene as a party.

Subd. 4. Social Services Agency. The responsible social services agency shall have the right to intervene as a party in a case where the responsible social services agency is not the petitioner.

Rule 23.02. Permissive Intervention

Any person may be permitted to intervene as a party if the court finds that such intervention is in the best interests of the child.

Rule 23.03. Procedure

Subd. 1. Intervention of Right. A person with a right to intervene pursuant to Rule 23.01 shall file with the court and serve upon all parties and the county attorney a notice of intervention, which shall include the basis for a claim to intervene. The notice of intervention as a matter of right form shall be available from the court administrator. The intervention shall be deemed accomplished upon service of the notice of intervention, unless a party or the county attorney files and serves a written objection within ten (10) days of the date of service. If a written objection is timely filed and served, the court shall schedule a hearing for the next available date.

Subd. 2. Permissive Intervention. A person, including the county attorney in a case where the responsible social services agency is not the petitioner, seeking permissive intervention pursuant to Rule 23.02 shall file with the court and serve upon all parties and the county attorney a notice of motion and motion to intervene pursuant to Rule 15. The notice shall state the nature and extent of the person's interest in the child and the reason(s) that the person's intervention would be in the best interests of the child. A hearing on a motion to intervene shall be held within ten (10) days of the filing of the motion to intervene.

Rule 23.04. Effect of Intervention

The court may conduct hearings, make findings, and issue orders at any time prior to intervention being accomplished or denied. The intervention shall be effective as of the date granted and prior proceedings and decisions of the court shall not be affected.

RULE 24. JOINDER

Rule 24.01. Procedure

The court, upon its own motion or motion of a party or the county attorney pursuant to Rule 15, may join a person or entity as a party if the court finds that joinder is:

(a) necessary for a just and complete resolution of the matter; and

(b) in the best interests of the child.

The moving party shall serve the motion upon all parties, the county attorney, and the person proposed to be joined.

2003 Advisory Committee Comment

In *In Re the Welfare of Q.T.B.*, Nos. C7-97-2093 and C9-97-2094, (Minn. Ct. App. May 26, 1998), *rev. denied* (Minn. July 16, 1998), an unpublished decision of the Court of Appeals, the court considered the appellant's claim that she should have been joined as a party to a child in need of protection or services proceeding because she was at risk of losing her visitation rights with the infant who was the subject of the petition. The court cited Minn. R. Civ. P. 19.01 and determined that the rights of the appellant did not rise to the level of requiring joinder under Rule 19.01. While *In Re the Welfare of Q.T.B.* denies joinder under the specific facts of that case, it implies that joinder is permissible thus authorizing joinder in juvenile protection matters.

RULE 25. RIGHT TO REPRESENTATION; APPOINTMENT OF COUNSEL

Rule 25.01. Right to Representation

Every party and participant has the right to be represented by counsel in every juvenile protection matter, including through appeal, if any. This right attaches no later than when the party or participant first appears in court.

1999 Advisory Committee Comment (amended 2003)

Rule 25.01 sets forth the basic principle that each person appearing in court has the right to be represented by counsel. Each person, however, does not necessarily have the right to court appointed counsel as provided in Rule 25.02.

Rule 25.02. Appointment of Counsel

Subd. 1. Child. Appointment of counsel for a child who is the subject of a juvenile protection matter shall be pursuant to Minnesota Statutes § 260C.163, subd. 3(a) – (e). Appointment of counsel for an Indian child who is the subject of a juvenile protection matter shall be pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1912(b). The court may sua sponte appoint counsel for the child, or may do so upon the request of any party or participant. Any such appointment of counsel for the child shall occur as soon as practicable after the request is made. For purposes of appeal, appointment of counsel in a juvenile protection matter shall be made within three (3) days of the request for counsel. When possible, the trial court attorney should be appointed as appellate counsel.

Subd. 2. Parent, Legal Custodian, or Indian Custodian. Appointment of counsel for a parent or legal custodian whose child is the subject of a juvenile protection matter shall be pursuant to Minnesota Statutes § 260C.163, subd. 3(a) – (g). Appointment of counsel for a parent or Indian custodian of an Indian child who is the subject of a juvenile protection matter shall be pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1912(b). The appointment of counsel for the parent, legal custodian, or Indian custodian shall occur as soon as practicable after the request is made. For purposes of appeal, appointment of counsel in a juvenile protection matter shall be made within three (3) days of the request for counsel. When possible, the trial court attorney should be appointed as appellate counsel.

Subd. 3. Guardian Ad Litem. The court may appoint separate counsel for the guardian ad litem if necessary. A public defender may not be appointed as counsel for a guardian ad litem. For purposes of appeal, appointment of counsel in a juvenile protection matter shall be made within three (3) days of the request for counsel. When possible, the trial court attorney should be appointed as appellate counsel.

Subd. 4. Child's Preference. In any juvenile protection matter where the child is not represented by counsel, the court shall determine the child's preferences regarding the proceedings, if the child is of suitable age to express a preference.

Rule 25.03. Reimbursement

When counsel is appointed for a child, the court may inquire into the ability of the parent or legal custodian to pay for the attorney's services and, after giving the parent or legal custodian a reasonable opportunity to be heard, may order the parent or legal custodian to pay the attorney's fees. The parent or legal custodian shall have an ongoing duty to disclose any change in the person's financial circumstances.

Rule 25.04. Notice of Right to Representation

Any child, parent, legal custodian, or Indian custodian who appears in court and is not represented by counsel shall be advised by the court on the record of the right to representation pursuant to Rule 25.

Rule 25.05. Certificate of Representation

An attorney representing a client in a juvenile protection matter, other than a public defender or county attorney, shall on or before the attorney's first appearance file with the court a certificate of representation.

Rule 25.06. Withdrawal or Discharge of Counsel

An attorney representing a party in a juvenile protection matter, including a public defender, shall continue representation until such time as:

(a) all district court proceedings in the matter have been completed, including filing and resolution of all post-trial motions under Rules 45 and 46;
(b) the attorney has been discharged by the client in writing or on the record;
(c) the court grants the attorney's ex parte motion for withdrawal upon good cause shown; or
(d) the court approves the attorney's ex parte written substitution of counsel.

If the court grants an attorney's ex parte motion for withdrawal, the withdrawing attorney shall serve upon all parties and the county attorney a copy of the order permitting withdrawal.

RULE 26. GUARDIAN AD LITEM

Rule 26.01. Appointment for Child

Subd. 1. Mandatory Appointment Generally Required. Pursuant to the procedures set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court, the court shall issue an order appointing a guardian ad litem to advocate for the best interests of the child in each child in need of protection or services matter, termination of parental rights matter, and other permanent placement matter, where such appointment is mandated by Minnesota Statutes § 260C.163, subd. 5. If the court has issued an order appointing a person as a guardian ad litem in a child in need of protection or services matter, the court may, but is not required to, issue an order reappointing the same person in the termination of parental rights or other permanent placement matter. An appointment order is required only if a new person is being appointed as guardian ad litem.

Subd. 2. Discretionary Appointment. Pursuant to the procedures set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court, in all other cases, except as provided in subdivision 1, the court may appoint a guardian ad litem to advocate for the best interests of the child as permitted by Minnesota Statutes § 260C.163, subd. 5.

Subd. 3. Timing; Method of Appointment. Appointment of a guardian ad litem shall occur prior to the emergency protective care hearing or the admit-deny hearing, whichever occurs first. The court may appoint a person to serve as guardian ad litem for more than one child in a proceeding. The appointment of a guardian ad litem shall be made pursuant to the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court.

Subd. 4. Responsibilities; Rights. The guardian ad litem shall carry out the responsibilities set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court. The guardian ad litem shall have the rights set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court.

Subd. 5. Guardian Ad Litem Not Also Attorney for Child. Counsel for the child shall not also serve as the child's guardian ad litem or as legal counsel for the guardian ad litem.

1999 Advisory Committee Comment (updated 2003)

Rule 26.01 is consistent with Minnesota Statutes § 260C.163, subd. 5, which provides in part:

> *(a) The court shall appoint a guardian ad litem to protect the interests of the minor when it appears, at any stage of the proceedings, that the minor is without a parent or guardian, or that the minor's parent is a minor or incompetent, or that the parent or guardian is indifferent or hostile to the minor's interests, and in every proceeding alleging a child's need for protection or services under [Minnesota Statutes] § 260C.007, subd. 6.*

With respect to the appointment of guardians ad litem, Minnesota Statutes § 260C.163, subd. 5, complies with the federal Child Abuse Prevention and Treatment Act (CAPTA), 42 U.S.C. § 5106a(b)(2)(A). CAPTA mandates that for a state to qualify to receive federal grants for child protection prevention and treatment services, the state must have in place:

> *[P]rovisions and procedures requiring that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, and who may be an attorney or a court appointed special advocate (or both), shall be appointed to represent the child in such proceedings –*
> *(I) to obtain first-hand, a clear understanding of the situation and needs of the child; and*
> *(II) to make recommendations to the court concerning the best interests of the child . . . .*

42 U.S.C. § 5106a(b)(2)(A)(xiii) (2002).

The types of cases to which guardians ad litem must be appointed are much more expansive under Minnesota's statutes than under federal statutes. Minnesota requires the appointment of a guardian ad litem not only in cases where the act of an adult places the child in need of protection or services, but also in cases where the child's act or status places the child in need of protection or services. Minn. Stat. § 260C.163, subd. 5.

Rule 26.02. Discretionary Appointment for Child's Parent or Legal Custodian

Subd. 1. Appointment. Pursuant to the procedures set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court, the court may sua sponte or upon the written or on-the-record request of a party or participant appoint a guardian ad litem for a parent who is a party or the legal custodian if the court determines that the parent or legal custodian:

(a) is incompetent to assist counsel in the matter or understand the nature of the proceedings; or

(b) it appears at any stage of the proceedings that the parent is under eighteen (18) years of age and is without a parent or legal custodian, or that considered in the context of the matter the minor parent's parent or legal custodian is unavailable, incompetent, indifferent to, hostile to, or has interests in conflict with the interests of the minor parent.

Subd. 2. Attorney Not Discharged. Appointment of a guardian ad litem for a parent or legal custodian shall not result in discharge of counsel for the parent or legal custodian.

Subd. 3. Responsibilities; Rights. The guardian ad litem shall carry out the responsibilities set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court. The guardian ad litem shall have the rights set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court.

2004 Advisory Committee Comment

If the minor parent or incompetent adult is unable to admit or deny the petition, the court may choose to appoint a substitute decisionmaker or legal guardian to admit or deny the petition.

Rule 26.03. Term of Service of Guardian Ad Litem

Unless otherwise ordered by the court, upon appointment to a juvenile protection matter the guardian ad litem shall serve as follows:

(a) when the permanency plan for the child is to return the child home, the court shall issue an order dismissing the guardian ad litem from the case upon issuance of an order returning the child to the child's home and terminating the juvenile protection matter;

(b) when the permanency plan for the child is transfer of permanent legal and physical custody to a relative, the court shall issue an order dismissing the guardian ad litem from the case upon issuance of the order transferring custody and terminating the juvenile protection matter;

(c) when the permanency plan for the child is termination of parental rights leading to adoption, the guardian ad litem shall continue to serve as a party until the adoption decree is entered;

(d) when the permanency plan for the child is long-term foster care, the guardian ad litem shall continue to serve as a party for the purpose of monitoring the child's welfare, and shall provide the foster parent and child, if of suitable age, with the address and phone number of the guardian ad litem so that they may contact the guardian ad litem if necessary. The guardian ad litem shall be provided notice of all social services administrative reviews and shall be consulted regarding development of any case plan, out-of-home placement plan, or independent living plan required pursuant to Rule 37.

Rule 26.04. Request for Appointment of Counsel for Child

The guardian ad litem shall request appointment of counsel for a child if the guardian ad litem determines that the appointment is necessary to protect the legal rights or legal interests of the child.

2003 Advisory Committee Comment

In deciding whether to request appointment of counsel for the child, the guardian ad litem should assess the following, among other factors: the child's ability to work with counsel, whether the guardian ad litem's recommendation is contrary to the child's expressed preference, whether the child's siblings are represented, and the complexity of the issues involved.

Rule 26.05. Reimbursement

The court may inquire into the ability of the parent or legal custodian to pay for the guardian ad litem's services and, after giving the parent or legal custodian a reasonable opportunity to be heard, may order the parent or legal custodian to pay the guardian ad litem's fees. The parent or legal custodian shall have an ongoing duty to disclose any change in the person's financial circumstances.

RULE 27. ACCESS TO HEARINGS

Rule 27.01. Presumption of Public Access to Hearings

Absent exceptional circumstances, hearings in juvenile protection matters are presumed to be accessible to the public. Hearings, or portions of hearings, may be closed to the public by the court only in exceptional circumstances. The closure of any hearing shall be noted on the record and the reasons for the closure given. Closure of all or part of a hearing shall not prevent the court from proceeding with the hearing or issuing a decision. Minnesota Statutes § 260C.163, subd. 1(c), is superseded insofar as it applies to public access to hearings in juvenile protection matters. An order closing a hearing or portion of a hearing to the public shall be accessible to the public.

Rule 27.02. Party and Participant Attendance at Hearings

Notwithstanding the closure of a hearing to the public pursuant to Rule 27.01, any party who is entitled to summons pursuant to Rule 32.02 or any participant who is entitled to notice pursuant to Rule 32.03, or any person who is summoned or given notice, shall have the right to attend the hearing to which the summons or notice relates unless excluded pursuant to Rule 27.04.

1999 Advisory Committee Comment

Pursuant to Rule 21, a party has the right to be present in person at any hearing. For a child, the person with physical custody of the child should generally be responsible

for ensuring the child's presence in court. When a child is in emergency protective care or protective care, the responsible social services agency is responsible for ensuring the child's presence in court. If the child is in the custody of the responsible social services agency in out-of-home placement, the agency should transport the child to the hearing. If the agency fails to make arrangements for the child to attend the hearing, the child's attorney or guardian ad litem may need to ask for a continuance and for an order requiring the child to be brought to the next hearing.

Rule 27.03. Absence Does Not Bar Hearing

The absence from a hearing of any party or participant shall not prevent the hearing from proceeding provided appropriate notice has been served.

Rule 27.04. Exclusion of Parties or Participants from Hearings

The court may exclude from any hearing any party or participant, other than a guardian ad litem or counsel for any party or participant, only if it is in the best interests of the child to do so or the person engages in conduct that disrupts the court. The exclusion of any party or participant from a hearing shall be noted on the record and the reason for the exclusion given. The exclusion of any party or participant shall not prevent the court from proceeding with the hearing or issuing a decision. An order excluding a party or participant from a hearing shall be accessible to the public.

D. COURSE OF CASE

RULE 28. EMERGENCY PROTECTIVE CARE ORDER AND NOTICE

Rule 28.01. Emergency Protective Care Defined

A child is in "emergency protective care" when:

(1) taken into custody by a peace officer pursuant to Minnesota Statutes § 260C.151, subd. 6; § 260C.154; or § 260C.175; or

(2) returned home before an emergency protective care hearing pursuant to Rule 30 with court ordered conditions of release.

1999 Advisory Committee Comment

A child taken into emergency protective care should never be held in secure detention.

Rule 28.02. Ex Parte Order for Emergency Protective Care

Subd. 1. Generally. When the court makes individualized, explicit findings, the court may issue an ex parte order for emergency protective care if it finds from the facts set forth in the petition or any supporting affidavits or sworn testimony that:

(a) the child has left or been removed from a court-ordered placement; or
(b) there is a prima facie showing that the child is in surroundings or conditions that endanger the child's health, safety, or welfare and that require that responsibility for the child's care and custody be immediately assumed by the responsible social services agency; and
(c) continuation of the child in the custody of the parent or legal custodian is contrary to the child's welfare.

Subd. 2. Habitual Truant, Runaway, Sexually Exploited Child, Delinquent Under Age 10, Incompetent to Proceed, and Domestic Abuse Matters. In addition to the provisions of subdivision 1, the court may issue an ex parte order for emergency protective care if it finds from the facts set forth in the petition or any supporting affidavits or sworn testimony that:
(a) there is a prima facie showing that pursuant to Minnesota Statutes § 260C.007, subd. 6, the child is a sexually exploited child, is a habitual truant, is a runaway, has committed a delinquent act before becoming ten (10) years of age, has been found incompetent to proceed or not guilty by reason of mental illness or mental deficiency, or has been found by the court to have committed domestic abuse; and
(b) the child failed to appear after having been personally served with a summons or subpoena, reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons; and
(c) continuation of the child in the custody of the parent or legal custodian is contrary to the child's welfare.

Rule 28.03. Contents of Order

An order for emergency protective care shall be signed by a judge, shall include the findings required under Rule 28.02, subds. 1 and 2, and shall:
(a) order the child to be taken to an appropriate relative, a designated caregiver pursuant to Minnesota Statutes § 260C.181, or a shelter care facility designated by the court pending an emergency protective care hearing;
(b) state the name and address of the child, unless such information would endanger the child, or, if unknown, designate the child by any name or description by which the child can be identified with reasonable certainty;
(c) state the age and gender of the child or, if the age of the child is unknown, that the child is believed to be of an age subject to the jurisdiction of the court;
(d) state the reasons why the child is being taken into emergency protective care;
(e) state the reasons for any limitation on the time or location of the execution of the emergency protective care order;
(f) state the date when issued and the county and court where issued; and
(g) state the date, time, and location of the emergency protective care hearing.

Rule 28.04. Execution of Order

An order for emergency protective care:
(a) may only be executed by a peace officer authorized by law to execute a warrant;
(b) shall be executed by taking the child into custody;

(c) may be executed at any place in the state except where prohibited by law or unless otherwise ordered by the court;
(d) may be executed at any time unless otherwise ordered by the court; and
(e) need not be in the peace officer's possession at the time the child is taken into emergency protective care.

Rule 28.05. Notice

When an order for emergency protective care is executed, the peace officer shall notify the child and the child's parent or legal custodian:

(a) of the existence of the order for emergency protective care;
(b) of the reasons why the child is being taken into emergency protective care;
(c) of the time and place of the emergency protective care hearing;
(d) of the name, address, and telephone number of the responsible social services agency; and
(e) that the parent or legal custodian or child may request that the court place the child with a relative or a designated caregiver rather than in a shelter care facility.

The notice shall be delivered in written form and, when possible, the content of the notice shall also be orally summarized and explained. If the parent or legal custodian is not present when the child is removed from the premises, the notice shall be left with an adult on the premises. If no adult is present at the time the child is removed, the notice shall be left in a conspicuous place on the premises.

Rule 28.06. Enforcement of Order

An emergency protective care order shall be enforceable by any peace officer in any jurisdiction.

RULE 29. PROCEDURES DURING PERIOD OF EMERGENCY PROTECTIVE CARE

Rule 29.01. Release from Emergency Protective Care

Subd. 1. Child Taken Into Emergency Protective Care Pursuant to Court Order.

(a) **Release Prohibited.** A child taken into emergency protective care pursuant to a court order shall be held for seventy-two (72) hours unless the court issues an order authorizing release.

(b) **Release Required.** A child taken into emergency protective care pursuant to a court order shall not be held in emergency protective care for more than seventy-two (72) hours unless an emergency protective care hearing has commenced pursuant to Rule 30 and the court has ordered continued protective care.

Subd. 2. Child Taken Into Emergency Protective Care Without Court Order.

(a) **Release Required.** A child taken into emergency protective care without a court order shall be released unless an emergency protective care hearing pursuant to Rule 30 has commenced within seventy-two (72) hours of the time the child was removed from home and the court has ordered continued protective care.

(b) **Discretionary Release by Peace Officer or County Attorney.** When a peace officer has taken a child into emergency protective care without a court order, the peace officer, peace officer's supervisor, or the county attorney may release the child any time prior to an emergency protective care hearing. The peace officer, the peace officer's supervisor, or the county attorney who releases the child may not place any conditions of release on the child.

2003 Advisory Committee Comment

When calculating the seventy-two (72) hour period referenced in Rule 29.01, pursuant to Rule 4.01 the day the child was removed from home and any Saturday, Sunday, or legal holiday is not counted. The last day of the period shall be included, unless it is a Saturday, Sunday, or legal holiday in which event the period runs to the end of the next day that is not a Saturday, Sunday, or legal holiday.

Rule 29.02. Discretionary Release by Court; Custodial Conditions

The court at any time before an emergency protective care hearing may release a child and may:

(a) place restrictions on the child's travel, associations, or place of abode during the period of the child's release; and

(b) impose any other conditions upon the child or the child's parent or legal custodian deemed reasonably necessary and consistent with criteria for protecting the child.

Any conditions terminate after seventy-two (72) hours unless a hearing has commenced pursuant to Rule 30 and the court has ordered continuation of the condition.

Rule 29.03. Release to Custody of Parent or Other Suitable Person

A child released from emergency protective care shall be released to the custody of the child's parent, legal custodian, or other suitable person.

Rule 29.04. Reports

Subd. 1. Report by Peace Officer. Any report required by Minnesota Statutes § 260C.176, subd. 6, shall be filed with the court on or before the first court day following placement of the child and the report shall include at least:

(a) the time the child was taken into emergency protective care;

(b) the time the child was delivered for transportation to the shelter care facility;

(c) the reasons why the child was taken into emergency protective care;

(d) the reasons why the child has been placed;

(e) a statement that the child and the child's parent or legal custodian have received the advisory required by Minnesota Statutes § 260C.176, subd. 3, or the reasons why the advisory has not been made; and

(f) reasons to support the non-disclosure, if disclosure of the location of the placement has not been made because there is reason to believe that the child's health and welfare would be immediately endangered.

Subd. 2. Report by Supervisor of Shelter Care Facility. Any report required by Minnesota Statutes § 260C.176, subd. 6, shall be filed with the court on or before the first court day following placement. The report shall include, at least, acknowledgement of receipt of the child and state the time the child arrived at the shelter care facility.

RULE 30. EMERGENCY PROTECTIVE CARE HEARING

Rule 30.01. Timing

Subd. 1. Generally. The court shall hold an emergency protective care hearing within seventy-two (72) hours of the child being taken into emergency protective care unless the child is released pursuant to Rule 29. The purpose of the hearing shall be to determine whether the child shall be returned home or placed in protective care.

Subd. 2. Continuance. The court may, upon its own motion or upon the written or oral motion of a party made at the emergency protective care hearing, continue the emergency protective care hearing for a period not to exceed eight (8) days. A continuance may be granted:

(a) upon a determination by the court that there is a prima facie showing that the child should be held in emergency protective care pursuant to Rule 28; and

(b) if the court finds that a continuance is necessary for the protection of the child, for the accumulation or presentation of necessary evidence or witnesses, to protect the rights of a party, or for other good cause shown.

1999 Advisory Committee Comment

Subdivision 2 requires that the court make certain findings before permitting a continuance. This provision recognizes that parties may need time to prepare for the hearing, but assures that a child will not be held unnecessarily during the continuance.

Rule 30.02. Notice of Hearing

The court administrator, or designee, shall inform the county attorney; the responsible social services agency; the child; and the child's counsel, guardian ad litem, parent, legal custodian, spouse, Indian custodian, Indian tribe, and school district of residence as required by Minnesota Statutes § 127A.47, subd. 6, of the time and place of the emergency protective care hearing.

Rule 30.03. Inspection of Reports

Prior to the emergency protective care hearing, the parties shall be permitted to inspect reports or other written information or records that any party intends to present at the hearing.

1999 Advisory Committee Comment

Rule 30.03 places upon each party the burden of providing to opposing parties all documentation the party intends to introduce at the hearing. The rule is intended to ensure that the parties have the relevant information before the hearing so they are prepared to respond. This rule is not intended to limit discovery allowed by Rule 17.

Rule 30.04. Determination Regarding Notice

During the hearing, the court shall determine whether all persons identified in Rule 30.02 have been informed of the time and place of the emergency protective care hearing and what further efforts, if any, must be taken to notify all parties and participants as rapidly as possible of the pendency of the matter and the date and time of the next hearing. Before the emergency protective care hearing, the court administrator, or designee, shall file with the court a written statement describing the efforts to inform the persons identified in Rule 30.02 of the emergency protective care hearing, including the date, time, and method of each effort to inform each such person and whether contact was actually made.

Rule 30.05. Advisory

At the beginning of the emergency protective care hearing the court shall on the record advise all parties and participants present of:

(a) the reasons why the child was taken into emergency protective care;
(b) the substance of the statutory grounds and supporting factual allegations set forth in the petition;
(c) the purpose and scope of the hearing;
(d) the possible consequences of the proceedings;
(e) the right of the parties and participants to legal representation, including the right of the child, the child's parent or legal custodian, and the child's Indian custodian to court appointed counsel pursuant to Rule 25;
(f) the right of the parties to present evidence and to cross-examine witnesses regarding whether the child should return home with or without conditions or whether the child should be placed in protective care; and
(g) that failure to appear at future hearings could result in a finding that the petition has been proved, issuance of an order adjudicating the child in need of protection or services, and an order transferring permanent legal and physical custody of the child to another.

Rule 30.06. Evidence

The court may admit any evidence, including reliable hearsay and opinion evidence, that is relevant to the decision of whether to continue protective care of the child or return the child

home. Privileged communications may be admitted in accordance with Minnesota Statutes § 626.556, subd. 8.

Rule 30.07. Filing and Service of Petition

A petition shall be filed with the court and may be served at or before the emergency protective care hearing.

Rule 30.08. Protective Care Determinations

Subd. 1. Initial Findings.

(a) **Prima Facie Showing.** The court shall dismiss the petition if it finds that the petition fails to establish a prima facie showing that a juvenile protection matter exists and that the child is the subject of that matter.

(b) **Endangerment.**

(1) **Findings.** If the court finds that the petition establishes a prima facie showing that a juvenile protection matter exists and that the child is the subject of that matter, the court shall then determine whether the petition also makes a prima facie showing that:

(i) the child or others would be immediately endangered by the child's actions if the child were released to the care of the parent or legal custodian; or

(ii) the child's health, safety, or welfare would be immediately endangered if the child were released to the care of the parent or legal custodian.

(2) **Determination.** If the court finds that endangerment exists pursuant to this subdivision, the court shall continue protective care or release the child to the child's parent or legal custodian and impose conditions to ensure the safety of the child or others. If the court finds that endangerment does not exist, the court shall release the child to the child's parent or legal custodian subject to reasonable conditions of release.

(3) **Continued Custody by Parent Contrary to Welfare of Child.** The court may not order or continue the foster care placement of the child unless the court makes explicit, individualized findings that continued custody of the child by the parent or legal custodian is contrary to the welfare of the child.

Subd. 2. Indian Child Determination. The court shall determine whether the child is an Indian child through review of the petition and other documents and an on-the-record inquiry. If the court is unable to determine whether the child is an Indian child, the court shall direct the petitioner to make further inquiry and provide to the court and parties additional information regarding whether the child is an Indian child.

Subd. 3. Emergency Removal and Placement Authority For Indian Child Ward, Resident, or Domiciliary.

(a) **Finding.** If the district court finds from review of the petition or other information that an Indian child resides or is domiciled on an Indian reservation or that an Indian child is a ward of tribal court but is temporarily located off the reservation, the district court may order emergency removal of the child from the child's parent or Indian custodian and emergency placement in foster care.

(b) **Required Actions for Wards of Tribal Court.** If the district court finds from review of the petition or other information that an Indian child is a ward of tribal court, the court shall order that the child be expeditiously returned to the jurisdiction of the Indian child's tribe and shall consult with the tribal court regarding the child's safe transition pursuant to Rule 48.02, subd. 1.

1999 Advisory Committee Comment

Rule 30.08 is consistent with Minnesota Statutes § 260C.178, subd. 1(b), which provides:

> *Unless there is reason to believe that the child would endanger self or others, not return for a court hearing, run away from the child's parent, guardian, or custodian or otherwise not remain in the care or control of the person to whose lawful custody the child is released, or that the child's health or welfare would be immediately endangered, the child shall be released to the custody of a parent, guardian, custodian, or other suitable person, subject to reasonable conditions of release including, but not limited to, a requirement that the child undergo a chemical use assessment as provided in [Minnesota Statutes §] 260C.157, subd. 1.*

2008 Advisory Committee Comment

Child's Status as Indian Child Unknown. In cases where the application of the Indian Child Welfare Act (ICWA) is unclear, such as when it is not yet known whether the child is or is not an Indian child, it is advisable to proceed pursuant to the requirements of the ICWA unless or until a determination is otherwise made in order to fulfill the Congressional purposes of the ICWA, to ensure that the child's Indian tribe is involved, and to avoid invalidation of the action pursuant to 25 U.S.C. § 1914 and Rule 46.03.

Exclusive Jurisdiction. With respect to exclusive jurisdiction, the Indian Child Welfare Act (ICWA) provides:

> *"An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child."*

25 U.S.C. § 1911(a). The language in the Minnesota Indian Family Preservation Act (MIFPA), Minn. Stat. § 260.771, subd. 1., is nearly identical. For a full discussion of "domicile" under the ICWA, see Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989).

There are differences of opinion regarding application of Public Law 83-280, codified at 25 U.S.C. § 1322, as it may intersect with exclusive jurisdiction requirements in child welfare proceedings governed by the ICWA. See California v. Cabazon Band of Mission Indians, 480 U.S. 202, 207-14 (1987); Doe v. Mann (Mann II), 415 F.3d 1038, 1047-68 (9th Cir. 2005); Native Village of Venetie I.R.A. Council v. Alaska (Venetie II), 944 F.2d 548, 559-62 (9th Cir. 1991); Teague v. Bad River Band of the Lake Superior Tribe of Chippewa Indians, 612 N.W.2d 709, 717-18 (Wis. 2000); In re M.A., 40 Cal. Rptr. 3d 439, 441-43 (Cal. Ct. App. 2006); State ex rel Dep't of Human Servs. v. Whitebreast, 409 N.W.2d 460, 461-64 (Iowa 1987); 78 Wis. Op. Att'y Gen. 122 (1989).

Rule 30.09. Factors

Subd. 1. Generally. Except in cases described in subdivision 3, or when the parental rights of the parent to a sibling of the child have been terminated involuntarily, or the child is presumed to be an abandoned infant under Minnesota Statutes § 260C.301, subd. 2, at the emergency protective care hearing the court shall require petitioner to present information regarding the following issues:

(a) whether the responsible social services agency made reasonable efforts, or active efforts in the case of an Indian child, to prevent placement or eliminate the need for removal of the child from the home;
(b) whether there are services the court could order that would allow the child to safely return home;
(c) whether responsible relatives or other responsible adults are available to provide services or to serve as placement options if licensed;
(d) whether the placement proposed by the agency is the least restrictive and most home-like setting that meets the needs of the child;
(e) whether restraining orders, or orders expelling an allegedly abusive parent or legal custodian from the home, are appropriate;
(f) whether orders are needed for examinations, evaluations, or immediate services;
(g) the terms and conditions for parental visitation; and
(h) what consideration has been given for financial support of the child.

Subd. 2. Determination Regarding Reasonable or Active Efforts. Based upon the information provided to the court in the petition, affidavit, certified report, or on the record, the court shall make a determination whether reasonable efforts, or active efforts in the case of an Indian child, were made to prevent the child's out-of-home placement. The court shall also determine whether there are available services that would prevent the need for further placement. In the alternative, the court shall determine that reasonable efforts are not required if the court makes a prima facie determination that one of the circumstances under subdivision 3 exists.

Subd. 3. Cases Permitting Bypass of Child in Need of Protection or Services Proceedings.

(a) **Permanency Determination.** Reasonable efforts to prevent placement and for rehabilitation and reunification are always required except upon notice by the county attorney and a determination by the court at the emergency protective care hearing, or at any time prior to adjudication, that a petition has been filed stating a prima facie case that at least one of the circumstances under Minnesota Statutes § 260.012(a) exists.

(b) **Permanency Hearing Required.** If the court makes a determination under subdivision 3(a), the court shall bypass the child in need of protection or services proceeding and shall proceed directly to permanency by scheduling a permanent placement determination hearing pursuant to Rule 42 within thirty (30) days.

2003 Advisory Committee Comment

Consistent with Minnesota Statutes § 260C.178, Rule 30.09 requires the court to make a determination about whether the responsible social services agency made reasonable, or active efforts in the case of an Indian child, to prevent the removal of the child. Unless the child's removal is due to circumstances which do not require efforts to reunify the child with the parent or legal custodian, the responsible social services agency should provide services to prevent the child's removal. The circumstances where reunification efforts are not required are set out in subdivision 3. When the removal occurs due to an emergency, the agency should consider what services it might put into the child's home to allow the child to return home or whether the child's safety could be met by excluding from the child's home the individual responsible for abuse or neglect of the child. When the agency documents the services provided or attempted, or other measures it considered but rejected, to provide for the child's safety, and the court finds such actions reasonable, the court may properly find the agency has made reasonable efforts to prevent the removal of the child.

Rule 30.10. Protective Care Findings and Order

Within three (3) days of the conclusion of the emergency protective care hearing the court shall issue a written order which shall include findings pursuant to Rules 30.08 and 30.09 and which shall order:

(a) that the child:
  (1) continue in protective care;
  (2) return home with conditions to ensure the safety of the child or others;
  (3) return home with reasonable conditions of release; or
  (4) return home with no conditions;

(b) conditions pursuant to subdivision (a), if any, to be imposed upon the parent, legal custodian, or a party;

(c) services, if any, to be provided to the child and the child's family;

(d) terms of parental and sibling visitation pending further proceedings;

(e) the parent's responsibility for costs of care pursuant to Minnesota Statutes § 260C.331, subd. 1;

(f) if the court knows or has reason to know that the child is an Indian child, notice of the proceedings shall be sent to the Indian child's parents or Indian custodian and Indian child's tribe consistent with 25 U.S.C. § 1912(a); Minnesota Statutes § 260.761, subd. 3; and Rule 32.06; and

(g) if the child is determined to be an Indian child and is proposed to be placed in foster care, testimony, pursuant to Rule 49, of a qualified expert witness.

1999 Advisory Committee Comment

Minnesota Statutes § 260C.178, subd. 1(c), provides as follows:

> *[In a proceeding regarding a child in need of protection or services,] the court, before determining whether a child should continue in custody, shall also make a determination, consistent with [Minnesota Statutes §] 260.012 as to whether reasonable efforts, or in the case of an Indian child, active efforts, according to the Indian Child Welfare Act of 1978, United States Code, title 25, section 1912(d), were made to prevent placement. The court shall also determine whether there are available services that would prevent the need for further detention.*

In compliance with the statutory mandate of Minnesota Statutes § 260C.178, Rules 30.08 and 30.09 require the court to elicit relevant evidence from the petitioner and make findings as to whether the child is in imminent danger, whether the county made reasonable efforts to prevent removal or eliminate the need for removal, and whether there are services the court could order to allow the child to safely return home. Rule 30.10 requires that the court issue a written order that includes specific findings in support of the order.

2006 Advisory Committee Comment (amended 2014)

When the court orders a child into "protective care," the court is ordering the child placed in foster care. That means the responsible social services agency has the right to temporary physical custody and control of the child. See Rule 2.01(23); Minn. Stat. §§ 260C.178, subd. 1; and 260C.007, subd. 18. The responsible social services agency must make an individualized determination that the placement selected is in the best interests of the child using the eight factors set out in the statute. Minn. Stat. § 260C.201, subd. 1(a)(2)(ii), and § 260C.212, subd. 2. The agency documents its use of the eight best interest factors in the Out-of-Home Placement Plan required under Minn. Stat. § 260C.212, subd. 1, and Rule 37.02. The court reviews the agency's use of the eight statutory best interest factors during the hearing required under Rule 41 and Minn. Stat. § 260C.193, subd. 3.

2008 Advisory Committee Comment

Notice to Indian Child's Parent, Indian Custodian, and Indian Tribe Required under ICWA. See the 2008 Advisory Committee Comment following Rule 34.03 for information about the notice required under the Indian Child Welfare Act (ICWA) to be provided to the Indian child's parent, Indian custodian, and Indian tribe, including timing of the notice and time to respond.

Emergency Protective Care Placement Pending ICWA Notice. While both the ICWA and Minnesota law require notice to the Indian child's parent or Indian custodian and Indian child's tribe regarding the juvenile protection proceeding, 25 U.S.C. § 1922 provides that a state may take emergency action to protect an Indian child who is domiciled or resides on a reservation but is temporarily located off the reservation. While there is no such explicit provision in the ICWA regarding an Indian child who is not domiciled on or a resident of a reservation, by analogy there is general recognition that the state may take emergency action to protect an Indian child who is not domiciled on or resident of a reservation. It is not possible to send the ICWA notice referred to in Rule 32.06 and meet the timing requirements of 25 U.S.C. § 1912(a) before the emergency removal hearing. The ICWA notice that the court will direct be provided under Rule 30.10(f) is required under Rule 32.06 before the Admit/Deny Hearing may be held. The timing of the Admit/Deny Hearing in matters governed by the ICWA may be different due to the notice requirement of Rule 32.06.

Rule 30.11. Protective Care Review

Subd. 1. Consent for Continued Protective Care. The court may, with the consent of the parties and the county attorney, order that the child continue in protective care even if the circumstances of the parent, legal custodian, or child have changed.

Subd. 2. Release from Protective Care on Consent of Parties and the County Attorney. The court may, with the consent of the parties and the county attorney, order that a child be released from protective care. If the child has no guardian ad litem, the court may not release the child from protective care without a court hearing.

Subd. 3. Formal Review.

(a) **On Motion of Court.** The court may on its own motion schedule a formal review hearing at any time.

(b) **On Request of a Party or the County Attorney.** A party or the county attorney may request a formal hearing concerning continued protective care by filing a motion with the court. The court shall schedule a hearing and provide notice pursuant to Rule 32 if the motion states:

(1) that the moving party has new evidence concerning whether the child should be continued in protective care; or

(2) that the party has an alternate arrangement to provide for the safety and protection of the child.

(c) **Evidence.** The court may admit any evidence, including reliable hearsay and opinion evidence, which is relevant to the decision whether to continue protective care of the child or return the child home. Privileged communications may be admitted in accordance with Minnesota Statutes § 626.556, subd. 8.

(d) **Findings and Order.** At the conclusion of the formal review hearing the court shall:

(1) return the child to the care of the parent or legal custodian with or without reasonable conditions of release if the court does not make findings pursuant to subdivision 3(d)(2);
(2) continue the child in protective care or release the child with conditions to assure the safety of the child or others if the court finds that the petition states a prima facie case to believe that a child protection matter exists and that the child is the subject of that matter, and (a) the child or others would be immediately endangered by the child's actions if the child were released to the care of the parent or legal custodian or (b) the child's health, safety or welfare would be immediately endangered if the child were released to the care of the parent or legal custodian; or
(3) modify the conditions of release.

Rule 30.12. Notification When Child Returned Home

If the parents comply with the conditions of the court order and the child is returned home, including under protective supervision, the county attorney shall immediately file with the court and serve upon all parties a notice stating the date the child was returned home.

RULE 31. METHODS OF FILING AND SERVICE

Rule 31.01. Types of Filing

Subd. 1. Generally; Electronic Filing. When a document is required to be filed electronically through the E-Filing System, the document shall be filed in accordance with Rule 14 of the General Rules of Practice for the District Courts. Otherwise any document may be filed with the court personally, by U.S. mail, electronically through the E-Filing System, or by facsimile transmission.

Subd. 2. Filing by Facsimile Transmission.

(a) Any document not required to be filed through the E-Filing System may be filed with the court by facsimile transmission. Filing shall be deemed complete at the time that the facsimile transmission is received by the court. The facsimile shall have the same force and effect as the original. Only facsimile transmission equipment that satisfies the published criteria of the supreme court shall be used for filing in accordance with this rule.

(b) Within five (5) days after the court has received the transmission, the party filing the document shall forward the following to the court:
(1) a $25 transmission fee for each 50 pages, or part thereof, of the filing, unless otherwise provided by statute or rule or otherwise ordered by the court;
(2) any bulky exhibits or attachments; and
(3) the applicable filing fee or fees, if any.

(c) If a document is filed by facsimile, the sender's original must not be filed but must be maintained in the files of the party transmitting it for filing and made available to the court or any party to the action upon request.

(d) Upon failure to comply with the requirements of this rule, the court in which the action is pending may make such orders as are just including, but not limited to, an order striking pleadings or parts thereof, staying further proceedings until compliance is complete, or dismissing the action, proceeding, or any part thereof.

Advisory Committee Comment-2012 Amendment

Rule 31.01, subd. 1, is amended to add the last sentence, which is intended to facilitate a pilot project on electronic filing and service, but is designed to be a model for the implementation of electronic filing and service if the pilot project is made permanent and statewide. The purpose of the amendment is to authorize electronic filing when authorized by order of the Minnesota Supreme Court.

2006 Advisory Committee Comment

Rule 31.01, subd. 2, regarding facsimile filing is amended in format and substance consistent with the amendments made to the Rules of Civil Procedure. Specifically, it is amended to delete the requirement that an "original" document follow the filing by facsimile. The requirement of a double filing causes confusion and unnecessary burdens for court administrators, and with the dramatic improvement in quality of received faxes since initial implementation of the Civil Rule in 1988, it no longer serves a useful purpose. Under the amended rule, the document filed by facsimile is the original for all purposes unless an issue arises as to its authenticity, in which case the version transmitted electronically and retained by the sender can be reviewed.

The filing fee for fax filings is changed from $5.00 to $25.00 because fax filings, even under the streamlined procedures of the amended rule, still impose significant administrative burdens on court staff, and it is therefore appropriate that this fee, unchanged since its adoption in the Rules of Civil Procedure in 1988, be increased. A number of committee members expressed the view that facsimile filing was, and still is, intended to be a process used on a limited basis in exigent or at least unusual circumstances. It is not intended to be a routine filing method.

The rule does not provide a specific mechanism for collecting the transmission fee required under the rule. Because prejudice may occur to a party if a filing is deemed ineffective, the court should determine the appropriate consequences of failure to pay the necessary fee.

Rule 31.02. Types of Service

Subd. 1. Personal Service. Personal service means personally delivering the document to the person to be served or leaving it at the person's home or usual place of abode with a person of suitable age and discretion residing therein. Unless otherwise provided by these rules

or ordered by the court, the sheriff or other person not less than eighteen (18) years of age and not a party to the action may make personal service of a summons or other process. The social services reports and guardian ad litem reports required under Rule 38 may be served directly by the social worker and guardian ad litem. Whenever personal service is required under these rules, the court may authorize alternative personal service pursuant to Rule 31.02, subd. 5.

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

(b) **Service Outside United States.** Unless otherwise provided by law, service upon an individual, other than an infant or an incompetent person, may be effected in a place not within the state:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(a) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(b) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(c) unless prohibited by the law of the foreign country, by:

(i) delivery to the individual personally of a copy of the summons and the complaint; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the court administrator to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the court.

Subd. 2. U.S. Mail. Service by U.S. mail means placing the document in the U.S. mail, first class, postage prepaid, addressed to the person to be served.

Subd. 3. Publication. Service by publication substitutes for personal service when authorized by the court. Service by publication means the publication in full of the summons, notice, or other documents in the regular issue of a qualified newspaper, once each week for the number of weeks specified pursuant to Rule 32.02. The court shall authorize service by publication only if the petitioner has filed a written statement or affidavit describing diligent efforts to locate the person to be served. Service by publication shall be completed in a location approved by the court. The published summons shall be directed to the person for whom personal service was not accomplished and shall not include the child's name or initials. In cases involving an Indian child, if the identity or location of the parent or Indian custodian and the

child's Indian tribe cannot be determined, the summons and petition shall be served upon the Secretary of the Interior pursuant to 25 U.S.C. § 1912.

Subd. 4. Electronic Service. When authorized or required by Rule 14 of the General Rules of Practice for the District Courts, documents, except those required by these rules to be served personally or by registered U.S. mail return receipt requested, may, or where required, shall be served electronically by following the procedures of that rule and will be deemed served in accordance with the provisions of that rule.

Subd. 5. Alternative Personal Service.

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

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

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

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

2014 Advisory Committee Comment

Rule 31.06, subd. 6, is based upon alternative personal service authorized under Rule 355.02, subd. 1(c), of the General Rules of Practice for the District Courts.

Rule 31.03. Service by Electronic Means

Unless these rules require personal service or service through the E-Filing System, any document may be served by e-mail or other electronic means agreed upon in writing or on the record by the person to be served.

2015 Advisory Committee Comment

Rule 31.03 authorizes service by "electronic means." Pursuant to Rule 14.01(a)(7) of the General Rules of Practice for the District Courts, "electronic means"

is defined as "transmission using computers or similar means of transmitting documents electronically, including facsimile transmission." Because "electronic means" includes "facsimile transmission," the reference in Rule 31.03 to "facsimile transmission" has been deleted.

Rule 31.04. Service Upon Counsel; Social Services Agency

Unless personal service upon a party is required, service upon counsel for a party or counsel for a participant shall be deemed service upon the party or participant. Service upon the county attorney shall be deemed to be service upon the responsible social services agency. Reports and other documents that are not court orders shall not be served directly upon a represented party.

Rule 31.05. Service of Subpoena

A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the state.

Rule 31.06. Completion of Service

Personal service is complete upon delivery of the document. Service by U.S. mail is complete upon mailing to the last known address of the person to be served. Completion of service by electronic means is governed by Rule 14.03(e) of the General Rules of Practice for the District Courts.

2015 Advisory Committee Comment

With respect to completion of service, Rule 14.03(e) of the General Rules of Practice for the District Courts provides "[s]ervice is complete upon completion of the electronic transmission of the document to the E-Filing System notwithstanding whether the document is subsequently rejected for filing by the court administrator. Service by facsimile transmission, where authorized, is complete upon the completion of the facsimile transmission." Similar to service by U.S. mail, which is complete when sent rather than when received, the intent of Rule 31.06 is that service through the E-Filing System is complete when the document is transmitted to the E-Filing System and service by e-mail is complete when the e-mail is sent.

Rule 31.07. Proof of Service

Subd. 1. Generally. On or before the date set for appearance, the person serving the document shall file with the court an affidavit of service stating:

(a) whether the document was served;
(b) the method of service;
(c) the name of the person served; and
(d) the date and place of service.

If the court administrator served the document, the court administrator may file a written statement in lieu of an affidavit.

Subd. 2. Exceptions.

(a) **Social Worker and Guardian Ad Litem Court Reports.** Social workers and guardians ad litem are not required to file proof of service when serving the court reports required under Rule 38 and, instead, shall include with their report a certificate of distribution under oath or penalty of perjury under Minnesota Statutes § 358.116 stating:
(1) the name of the person served,
(2) the method of service,
(3) the date and place of service, and
(4) the name of the person submitting the certificate of distribution.

(b) **Court Administrators.** If the court administrator served the document, the court administrator may file a written statement in lieu of an affidavit.

RULE 32. SUMMONS AND NOTICE

Rule 32.01. Commencement

A juvenile protection matter is commenced by filing a petition with the court.

Rule 32.02. Summons

Subd. 1. Definition. A summons is a document issued by the court that orders the initial appearance in court of the person to whom it is directed.

Subd. 2. Upon Whom; Cost.

(a) **Generally.** Except as provided in subdivision 3, the court shall serve a summons and petition upon each party identified in Rule 21; the child's parents, except alleged fathers who shall be served a notice of hearing pursuant to Rule 32.03; and any other person whose presence the court deems necessary to a determination concerning the best interests of the child. The cost of service of a summons and petition filed by someone other than a non-profit or public agency shall be paid by the petitioner.

(b) **Termination of Parental Rights Matters.** In addition to the requirements of subdivision 2(a), in any termination of parental rights matter the court administrator shall serve the summons and petition upon the county attorney, any guardian ad litem for the child's parent or legal guardian, and any attorney representing a party in an ongoing child in need of protection or services proceeding involving the subject child. A summons shall not be served upon a

putative father, as defined in Minnesota Statutes § 259.21, who has failed to timely register with the Minnesota Fathers' Adoption Registry under Minnesota Statutes § 259.52, unless that individual also meets the requirements of Minnesota Statutes § 257.55 or is required to be given notice under Minnesota Statutes § 259.49, subd. 1.

Subd. 3. Service.

(a) **Parents, Parties, and Attorneys.** Unless the court orders service by publication pursuant to Rule 31.02, subd. 3, the summons and petition shall be personally served upon the child's parents or legal guardian. Service of the summons and petition upon parties and attorneys shall be made through the E-Filing System or by personal service, U.S. mail, e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court. Alleged parents and participants shall be served a notice of hearing and petition pursuant to Rule 32.03. The court may authorize alternative personal service pursuant to Rule 31.02, subd. 5.

(b) **Habitual Truant, Runaway, and Sexually Exploited Child Matters.**

(1) **Initial Service.** Notwithstanding the requirements of subdivisions 2(a) and 3(a), when the sole allegation is that the child is a habitual truant, a runaway, or a sexually exploited child, initial service may be made as follows:

(i) in lieu of a summons, the court may serve a notice of hearing and a copy of the petition by U.S. mail upon the legal custodian, the person with custody or control of the child, and each party and participant; or

(ii) a peace officer may issue a notice to appear or a citation.

(2) **Failure to Appear.** If the child or the child's parent or legal custodian or the person with custody or control of the child fails to appear in response to the initial service, the court shall order such person to be personally served with a summons.

(c) **Voluntary Placement.** In all cases involving a voluntary placement of a child pursuant to Rule 44, the summons shall be served upon the parent or legal custodian personally, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

Subd. 4. Content.

(a) **Generally.** A summons shall contain or have attached:

(1) a copy of the petition, court order, motion, affidavit or other legal documents not previously provided; however, these documents shall not

be contained in or attached to the summons and complaint if the court has authorized service of the summons by publication pursuant to Rule 32.02, subd. 3(a);

(2) a statement of the time and place of the hearing;

(3) a statement describing the purpose of the hearing;

(4) a statement explaining the right to representation pursuant to Rule 25; and

(5) a statement that failure to appear may result in:

(i) the child being removed from home pursuant to a child in need of protection or services petition;

(ii) the parent's parental rights being permanently severed pursuant to a termination of parental rights petition;

(iii) permanent transfer of the child's legal and physical custody to a relative;

(iv) a finding that the statutory grounds set forth in the petition have been proved; and

(v) an order granting the relief requested.

(b) **Child in Need of Protection or Services Matters.** In addition to the content requirements set forth in subdivision 4(a), in any child in need of protection or services matter the summons shall also contain or have attached a statement pursuant to Rule 18.01 that:

(1) if the person summoned fails to appear, the court may conduct the hearing in the person's absence; and

(2) a possible consequence of the hearing is that the child may be removed from the home of the parent or legal custodian and placed in foster care, and such removal may lead to other proceedings for permanent out-of-home placement of the child or termination of parental rights.

(c) **Termination of Parental Rights Matters.** In addition to the content requirements set forth in subdivision 4(a), in any termination of parental rights matter the summons shall also contain or have attached a statement pursuant to Rule 18.01 that if the person summoned fails to appear the court may conduct the hearing in the person's absence and the hearing may result in termination of the person's parental rights.

(d) **Permanent Placement Matters.** In addition to the content requirements set forth in subdivision 4(a), in any permanent placement matter the summons shall also contain or have attached a statement pursuant to Rule 18.01 that if the person summoned fails to appear the court may conduct the hearing in the person's absence and the hearing may result in an order granting the relief requested in the petition.

Subd. 5. Timing of Service of Summons and Petition.

(a) **Generally.** The summons and petition shall be served either at or before the emergency protective care hearing held pursuant to Rule 30, or at least three (3)

days prior to the admit/deny hearing, whichever is earlier. At the request of a party, the hearing shall not be held at the scheduled time if the summons and petition have been served less than three (3) days before the hearing. If service is made outside the state or by publication, the summons shall be served or last published at least ten (10) days before the hearing. In cases where publication of a child in need of protection or services petition is ordered, published notice shall be made one time with the last publication at least ten (10) days before the date of the hearing. Service by publication shall be made pursuant to Rule 31.02, subd. 3.

(b) **Termination of Parental Rights Matters and Permanent Placement Matters.** In any termination of parental rights matter or permanent placement matter the summons and petition shall be served upon all parties in a manner that will allow for completion of service at least ten (10) days prior to the date set for the admit/deny hearing. In cases where publication of a termination of parental rights or other permanency summons is ordered, published notice shall be made once per week for three (3) weeks with the last publication at least ten (10) days before the date of the hearing. Pursuant to Minnesota Statutes § 260C.307, subd. 3, notice sent by certified mail to the last known address shall be mailed at least twenty (20) days before the date of the hearing. Service by publication shall be made pursuant to Rule 31.02, subd. 3.

Subd. 6. Waiver. Service is waived by voluntary appearance in court or by a written waiver of service filed with the court.

Subd. 7. Failure to Appear. If any person personally served with a summons or subpoena fails, without reasonable cause, to appear or bring the child if ordered to do so, or if the court has reason to believe the person is avoiding personal service, the court may sua sponte or upon the motion of a party or the county attorney pursuant to Rule 15 proceed against the person for contempt of court or the court may issue a warrant for the person's arrest, or both. When it appears to the court that service will be ineffectual, or that the welfare of the child requires that the child be immediately brought into the custody of the court, the court may issue a warrant for immediate custody of the child.

1999 Advisory Committee Comment

Rule 32.02 specifies the procedure for summoning a party to his or her first appearance in a case. Rule 32.03 specifies the procedure for providing initial notice to a participant. While failure to notify a non-legal custodial parent does not create a jurisdictional defect, the best practice is to invite that parent to participate in the proceedings, as failure to do so may create substantial barriers to permanency.

Rule 32.03. Notice of Emergency Protective Care or Admit/Deny Hearing

Subd. 1. Definition. A notice is a document issued by the court notifying the person to whom it is addressed of the specific time and place of a hearing.

Subd. 2. Upon Whom.

(a) **Emergency Protective Care Hearing.** If the initial hearing is an emergency protective care hearing, the court administrator, or designee, shall inform all parties and participants identified by the petitioner in the petition, and their attorneys, of the date, time, and location of the hearing.

(b) **Admit/Deny Hearing.** If the initial hearing is an admit/deny hearing, the court administrator shall serve a summons and petition upon all parties identified in Rule 21, and a notice of hearing and petition upon all participants identified in Rule 22, the county attorney, any attorney representing a party in the matter, and the child through the child's attorney, if represented, or the child's physical custodian.

Subd. 3. Content. A notice shall contain or have attached:

(a) a copy of the petition, but only if it is the initial hearing or the person has intervened or been joined as a party and previously has not been served with a copy of the petition;
(b) a statement of the time and place of the hearing;
(c) a statement describing the purpose of the hearing;
(d) a statement explaining the right to representation pursuant to Rule 25;
(e) a statement explaining intervention as of right and permissive intervention pursuant to Rule 23;
(f) a statement pursuant to Rule 18.01 that failure to appear may result in:
    (1) the child being removed from home pursuant to a child in need of protection or services petition;
    (2) the parent's parental rights being permanently severed pursuant to a termination of parental rights petition;
    (3) permanent transfer of the child's legal and physical custody to a relative;
    (4) a finding that the statutory grounds set forth in the petition have been proved; and
    (5) an order granting the relief requested; and
(g) a statement that it is the responsibility of the individual to notify the court administrator of any change of address.

Subd. 4. Method of Service.

(a) **Emergency Protective Care Hearing**. If the initial hearing is an emergency protective care hearing, written notice is not required to be served. Instead, the court administrator, or designee, shall use whatever method is available, including, but not limited to, phone calls, personal service, the E-Filing System, or e-mail or other electronic means agreed upon in writing by the person to be served, to inform all parties and participants identified by the petitioner in the petition, and their attorneys, of the date, time, and location of the hearing.

(b) **Admit/Deny Hearing**. If the initial hearing is an admit/deny hearing, the court administrator shall serve the notice of hearing and petition through the E-Filing System or by personal service, U.S. mail, e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

1999 Advisory Committee Comment

Rule 32.02 specifies the procedure for summoning a party to his or her first appearance in a case. Rule 32.03 specifies the procedure for providing initial notice to a participant. While failure to notify a non-legal custodial parent does not create a jurisdictional defect, the best practice is to invite that parent to participate in the proceedings as failure to do so may create substantial barriers to permanency.

Rule 32.04. Notice of Subsequent Hearings

(a) **Upon Whom**. For each hearing following the emergency protective care or admit/deny hearing, the court shall order and the court administrator shall serve upon each party, participant, and attorney a written notice of the date, time, and location of the next hearing.

(b) **Form**. The notice may be on a form prepared by the State Court Administrator or included in the order resulting from the hearing.

(c) **Timing**. Unless otherwise ordered by the court, such notice shall be personally served by the close of the current hearing. If not served by the close of the current hearing, the notice shall be served as soon as possible after the hearing, but no later than five (5) days before the date of the next hearing or ten (10) days before the date of the next hearing if mailed to an address outside of the state.

(d) **Method of Service**. If not served by the close of the current hearing, the notice may be served by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as directed by the court.

2015 Advisory Committee Comment

Rule 32.04 is amended in 2015 to encourage the best practice of personally serving the notice of hearing by the close of the current hearing. The Committee recognizes that in some instances the date of the next hearing cannot reasonably be set by the close of the current hearing because of scheduling difficulties. In those instances, the notice may be served by authorized alternative means following the current hearing.

Rule 32.05. Orders on the Record

An oral order stated on the record directed to the parties which either separately or with written supplementation contains the information required by this rule is sufficient to provide

notice and compel the presence of the parties at a stated time and place. Such an order shall be reduced to writing pursuant to Rule 10.

Rule 32.06. Petitioner's Notice Responsibility Under Indian Child Welfare Act

Pursuant to 25 U.S.C. § 1912(a), in any juvenile protection proceeding where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe of the pending proceedings and of the right of intervention pursuant to Rule 23. Such notice shall be by registered U.S. mail with return receipt requested, unless personal service has been accomplished. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary of the Interior in like manner, who shall have fifteen (15) days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior, provided that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty (20) additional days to prepare for such proceeding. The original or a copy of each notice shall be filed with the court together with any return receipts or other proof of service.

2008 Advisory Committee Comments

Notice to Indian Child's Parent, Indian Custodian, and Indian Tribe Required under ICWA. See the 2008 Advisory Committee Comment following Rule 34.03 for information about the notice required under the Indian Child Welfare Act (ICWA) to be provided to the Indian child's parent, Indian custodian, and Indian tribe, including timing of the notice and time to respond.

Content of ICWA Notice. The Bureau of Indian Affairs Guidelines for State Courts: Indian Child Custody Proceedings (BIA Guidelines) provides as follows regarding the content of the notice required to be provided under Rule 32.06 to the Indian child's parent or Indian custodian and the Indian child's tribe:

"Notice Requirements

a. In any involuntary child custody proceeding, the state court shall make inquiries to determine if the child involved is a member of an Indian tribe or if a parent of the child is a member of an Indian tribe and the child is eligible for membership in an Indian tribe.

b. In any involuntary Indian child custody proceeding, notice of the proceeding shall be sent to the parents and Indian custodians, if any, and to any tribes that may be the Indian child's tribe by registered mail with return receipt requested. The notice shall be written in clear and understandable language and include the following information:

i. The name of the Indian child.

ii. His or her tribal affiliation.

iii. A copy of the petition, complaint or other document by which the proceeding was initiated.

iv. The name of the petitioner and the name and address of the petitioner's attorney.

v. A statement of the right of the biological parents or Indian custodians and the Indian child's tribe to intervene in the proceeding.

vi. A statement that if the parents or Indian custodians are unable to afford counsel, counsel will be appointed to represent them.

vii. A statement of the right of the natural parents or Indian custodians and the Indian child's tribe to have, on request, twenty days (or such additional time as may be permitted under state law) to prepare for the proceedings.

viii. The location, mailing address and telephone number of the court.

ix. A statement of the right of the parents or Indian custodians or the Indian child's tribe to petition the court to transfer the proceeding to the Indian child's tribal court.

x. The potential legal consequences of an adjudication on future custodial rights of the parents or Indian custodians.

xi. A statement in the notice to the tribe that since child custody proceedings are usually conducted on a confidential basis, tribal officials should keep confidential the information contained in the notice concerning the particular proceeding and not reveal it to anyone who does not need the information in order to exercise the tribe's right under the Act."

BIA Guidelines, 44 Fed. Reg. 67584, 67588, 67591 at B.5 (Nov. 26, 1979).

RULE 33. PETITION

Rule 33.01. Drafting; Filing; Service

Subd. 1. Generally. A petition may be drafted and filed by the county attorney or any responsible person. A petition shall be served pursuant to Rule 32.02. If the petition contains any confidential information or confidential documents as attachments that are inaccessible to the public under Rule 8.04 of these rules, the petitioner shall file the confidential information or confidential document sin the manner required by Rule 8.04, subd. 5.

Subd. 2. Habitual Truant and Runaway Matters. A matter based solely on grounds that a child is a habitual truant or a runaway may be initiated by citation issued by a peace officer or school attendance officer. A citation shall contain:

(a) the name, address, date of birth, and race of the child;

(b) the name and address of the parent or legal custodian of the child;

(c) the offense alleged and a reference to the statute which is the basis for the charge; and

(d) the time and place the alleged offense was committed. In the event the child is alleged to be a runaway, the place where the offense was committed may be stated in the notice as either the child's parent's residence or lawful placement or

where the child was found by the officer. In the event the child is alleged to be a habitual truant, the place where the offense was committed may be stated as the school or the place where the child was found by the officer.

Subd. 3. Termination of Parental Rights Matters.

(a) **Drafting.** A termination of parental rights petition may be drafted and filed by the county attorney or any responsible person.

(b) **Filing and Service.** Any termination of parental rights petition shall be filed in a file separate from the child in need of protection or services file, if one exists. A petition shall be served pursuant to Rule 32.02.

(c) **Egregious Harm, Abandonment of an Infant, Previous Involuntary Termination of Parental Rights, or Previous Involuntary Transfer of Permanent Legal and Physical Custody Matters.** The county attorney shall file a termination of parental rights petition within thirty (30) days of the responsible social services agency determining that a child:

(1) has been subjected to egregious harm as defined in Minnesota Statutes § 260C.007, subd. 14;

(2) is the sibling of another child who was subjected to egregious harm by the parent;

(3) is an abandoned infant as defined in Minnesota Statutes § 260C.301, subd. 2;

(4) is a child of a parent whose parental rights to another child have been involuntarily terminated; or

(5) is the child of a parent whose custodial rights to another child have been involuntarily transferred to a relative under Minnesota Statutes § 260C.515, subd. 4, or similar law of another jurisdiction.

Subd. 4. Permanent Placement Matters.

(a) **Generally.** Any permanent placement petition required under Rule 42 shall be filed in a file separate from the child in need of protection or services file, if one exists.

(b) **Filing by Whom; Service.** The county attorney shall file a permanent placement petition in juvenile court to determine the permanent placement of a child. The county attorney may seek any alternative permanent placement relief, and any other party may seek only termination of parental rights or transfer of permanent legal and physical custody to a relative. A party, including a guardian ad litem for the child, shall file a permanent placement petition if the party disagrees with the permanent placement determination set forth in the petitions filed by other parties. A petition shall be served pursuant to Rule 32.02.

1999 Advisory Committee Comment

If a child in need of protection or services matter is pending at the time a termination of parental rights matter is filed regarding the same child, the termination petition should be filed in the same file as the child in need of protection or services matter.

Rule 33.02. Content

Subd. 1. Generally. Every petition filed with the court in a juvenile protection matter, or an affidavit accompanying such petition, shall contain:

(a) a statement of facts that, if proven, would support the relief requested in the petition;

(b) the child's name, date of birth, race, gender, current address unless stating the address would endanger the child or seriously risk disruption of the current placement, and, if the child is believed to be an Indian child, the name of the child's tribe;

(c) the names, race, dates of birth, residences, and post office addresses of the child's parents when known;

(d) the name, residence, and post office address of the child's legal custodian, the person having custody or control of the child, the nearest known relative if no parent or legal custodian can be found, and, if the child is believed to be an Indian child, the name and post office address of the child's Indian custodian, if any, and the Indian custodian's tribal affiliation;

(e) the name, residence, and post office address of the spouse of the child;

(f) the statutory grounds on which the petition is based, together with a recitation of the relevant portion of the subdivision(s);

(g) a statement regarding the applicability of the Indian Child Welfare Act;

(h) the names and addresses of the parties identified in Rule 21, as well as a statement designating them as parties;

(i) the names and addresses of the participants identified in Rule 22, as well as a statement designating them as participants;

(j) if the child is believed to be an Indian child, a statement regarding:

  (1) the specific actions that have been taken to prevent the child's removal from, and to safely return the child to, the custody of the parents or Indian custodian;

  (2) whether the residence of the child is believed to be on an Indian reservation and, if so, the name of the reservation;

  (3) whether the child is a ward of a tribal court and, if so, the name of the tribe; and

  (4) whether the child's tribe has exclusive jurisdiction pursuant to 25 U.S.C. section 1911(a); and

(k) when appropriate under the circumstances of the case, notice that:

  (1) a proceeding to establish a parent and child relationship or to declare the nonexistence of a parent and child relationship may be brought at the same time as the juvenile protection matter; and

(2) parents may apply for parentage establishment and child support services through the county child support agency.

If any information required by subdivision 1 is unknown at the time of the filing of the petition, as soon as such information becomes known to the petitioner it shall be provided to the court and parties either orally on the record, by affidavit, or by amended petition. If presented orally on the record, the court shall annotate the petition to reflect the updated information.

Subd. 2. Child in Need of Protection or Services Matters.

(a) **Petitions Drafted and Filed by County Attorney.** A child in need of protection or services matter is defined in Minnesota Statutes § 260C.007, subd. 6. All child in need of protection or services petitions shall be drafted and filed under the supervision of the county attorney, except as provided in Minnesota Statutes § 260C.141, subd. 1, and subdivision 2(b) of this Rule.

(b) **Petitions Drafted and Filed By Others.**

(1) **Petition Form**. A child in need of protection or services petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services shall be filed on a form developed by the state court administrator. Copies of the form shall be available from the court administrator in each county.

(2) **Additional Content Requirements for Petitions Not Filed by County Attorney.** In addition to the content requirements set forth in subdivision 1, a petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services shall contain:

(i) a statement that the petitioner has reported the circumstances underlying the petition to the responsible social services agency and that protection or services were not provided to the child;

(ii) a statement, including court file numbers where possible, of pending juvenile or family court proceedings and prior or present juvenile or family court orders relating to the child; and

(iii) a statement regarding the relationship of the petitioner to the child and to any other parties.

(3) **Review by Court Administrator.** Any petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services shall be reviewed by the court administrator before it is filed to determine whether it is complete. The court administrator may reject the petition as incomplete if it does not indicate that the petitioner has contacted the responsible social services agency.

(4) **Court Review.** Within three (3) days of the date a petition is filed by a person who is not a county attorney or an agent of the Commissioner of Human Services, the court shall review the petition. If the court determines that the petition and attachments establish a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter, the court shall set the matter for an admit/deny hearing pursuant to Rule 34 and shall direct notice pursuant to Rule 32. The court shall not allow a petition to proceed if it appears that the sole purpose of the petition is to modify custody between the parents or if it fails to set forth the information required in subdivisions 1 and 2(b) of this rule.

(c) **Petition Based Upon Prima Facie Case.**

(1) **When Required.** In addition to the content requirements of subdivisions 1 and 2(b), a petition establishing a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter shall be filed with the court:

(i) before the court may issue an ex parte order for emergency protective care pursuant to Rule 28; or

(ii) before an emergency protective care hearing is held pursuant to Rule 30 for a child taken into emergency protective care without a court order.

(2) **Manner.** The facts establishing a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter may be set forth in writing in or with the petition, or in supporting affidavits, and may be supplemented by sworn testimony of witnesses taken before the court. If such testimony is taken, a note stating this fact shall be made by the court on the petition. The testimony shall be recorded pursuant to Rule 11.

Subd. 3. Termination of Parental Rights Matters.

(a) **Generally.** A termination of parental rights matter shall be entitled "Petition to Terminate Parental Rights" and shall conform to the requirements of Minnesota Statutes § 260C.141.

(b) **Petitions Drafted and Filed By Others.**

(1) **Petition Form**. A termination of parental rights petition filed by an individual who is not a county attorney or responsible social services agency shall be filed on a form developed by the state court administrator. Copies of the form shall be available from the court administrator in each county.

(2) **Additional Content Requirements for Petitions Not Filed by County Attorney.** In addition to the content requirements set forth in subdivision 1, a petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services shall contain:

(i) a statement, including court file numbers where possible, of pending juvenile or family court proceedings and prior or present juvenile or family court orders relating to the child;

(ii) a statement regarding the relationship of the petitioner to the child and to any other parties; and

(iii) a statement identifying any past or pending cases involving the child or family that is the subject of the petition.

(3) **Review by Court Administrator.** Any petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services shall be reviewed by the court administrator before it is filed to determine whether it is complete. The court administrator may reject the petition if incomplete.

(c) **Petitions Seeking Alternative Permanent Placement Relief.** In addition to the content requirements set forth in subdivision 1, any termination of parental rights petition filed by the county attorney or agent of the Commissioner of Human Services may seek alternative permanent placement relief, and any other party may seek only transfer of permanent legal and physical custody to a relative as the alternative to termination of parental rights. A petition seeking alternative permanent placement relief shall identify which proposed permanent placement option the petitioner believes is in the best interests of the child. A petition may seek separate permanent placement relief for each child named as a subject of the petition as long as the petition identifies which option(s) is sought for each child and why that option(s) is in the best interests of the child. At the admit/deny hearing on a petition that seeks alternative relief, each party shall identify on the record the permanent placement option that is in the best interests of the child.

Subd. 4. Permanent Placement Matters.

(a) **Captions and Title.** Every petition in a permanent placement matter, or an affidavit accompanying such petition, shall contain a title denoting the permanency relief sought:

(1) A transfer of permanent legal and physical custody matter shall be entitled "Juvenile Protection Petition to Transfer Permanent Legal and Physical Custody" and shall name a fit and willing relative as a proposed permanent legal and physical custodian.

(2) A request for permanent custody to the agency shall be entitled "Juvenile Protection Petition for Permanent Custody to the Agency."

(3) A request for temporary legal custody to the agency for a child adjudicated to be in need of protection or services solely on the basis of the child's

behavior shall be entitled "Juvenile Protection Petition for Temporary Legal Custody to the Agency."

(b) **Petitions Seeking Alternative Permanent Placement Relief.** Any permanent placement petition filed by the county attorney or agent of the Commissioner of Human Services may seek alternative permanent placement relief, including termination of parental rights, transfer of permanent legal and physical custody to a relative, or placement of the child in long-term foster care. Any permanent placement petition filed by a party who is not the county attorney or agent of the Commissioner of Human Services may seek only transfer of permanent legal and physical custody to a relative as the alternative to termination of parental rights. A petition seeking alternative permanent placement relief shall identify which permanent placement option the petitioner believes is in the best interests of the child. A petition may seek separate permanent placement relief for each child named as a subject of the petition as long as the petition identifies which option(s) is sought for each child and why that option is in the best interests of the child. At the admit/deny hearing on a petition that seeks alternative relief, each party shall identify on the record the permanent placement option that is in the best interests of the child. If another party files a permanent placement petition in response to the county's petition, it must be filed and served at least fifteen (15) days prior to the date of trial.

Subd. 5. Out of State Party. If a party resides out of state, or if there is likelihood of interstate litigation, the petition or an attached affidavit shall include a statement regarding the whereabouts of the party and any other information required by the Uniform Child Custody Jurisdiction and Enforcement Act, Minnesota Statutes § 518D.101 to § 518D.317.

Subd. 6. Disclosure of Name and Address – Endangerment. If there is reason to believe that an individual may be endangered by disclosure of a name or address required to be provided pursuant to this rule, that name or address may be provided to the court in a separate informational statement and shall not be accessible to the public, parties, or participants, but it shall be accessible to the attorneys and guardian ad litem. Upon notice and motion, the court may disclose the name or address to others as it deems appropriate.

2008 Advisory Committee Comment

For a quote from the Indian Child Welfare Act (ICWA) that addresses "exclusive jurisdiction," see the 2008 Advisory Committee Comment following Rule 30.08.

2014 Advisory Committee Comment

Under Rule 33.02, subd. 1(k), if appropriate under the circumstances of the case, the petitioner shall give notice to the child's parents that a parentage matter may be brought and of the availability of parentage establishment and child support services through the county child support agency. This notice can help introduce parents to the benefits of establishing the legal parent and child relationship and of the benefits to the child of partnership on financial issues. Unless prohibited by federal law, the county child support agency has the obligation to bring an action to establish the parent and

child relationship when a parent, including an alleged father, or the responsible social services agency who has legal responsibility for the placement of a child applies for full child support services, unless good cause is claimed and substantiated under Minnesota Statutes § 256.741 subds. 5–13.

Rule 33.03. Verification

A petition shall be verified by a person having knowledge of the facts and may be verified on information and belief.

Rule 33.04. Amendment

Subd. 1. Prior to Trial. The petition may be amended at any time prior to the commencement of the trial, including, in a child in need of protection or services matter, adding a child as the subject matter of the petition. The petitioner shall provide written or on-the-record notice of the amendment to all parties and participants. When the petition is amended, the court shall grant all other parties sufficient time to respond to the amendment.

Subd. 2. After Trial Begins. The petition may be amended after the trial has commenced if the court finds that the amendment does not prejudice a party and all parties are given sufficient time to respond to the proposed amendment. Upon receipt of approval from the court, the petitioner shall provide written or on-the-record notice of the proposed amendment to all parties and participants.

Rule 33.05. Timing of Filing of Petition

Subd. 1. Child in Need of Protection or Services. If a child is in emergency protective care pursuant to Rule 28, the petition shall be filed at or prior to the time of the emergency protective care hearing held pursuant to Rule 30.

Subd. 2. Permanency or Termination of Parental Rights. A permanency or termination of parental rights petition must be filed at or prior to the time the child has been in foster care or in the care of a noncustodial or nonresident parent for eleven (11) months or in the expedited manner required in Minnesota Statutes § 260C.503, subd. 2(a). A petition is not required if the responsible social services agency intends to recommend, at or prior to the time the court is required to hold the admit/deny hearing pursuant to Rule 34.02, that the child be returned to the care of the parent from whom the child was removed.

1999 Advisory Committee Comment

Minnesota Statutes § 260C.143 provides that a peace officer or school attendance officer may issue a notice to a child to appear in court and file the notice with the juvenile court.

RULE 34. ADMIT/DENY HEARING

Rule 34.01. Generally

An admit/deny hearing is a hearing at which the statutory grounds set forth in the petition are admitted or denied pursuant to Rule 35.

Rule 34.02. Timing

Subd. 1. Child in Placement.

(a) **Generally.** When the child is placed out of the child's home by court order, an admit/deny hearing shall be held within ten (10) days of the date of the emergency protective care hearing. Upon agreement of the parties, an admit/deny hearing may be combined with an emergency protective care hearing held pursuant to Rule 30.

(b) **Termination of Parental Rights Matters.** Except as otherwise provided in this paragraph, in a termination of parental rights matter the admit/deny hearing shall be held not less than ten (10) days after service of the summons and petition is complete upon the party. In a termination of parental rights matter that bypasses the child in need of protection or services proceeding, the admit/deny hearing shall be held within ten (10) days of the filing of the petition.

(c) **Permanent Placement Matters.** In a permanent placement matter the admit/deny hearing shall be held not less than ten (10) days after service of the summons and petition is complete upon the party.

(d) **Indian Child Welfare Act Matters.**

(1) **Parent's, Indian Custodian's or Tribe's Identity Known**. In matters governed by the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., the admit/deny hearing on a petition requesting the foster care placement of an Indian child, the permanent placement of an Indian child, or the termination of parental rights to an Indian child shall not be held until at least ten (10) days after receipt of the notice required under Rule 32.06, 25 U.S.C. § 1912(a), and Minnesota Statutes § 260.761, subd. 3. The parent, Indian custodian, or tribe shall, upon request, be granted up to twenty (20) additional days from receipt of the notice to prepare for the admit/deny hearing.

(2) **Parent's, Indian Custodian's, or Tribe's Identity Unknown**. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, the notice required under Rule 32.06, 25 U.S.C. § 1912(a), and Minnesota Statutes § 260.761, subd. 3, shall be sent to the Secretary of the Interior who shall have fifteen (15) days to provide the requisite

notice to the parent or Indian custodian and the tribe. The admit/deny hearing shall be held at least twenty-five (25) days after receipt of the notice by the Secretary. The parent, Indian custodian, or tribe shall, upon request, be granted up to twenty (20) additional days from receipt of the notice to prepare for the admit/deny hearing.

Subd. 2. Child Not in Placement.

(a) **Generally.** When the child is not placed outside the child's home by court order, an admit/deny hearing shall be held no sooner than three (3) days and no later than twenty (20) days after the filing of the petition.

(b) **Child's Behavior.** In matters where the sole allegation is that the child's behavior is the basis for the petition and the child is not in placement, an admit/deny hearing shall be commenced within a reasonable time after service of the summons and petition upon the child.

Subd. 3. Possession of Petition. The parties have the right to have a copy of the petition at least three (3) days before the admit/deny hearing.

Rule 34.03. Hearing Procedure

Subd. 1. Initial Procedure. At the commencement of the hearing the court shall on the record:

(a) verify the child's name, date of birth, race, gender, current address unless stating the address would endanger the child or seriously risk disruption of the current placement, and, if the child is believed to be an Indian child, the name of the child's tribe;
(b) inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe, parent, and Indian custodian have been notified;
(c) determine whether all parties are present and identify those present for the record;
(d) advise any child and the child's parent or legal custodian who appears in court and is not represented by counsel of the right to representation pursuant to Rule 25;
(e) determine whether notice requirements have been met and, if not, whether the affected person waives notice;
(f) if the child who is a party or the child's parent or legal custodian appears without counsel, explain basic trial rights;
(g) determine whether the child and the child's parent or legal custodian understand the statutory grounds and the factual allegations set forth in the petition and, if not, provide an explanation;
(h) explain the purpose of the hearing and the possible transfer of custody of the child from the parent or legal custodian to another, when such transfer is permitted by law and the permanency requirements of Minnesota Statutes § 260C.503–.521;
(i) if the admit/deny hearing is the first hearing in the juvenile protection matter, and if the court knows or has reason to know that the child is an Indian child,

determine whether notice has been sent pursuant to Rule 32.06; 25 U.S.C. § 1912(a); and Minnesota Statutes § 260.761, subd. 3.

(j) if the admit/deny hearing is not the first hearing and the determination that the child is an Indian child has not been made as required in Rule 30.08, subd. 2, attempt to determine whether the child is an Indian child through review of the petition, other documents, and an on-the-record inquiry. If the court is unable to determine whether the child is an Indian child, the court shall direct the petitioner to make further inquiry and provide to the court and parties additional information regarding whether the child is an Indian child;

(k) if the district court finds from review of the petition or other information that an Indian child is a ward of tribal court, pursuant to Rule 48.02, subd. 1, adjourn the hearing to consult with the tribal court regarding the safe and expeditious return of the child to the jurisdiction of the tribe and dismiss the juvenile protection matter; and

(l) attempt to determine the applicability of the Indian Child Welfare Act, 25 U.S.C. § 1901 *et seq.*, based on the information received from the tribe or tribes required to receive notice pursuant to 25 U.S.C. § 1912(a). The court shall order the petitioner to make further inquiry of the tribe or tribes until the court can determine whether the Indian Child Welfare Act applies.

Subd. 2. Child in Need of Protection or Services Matters.

(a) In each child in need of protection or services matter, after completing the initial inquiries set forth in subdivision 1, the court shall determine whether the petition establishes a prima facie showing that a juvenile protection matter exists and that the child is the subject of the matter, unless the prima facie determination was made at the emergency protective care hearing pursuant to Rule 30.08. The court shall dismiss the petition if it finds that the petition fails to establish a prima facie showing that a juvenile protection matter exists and that the child is the subject of the matter.

(b) In addition to the initial procedures set forth in subdivision 1, in each child in need of protection or services matter the court shall also advise all persons present that if the petition is proven and the child is not returned home:

(1) a permanency progress review hearing shall be held within six (6) months of the date of the child's placement in foster care or in the home of a noncustodial or nonresident parent; and

(2) a permanent placement determination hearing must be held within twelve (12) months of the date of the child's placement in foster care or the home of a noncustodial or nonresident parent.

Subd. 3. Termination of Parental Rights Matters.

(a) In each termination of parental rights matter, after completing the initial inquiries set forth in subdivision 1, the court shall determine whether the petition states a prima facie case in support of one or more statutory grounds set forth in the

petition to terminate parental rights and a prime facie showing that a juvenile protection matter exists and that the child is the subject of the matter. The court shall dismiss the petition if it finds that the petition fails to establish a prima facie showing that a juvenile protection matter exists and that the child is the subject of that matter.

(b) When the petition alleges that reasonable efforts, or active efforts in the case of an Indian child, have been made to reunify the child with the parent or legal custodian, the court shall enter a separate finding regarding whether the factual allegations contained in the petition state a prima facie case that the agency has provided reasonable efforts, or active efforts in the case of an Indian child, to reunify the child and the parent or legal custodian. In the alternative, the court may enter a finding that reasonable efforts to reunify the child and the parent or legal custodian were not required under Minnesota Statutes § 260.012.

(c) If the court determines that the petition states a prima facie case in support of termination of parental rights, the court shall proceed pursuant to Rule 35. If the court determines that the petition fails to state a prima facie case in support of termination of parental rights, the court shall:

(i) return the child to the care of the parent or legal custodian;

(ii) give the petitioner ten (10) days to file an amended petition or supplementary information if the petitioner represents there are additional facts which, if presented to the court, would establish a prima facie case in support of termination of parental rights;

(iii) give the petitioner ten (10) days to file a child in need of protection or services petition; or

(iv) dismiss the petition.

Subd. 4. Permanent Placement Matters.

(a) In each permanent placement matter, after completing the initial inquiries set forth in subdivision 1, the court shall review the facts set forth in the petition, consider such argument as the parties may make, and determine whether the petition states a prima facie case in support of one or more of the permanent placement options.

(b) When the petition seeking permanent placement of the child away from the parent or legal custodian requires a determination by the court that reasonable efforts, or active efforts in the case of an Indian child, have been made to reunify the child with the parent or legal custodian, the court shall enter a separate finding regarding whether the factual allegations in the petition state a prima face case that the agency has provided reasonable efforts, or active efforts in the case of an Indian child, to reunify the child and the parent or legal custodian. In the alternative, the court may enter a finding that reasonable efforts were not required under Minnesota Statutes § 260.012.

(c) If the court determines that the petition states a prima facie case, the court shall proceed pursuant to Rule 35. If the court determines that the petition fails to state a prima facie case, the court may:

(i) return the child to the care of the parent;

(ii) give the petitioner ten (10) days to file an amended petition or supplementary information if the petitioner represents there are additional facts which, if presented to the court, would establish a prima facie case; or

(iii) dismiss the petition.

Subd. 5 Motions. The court shall hear any motions, made pursuant to Rule 15, addressed to the sufficiency of the petition or jurisdiction of the court without requiring any person to admit or deny the statutory grounds set forth in the petition prior to making a finding on the motion.

1999 Advisory Committee Comment (amended 2003, 2008, and 2014)

Rule 34.03, subd. 2, is consistent with Minnesota Statutes § 260C.204, which provides that a permanency progress review hearing must be held within six (6) months of a child's removal from the home. The requirements of Rule 34.03, subds. 3 and 4, are consistent with federal requirements regarding the timing of reasonable efforts determinations and permanency hearings.

2008 Advisory Committee Comment

Notice to Indian Child's Parent, Indian Custodian, and Indian Tribe Required Under ICWA. For a juvenile protection matter involving an Indian child, the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1912(a); Minnesota Statutes § 260.761, subd. 3; and Rule 32.06 require that notice of the proceeding and of the right to intervene in the proceeding shall be given by registered mail with return receipt requested to the Indian child's parent or Indian custodian and the Indian child's tribe by the person seeking foster care placement or termination of parental rights. Minnesota Statutes § 260.761, subd. 2, also requires notice to the Indian child's tribe whenever the agency's involvement with the Indian child could lead to out-of-home placement and requires agency involvement longer than thirty (30) days. This requirement supports the practice of early involvement of the child's Indian tribe in planning for the child's safety and services for the family.

Timing of ICWA Notice. The ICWA, 25 U.S.C. § 1912(a), provides that no foster care placement or termination of parental rights proceeding shall be held until at least ten (10) days after receipt of notice by the Indian child's parent or Indian custodian and the Indian child's tribe, provided that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty (20) additional days from receipt of the notice to prepare for such proceeding.

Emergency Protective Care Placement Pending ICWA Notice. See 2008 Advisory Committee Comment to Rule 30.10.

2014 Advisory Committee Comment

With respect to subdivision 1(j) and (l), in cases where the application of the Indian Child Welfare Act (ICWA) is unclear, such as when it is not yet known whether the child is or is not an Indian child, it is advisable to proceed pursuant to the requirements of the ICWA unless or until a determination is otherwise made in order to fulfill the Congressional purposes of the ICWA, to ensure that the child's Indian tribe is involved, and to avoid invalidation of the action pursuant to 25 U.S.C. § 1914 and Rule 46.03.

RULE 35. ADMISSION OR DENIAL

Rule 35.01. Generally

Subd. 1. Parent or Legal Custodian.

(a) **Generally.** Unless the child's parent or legal custodian is the petitioner, a parent who is a party or a legal custodian shall admit or deny the statutory grounds set forth in the petition or remain silent. If the parent or legal custodian denies the statutory grounds set forth in the petition or remains silent, or if the court refuses to accept an admission, the court shall enter a denial of the petition on the record.

(b) **Termination of Parental Rights Matters.** In a termination of parental rights matter, only the parents of the child are required to admit or deny the petition. A party who is not required to admit or deny the petition may object to the admission if that party has filed a petition pursuant to Rule 33.

(c) **Permanent Placement Matters.** In a permanent placement matter:

(1) Only the legal custodian of the child who is not the petitioner is required to admit or deny the petition. A party who is not required to admit or deny the petition may object to the entry of the proposed permanent placement order if that party has filed a petition pursuant to Rule 33.

(2) When there is a petition for transfer of permanent legal and physical custody to a relative who is not represented by counsel, the court may not enter an order granting the transfer of custody unless there is testimony from the proposed custodian establishing that the proposed custodian understands:

(i) the legal consequences of a transfer of permanent legal and physical custody;

(ii) the nature and amount of financial support and services that will be available to help care for the child;

(iii) how the custody order can be modified; and

(iv) any other permanent placement options available for the subject child.

Subd. 2. Child.

(a) **Generally.** Except as otherwise provided in this rule, the child shall not admit or deny the petition.

(b) **Child's Behavior.** In matters where the sole allegation is that the child's behavior is the basis for the petition, only the child shall admit or deny the statutory grounds set forth in the petition or remain silent.

Subd. 3. Contested Petition. Any party has the right to contest the basis of a petition. The county attorney has the right to contest the basis of a petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services.

Rule 35.02. Denial

Subd. 1. Denial Without Appearance. A written denial or a denial on the record of the statutory grounds set forth in a petition may be entered by counsel without the personal appearance of the person represented by counsel.

Subd. 2. Further Proceedings After Denial. When a denial by any party is entered, the court shall schedule further proceedings pursuant to Rule 36 or Rule 39.

Rule 35.03. Admission

Subd. 1. Admission Under Oath. Any admission must be made under oath.

Subd. 2. Admission Without Appearance. Upon approval of the court, a written admission of the statutory grounds set forth in the petition, made under oath, may be entered by counsel without personal appearance of the person represented by counsel.

Subd. 3. Questioning of Person Making Admission.

(a) **Generally.** Before accepting an admission the court shall determine on the record or by written document signed by the person admitting and the person's counsel, if represented, whether:
  (1) the person admitting acknowledges an understanding of:
    (i) the nature of the statutory grounds set forth in the petition;
    (ii) if unrepresented, the right to representation pursuant to Rule 25;
    (iii) the right to a trial;
    (iv) the right to testify; and
    (v) the right to subpoena witnesses; and
  (2) the person admitting acknowledges an understanding that the facts being admitted establish the statutory grounds set forth in the petition.

(b) Child in Need of Protection or Services Matters, and Habitual Truant, Runaway, and Sexually Exploited Child Matters. In addition to the questions set forth in subdivision 3(a), before accepting an admission in a child in need of protection or services matter or a matter alleging a child to be a habitual truant, a runaway, or a sexually exploited child, the court shall also determine on the record or by written document signed by the person admitting and the person's counsel, if represented, whether the person admitting acknowledged an understanding that:

(1) a possible effect of a finding that the statutory grounds are proved may be the transfer of legal custody of the child to another or other permanent placement option including termination of parental rights to the child; and

(2) if the child is in out-of-home placement, a permanency progress review hearing will be held within six (6) months of the date the child is ordered placed in foster care or in the home of a noncustodial or nonresident parent, and a permanent placement determination hearing will be held within twelve (12) months of the date the child is ordered placed in foster care or in the home of a noncustodial or nonresident parent.

Subd. 4. Basis for Admission. The court shall refuse to accept an admission unless there is a factual basis for the admission.

(a) **Full Admission.** A party may admit all of the statutory grounds set forth in the petition.

(b) **Partial Admission.** Pursuant to a Rule 19 settlement agreement, a person may admit some, but not all, of the statutory grounds set forth in the petition.

Subd. 5. Withdrawal of Admission. After filing a motion with the court:

(a) an admission may be withdrawn at any time upon a showing that withdrawal is necessary to correct a manifest injustice; or

(b) the court may allow a withdrawal of an admission before a finding on the petition for any fair and just reason.

Subd. 6. Acceptance or Non-Acceptance of Admission. At the time of the admission, the court shall make a finding that:

(a) the admission has been accepted and the statutory grounds admitted have been proved;

(b) the admission has been conditionally accepted pending the court's approval of a settlement agreement pursuant to Rule 19; or

(c) the admission has not been accepted.

Subd. 7. Further Proceedings. If the court makes a finding that the admission is accepted and the statutory grounds admitted are proved, or that the admission is conditionally accepted pending the court's approval of a settlement agreement pursuant to Rule 19, the court shall enter an order with respect to adjudication pursuant to Rule 40 and proceed to disposition. If the court makes a finding that the admission has not been accepted, the court shall schedule further proceedings pursuant to Rule 36 or Rule 39.

RULE 36. PRETRIAL HEARING

Rule 36.01. Timing

The court shall convene a pretrial hearing at least ten (10) days prior to trial.

Rule 36.02. Purpose

The purposes of a pretrial hearing shall be to:

(a) determine whether a settlement of any or all of the issues has occurred or is possible;

(b) determine whether all parties have been served and, if not, review the efforts that have taken place to date to serve all parties;

(c) advise any child or the child's parent or legal custodian who appears in court and is unrepresented of the right to representation pursuant to Rule 25. If counsel is appointed at the pretrial hearing, the hearing shall be reconvened at a later date;

(d) determine whether the child shall be present and testify at trial and, if so, under what circumstances;

(e) identify any unresolved discovery matters;

(f) resolve any pending pretrial motions;

(g) identify and narrow issues of law and fact for trial, including identification of:

  (1) the factual allegations admitted or denied;

  (2) the statutory grounds admitted or denied;

  (3) any stipulations to foundation and relevance of documents; and

  (4) any other stipulations, admissions, or denials;

(h) exchange witness lists and a brief summary of each witness' testimony;

(i) exchange exhibit lists;

(j) confirm the trial date and estimate the length of trial;

(k) determine the need for, and date for submission of, proposed findings; and

(l) determine any other relevant issues.

Rule 36.03. Pretrial Order

The pretrial order shall be filed within ten (10) days of the hearing and shall include the information specified in Rule 36.02 and shall specify all factual allegations and statutory grounds admitted and denied.

Rule 36.04. Continuing Obligation to Update Information

From the date of the pretrial hearing through the date of trial, the parties shall have a continuing obligation to update information provided during the pretrial hearing.

1999 Advisory Committee Comment

Rule 36.02(d) addresses the need to determine whether the child will testify. The intent of the rule is to provide that an order protecting the child from testifying or placing conditions on the child's testimony can only be made after notice of motion and a hearing. The Committee intends that any such motion be heard and resolved at the pretrial conference.

RULE 37. CASE AND OUT-OF-HOME PLACEMENT PLANS

Rule 37.01. Case and Out-of-Home Placement Plans and Reports Generally

When the responsible social services agency is the petitioner, the agency shall file with the court and provide to the parties and foster parent a case plan or out-of-home placement plan for the child and the parents or legal custodians, as appropriate. A case plan shall be prepared according to the requirements of Minnesota Statutes § 245.4871, subd. 19 or 21; § 245.492, subd. 16; § 256B.092; § 260C.212, subd. 1; or § 626.556, subd. 10, whichever is applicable.

Rule 37.02. Child in Court-Ordered Foster Care: Out-of-Home Placement Plan

Subd. 1. Plan Required. When a child is placed in foster care by court order, the responsible social services agency shall file with the court and provide to the parties and foster parents the case plan or out-of-home placement plan required under Minnesota Statutes § 260C.212, subd. 1.

Subd. 2. Timing. The out-of-home placement plan shall be filed with the court and provided to the parties and foster parents by the responsible social services agency within thirty (30) days of the court order placing the child in foster care, an order for protective care, or order transferring legal custody to the responsible social services agency, whichever is earliest.

Subd. 3. Content.

(a) Generally. The out-of-home placement plan shall include a statement about whether the child and parent, legal custodian, or Indian custodian, participated in the preparation of the plan. If a parent or legal custodian refuses to participate in the preparation of the plan or disagrees with the services recommended in the plan by the responsible social services agency, the agency shall state in the plan the attempts made to engage the parent, legal custodian, and child in case planning and note such refusal or disagreement. The plan shall also include a statement about whether the child's guardian ad litem; the child's tribe, if the child is an Indian child; and the child's foster parent or representative of the residential facility have been consulted in the plan's preparation. The agency shall document whether the parent, legal custodian, or Indian custodian; child, if appropriate; the child's tribe, if the child is an Indian child; and foster parents have received a copy of the plan. When the child is in foster care due solely or in part to the child's emotional disturbance, the child's

mental health treatment provider shall also be consulted in preparation of the plan and the agency shall document such consultation in the plan filed with the court.

(b) Child's Education, Health, and Mental Health Records in the Out-of-Home Placement Plan; When Accessible by Parties and Participants. The following portions of or attachments to the out-of-home placement plan shall be filed in the manner required for confidential information and confidential documents under Rule 8.04, subd. 5, and shall be accessible only to the parties and participants of the particular juvenile protection matter as permitted under Rule 8.04 of these rules:

(1) the educational records of the child required under Minn. Stat. § 260C.212, subd. 1 (c)(8);
(2) information pertaining to the oversight of the child's health as provided in Minn. Stat. § 260C.212, subd. 1 (c)(9);
(3) the health records of the child required under Minn. Stat. § 260C.212, subd. 1 (c)(10); and
(4) records of the child's diagnostic and assessment information, specific services relating to meeting the mental health care needs of the child, and treatment outcomes as provided in Minn. Stat. § 260C.212, subd. 1 (c)(12).

Subd. 4. Procedure for Approving or Ordering Out-of-Home Placement Plan Prior to Disposition.

(a) **Court's Approval of Plan.** Upon the filing of the out-of-home placement plan, together with the information about whether the parent or legal custodian; the child, if appropriate; the child's tribe, if the child is an Indian child; and the foster parents have received a copy of the plan, the court may, based upon the allegations in the petition, approve the responsible social services agency's implementation of the plan if it was developed jointly with the parent and in consultation with others required under this Rule and Minnesota Statutes § 260C.212, subd. 1. The court shall serve written notice of the approval of the plan upon all parties and the county attorney, or may state such approval on the record at a hearing after the plan has been filed with the court and provided to the parties, foster parents, and the child, as appropriate. If the court directs that written notice of the approval of the case plan be served, such notice may be served by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as directed by the court.

(b) **Refusal to Participate in Development of Plan or Disagreement With Services.** When a parent or legal custodian refuses to participate in the preparation of the out-of-home placement plan or disagrees with the services recommended by the responsible social services agency, the agency shall notify the court of the services it will provide or efforts it will attempt under the plan notwithstanding the parent's refusal to cooperate or disagreement with the services. Any party may ask the court to modify the plan to require different or

additional services. The court may approve the plan as presented by the agency or may modify the plan to require services requested. The court's approval of the plan shall be based upon the content of the petition or amended petition.

(c) **Voluntary or Court-Ordered Compliance with Plan.** A parent may voluntarily agree to comply with the terms of an out-of-home placement plan filed with the court. Unless the parent voluntarily agrees to the plan, the court may not order a parent to comply with the plan until there is a disposition ordered under Minnesota Statutes § 260C.201, subd. 1, and Rule 41. However, the court may find that the responsible social services agency has made reasonable efforts to finalize a permanent placement plan for the child if the agency makes efforts to implement the terms of an out-of-home placement plan approved under this rule and Minnesota Statutes § 260C.178, subd. 7.

(d) **Copy of Plan.** When the out-of-home placement plan is either ordered or approved, a copy of the plan shall be incorporated into the order by reference. The plan need not be served with the order, unless the plan has been modified.

Subd. 5. Procedure for Ordering Out-of-Home Placement Plan at Disposition. Rule 41 governs the ordering of an out-of-home placement plan at the time of disposition.

Rule 37.03. Child in Voluntary Foster Care: Out-of-Home Placement Plan

Subd. 1. Child in Voluntary Foster For Reasons Other than for Treatment.

(a) **Timing.** The out-of-home placement plan required under Minnesota Statutes § 260C.212, subd. 1, shall be filed and served with the petition asking the court to review a voluntary placement of a child in placement when the placement is not due solely to the child's disability under Minnesota Statutes § 260C.141, subd. 2, and Rule 44.

(b) **Content.** The plan shall include a statement about whether the child and parent, legal custodian, or Indian custodian participated in the preparation of the plan. The plan shall also include a statement about whether the child's guardian ad litem; the child's tribe, if the child is an Indian child; and the child's foster parent or representative of the residential facility have been consulted in the plan's preparation. The agency shall document whether the parent, legal custodian, or Indian custodian; the child, if appropriate; the child's tribe, if the child is an Indian child; and foster parents have received a copy of the plan. When a child is in foster care due solely or in part to the child's emotional disturbance, the child's mental health treatment provider shall also be consulted in preparation of the plan and the agency shall document such consultation in the plan filed with the court.

Subd. 2. Procedure for Approving Out-of-Home Placement Plan for Child in Voluntary Foster Care. The court shall consider the appropriateness of the case plan or out-of-

home placement plan in determining whether the voluntary placement is in the best interests of the child as required under Rule 44.02.

Rule 37.04. Child Not in Foster Care: Child Protective Services Case Plan

A responsible social services agency may file a petition alleging that the child is in need of protection or services seeking to ensure the provision of adequate child protective services as required under Minnesota Statutes § 626.556, subd. 10, and Minnesota Rule 9560.0228.

(a) **Timing.** When the child is not in foster care, the child protective services plan required under Minnesota Statutes § 626.556, subd. 10, and Minnesota Rule 9560.0228 shall be filed with the petition alleging the child to be in need of protection or services unless the responsible social services agency includes a statement in the petition explaining why it has not been possible to develop the plan, which may include exigent circumstances or the non-cooperation of the child's parents or guardian. The child protective services plan shall be provided to the parties by the responsible social services agency at the time it is filed with the court.

(b) **Procedure for Ordering Child Protective Services Plan.** When the child is not in foster care or is not recommended to continue in foster care, but the court finds endangerment under Rule 30, the court may order the parties to comply with the provisions of the child protective services plan as a condition of the child remaining in the care of the parent, guardian, or custodian. The court may also order the parties to comply with the provisions of the plan as part of a disposition under Rule 41. When the court orders a child protection services plan, a copy of the plan shall be attached to the court's order and incorporated into it by reference.

Rule 37.05. Child with Disability: Case Plan

Subd. 1. Procedure. If a child found to be in need of protection or services has a physical or mental disability and a case plan is required under Minnesota Statutes § 245.4871, subd. 19 or 21; § 245.492, subd. 16; or § 256B.092, the plan shall be filed with the court. Services may be ordered provided to the child according to the provisions of Minnesota Statutes § 260C.201, subd. l(a)(3). When an out-of-home placement plan is required under Rule 37.02 or a child protective services plan is required under Rule 37.04, the requirements of a plan under this paragraph may be included in such plans and need not be a separate document.

Subd. 2. Timing. The case plan shall be provided to the parties by the responsible social services agency at the time it is filed with the court.

Rule 37.06. Non-Child Protection Cases; Child Not in Out-of-Home Care

Subd. 1. Timing of Filing of Case Plan for Child Under Protective Supervision, in Need of Special Care or Services, Allowed to Live Independently, or Who is a Runaway or Habitual Truant. When a petition is filed alleging a child to be in need of protection or services and no plan is required under Rule 37.02, 37.04, or 37.05, the responsible social services agency or other agency shall file a case plan designed to correct the conditions underlying the allegations that make the child in need of protection or services and may be based on the investigation and report required under subdivision 2. The case plan must be filed and served not later than five (5) days prior to the date of the disposition hearing.

Subd. 2. Predisposition Investigation and Report. Upon request of the court, the responsible social services agency or probation officer shall investigate the personal and family history and environment of any minor coming within the jurisdiction of the court under Minnesota Statutes § 260C.101 and shall report its findings to the court. The court may order any minor coming within its jurisdiction to be examined by a duly qualified physician, psychiatrist, or psychologist appointed by the court, the cost of which shall be paid pursuant to Minnesota Statutes § 260C.331, subd. 1. The predisposition report shall be governed by Rule 41.

RULE 38. REPORTS TO THE COURT

Rule 38.01. Social Services Court Reports – Generally

Subd. 1. Periodic Reports Required. The responsible social services agency shall submit periodic certified reports to the court regarding the child and family. Whenever possible and appropriate, the agency may combine required reporting provisions under this Rule into a single report.

Subd. 2. Timing of Filing and Service. The agency shall file the report with the court and serve it upon all parties at least five (5) business days prior to the hearing at which the report is to be considered.

Subd. 3. Supplementation of Report. Reports may be supplemented at or before the hearing either orally or in writing.

Subd. 4. Certificate of Distribution. Each report shall contain or have attached the certificate of distribution required under Rule 31.07, subd. 2.

Subd. 5. Report Content. Each report shall include a statement certifying the content as true based upon personal observation, first-hand knowledge, or information and belief, and shall:

(a) be captioned in the name of the case and include the court file number;
(b) include the following demographic information:
    (i) the name of the person submitting the report;
    (ii) the date of the report;

(iii) the date of the hearing at which the report is to be considered;
(iv) the child's name and date of birth and, in the case of an Indian child, the tribe in which the child is enrolled or eligible for membership;
(v) a statement about whether the child is an Indian child and whether the Indian Child Welfare Act applies;
(vi) the names of both of the child's parents or the child's legal custodian; and
(vii) the dates of birth of the child's parents who are minors;

(c) include the date the case was most recently opened for services in the responsible social services agency;

(d) include the date and a brief description of the nature of all other previous case openings for this child and the child's siblings with the responsible social services agency and, if known, case openings for this child and the child's siblings with any other social services agency responsible for providing public child welfare or child protection services;

(e) identify progress made on the out-of-home placement plan or case plan;

(f) address the safety, permanency, and well-being of the child, including the child's:
(1) educational readiness, stability, and achievement; and
(2) physical and mental health; and

(g) request orders related to:
(1) the child's need for protection or services;
(2) implementing requirements of the out-of-home placement plan or case plan; and
(3) the health, safety, and welfare of the child.

Subd. 6. Reports Regarding Siblings. The agency may submit in a single document reports regarding siblings who are subjects of the same juvenile protection matter.

Subd. 7. Information from Collateral Sources. The agency may submit written information from collateral sources, including, but not limited to, physical and mental health assessments, parenting assessments, or information about the delivery of services or any other relevant information regarding the child's safety, health, or welfare in support of the report or as a supplement to the report.

2014 Advisory Committee Comment

Subdivision 1 permits the agency to submit a single report to the court which addresses a number of requirements under this Rule. For instance, when the agency is reporting to the court about the progress being made on the out-of-home placement plan as required in Rule 38.02, subd. 1(b), the agency may also report on its efforts to identify and locate both parents of the child under Rule 38.03 and its identification and search for relatives under Rule 38.04.

Rule 38.02. Social Services Court Report - Child in Foster Care

Subd. 1. Content. In addition to the requirements of Rule 38.01, each certified report regarding a child in foster care shall include:

(a) the child's placement history, including:

(1) the date the child was removed from the home and the agency's legal authority for removal;
(2) the date the child was ordered placed in foster care, if the child has been ordered in foster care;
(3) the total length of time the child has been in foster care, including all cumulative time in foster care the child may have experienced within the previous five (5) years;
(4) the number of times, if any, the child reentered foster care prior to age 21;
(5) the number of foster care placements the child has been in prior to age 21;
(6) if the child's foster care home has changed since the last court hearing:
(i) the reason for the change in foster care home; and
(ii) how the child's new foster care home meets the child's best interests under Minnesota Statutes § 260C.212, subd. 2 (a) and (b), or, in the case of an Indian child, how the placement complies with placement preferences established in 25 U.S.C. § 1915; and
(7) if the child is not placed with siblings who are in placement, the efforts the agency has made to place the siblings together; and

(b) services under the out-of-home placement plan, including, as appropriate to the stage of the matter:
(1) a description of the agency's efforts to implement the out-of-home placement plan; and
(2) the parent's progress in complying with the out-of-home placement plan, including anything the parent has done to alleviate the child's need for protection or services; and

(c) a description of:
(1) the case worker visits required under Minnesota Statutes § 260C.212, subd. 4a, that occurred since the last court hearing; and
(2) as applicable, the quality and frequency of visitation between the child and the child's:
(i) parents or custodian;
(ii) siblings; and
(iii) relatives; and

(d) when the child is age sixteen (16) or older, progress in implementing each of the elements of the child's independent living plan required under Minnesota Statutes § 260C.212, subd. 1(b)(11), and the agency's continued efforts to identify and make the most legally-permanent placement that is in the child's best interest.

Subd. 2. Requested Court Action. The report shall include recommendations to the court for:

(a) modification of the out-of-home placement plan or for actions the parents or legal custodian must take to make changes necessary to alleviate the child's need for protection or services; and

(b) orders necessary for the child's safety, permanency, and well-being, including any orders necessary to promote the child's:
(1) educational readiness, stability, and achievement;
(2) physical and mental health; and

(3) welfare and best interests.

Subd. 3. Reports under Minnesota Statutes Chapter 260D. Reports under Minnesota Statutes Chapter 260D must meet the requirements of Minnesota Statutes § 260D.06 and Rule 43.02.

Rule 38.03. Social Services Court Report – Reasonable Efforts to Identify and Locate Both Parents of the Child

If both parents of the child have not been identified and located at the time of the first review hearing under Rule 41.06, the agency shall report to the court regarding the diligent efforts required of the agency to identify and locate the parents pursuant to Minnesota Statutes § 260C.150, subd. 3. The agency shall continue to report to the court, on a schedule set by the court, until:

(a) both parents of the child are identified and located; or

(b) the court finds the agency has made diligent efforts to identify and locate the parent as required under Minnesota Statutes § 260.012, § 260C.178, § 260C.201, and § 260C.301, subd. 8, regarding any parent who remains unknown or cannot be located. The court may also find that further reasonable efforts for reunification with the parent who cannot be identified or located would be futile.

2014 Advisory Committee Comment

The agency's report of efforts to locate a parent whose identity or location remains unknown should include the efforts listed in Minnesota Statutes § 260C.150, subd. 3. Minnesota Statutes § 260C.150, subd. 7, permits the finding that reasonable efforts to identify and locate a parent fulfill the required reasonable efforts under Minnesota Statutes § 260.012, § 260C.178, § 260C.201, and § 260C.301, subd. 8. When the agency has made diligent and reasonable efforts, then either both parents have been identified and located or there is a sufficient basis to determine that additional efforts are futile.

One of the steps the responsible social services agency can take to locate a parent is to ask for assistance from the county and state of Minnesota child support enforcement system. See Minnesota Statutes § 13.46, subd. 1(a)(30); 42 U.S.C. § 653(a), (b), and (c); and 42 U.S.C. § 654(8). This step can be an important and productive source of information about a parent whose identity and location are unknown.

Rule 38.04. Social Services Court Report – Due Diligence to Identify and Notify Relatives

Subd. 1. Timing.

(a) Within three (3) months of the child's placement, the agency shall report to the court regarding the agency's due diligence to identify and notify relatives under Minnesota Statutes § 260C.221 and, in the case of an Indian child, describe the agency's active efforts to meet the placement preferences of 25 U.S.C. § 1915.

(b) If the court orders continued efforts to identify and locate relatives, the agency shall periodically report on its continuing efforts on a schedule set by the court.

(c) If an Indian child is not placed according to the placement preferences of 25 U.S.C. § 1915, the agency shall periodically report on its efforts to meet the placement preferences until the court makes a finding of good cause under 25 U.S.C. § 1915.

Subd. 2. Content.

(a) **Identification and notice to relatives.** The report shall include information about identification and notice to relatives, including:

(1) a description of the procedures the agency used to identify relatives, including the names of persons who were asked to provide information about the child's relatives and the use of any internet or other resource to identify and locate relatives;

(2) the names of all identified relatives and how the person is related or known to the child or child's family;

(3) whether the agency has an address or other contact information for the relative and the results of using the address or contact information, if any; and

(4) whether the relative was sent the notice and information required under Minnesota Statutes § 260C.221(a) and the nature of any resulting contact from the relative back to the agency.

(b) **Consideration of relatives for placement**. The report shall include information about how the agency considered relatives for placement, including:

(1) whether identified relatives were considered for placement under Minnesota Statutes § 260C.212, subd. 2 (a) and (b), and the result of that consideration;

(2) a description of the process the agency used to consider relatives for placement, including who was consulted, whether the agency used family group decision-making or a family conference, or any other process to assist with consideration of relatives;

(3) in the case of an Indian child, the efforts the agency made to work with the child's tribe to identify relatives and the results of those efforts;

(4) a copy of or reference to the documentation from the out-of-home placement plan regarding how the relative with whom the child is placed meets the placement factors at Minnesota Statutes § 260C.212, subd. 2(b), or, if placement is not with a relative, why a relative placement was not appropriate; and

(5) what future consideration for placement of the child will be given to relatives.

(c) **Engagement in planning.** The report shall include a description of how the agency will engage relatives in continued support for the child and family and involvement in permanency planning for the child as required under Minnesota Statutes § 260C.221(a)(3).

Subd. 3. Requested Findings; Plan for Active Efforts; Orders.

(a) **Reasonable Efforts.** Pursuant to Minnesota Statutes § 260C.221(e), the agency may request a finding that the agency has made reasonable efforts to identify and notify relatives.

(b) **Active Efforts.** In the case of an Indian child, if the child's placement is not according to the preferences of 25 U.S.C. § 1915, the agency shall report its plan for continued efforts to place the child according to the preferences or request a finding of good cause under 25 U.S.C. § 1915.

(c) **Orders.** When appropriate to assist the agency in its duties for reasonable and active efforts, the agency may ask the court for orders that assist in the identification and location of relatives.

2014 Advisory Committee Comment

Subdivision 2 of Rule 38.04 reflects provisions of Minnesota Statutes § 260C.221(d), which permits disclosure of a relative's data — notwithstanding provisions in Minnesota Statutes Chapter 13 that make the data private data on the individual — for purposes of the court's review of the agency's efforts to identify, search for, and contact relatives. If relative placement is not made, this statutory provision permits disclosure of data regarding the reason for not making a relative placement.

Rule 38.05. Social Services Court Report – Permanency Progress Review Hearing

Subd. 1. Content.

(a) **Progress towards permanency.** In addition to the requirements of Rules 38.01 and 38.02 regarding the permanency progress review hearing, the report shall address the elements in Minnesota Statutes § 260C.204(a).

(b) **Concurrent efforts on adoption and referrals under the Interstate Compact on the Placement of Children.** As appropriate, the report shall also address any concurrent reasonable efforts required under Minnesota Statutes § 260C.605 and information on any referrals that have been made or will be made under Minnesota Statute § 260.851, the Interstate Compact on the Placement of Children.

Subd. 2. Requested Court Order Regarding Permanency Progress. The report shall include a request for appropriate orders under Minnesota Statutes § 260C.204(c) to:

(a) return the child home;
(b) continue reasonable efforts for reunification or active efforts to prevent the breakup of the Indian family; or
(c) plan for the legally permanent placement of the child away from the parent, identify permanency resource homes that will be the legally permanent home if

the child cannot return to the parent, and file a permanency petition under Minnesota Statutes § 260C.204(d)(2) or (3).

2014 Advisory Committee Comment

A permanency progress review hearing was formerly required only for children under age 8. Minnesota Statutes § 260C.204 now requires this hearing at month six for all children continuing out of the care of the parent from whom the child was removed.

Rule 38.06. Social Services Court Report – Child on Trial Home Visit

Subd. 1. Timing and Content. In addition to the requirements of Rules 38.01 and 38.02, when a hearing is required under Minnesota Statutes § 260C.503, subd. 3(c), and Rule 42.14 because the child is on a trial home visit at the time for a required permanency hearing or pursuant to Rule 41.06, subd. 2(b)(3), the agency shall serve and file a report regarding the child's and parent's progress during the trial home visit and the agency's reasonable efforts to finalize the child's safe and permanent return to the care of the parent. When a trial home visit is terminated, the agency shall report to the court as required under Minnesota Statutes § 260C.201, subd. 1(a)(3)(v) and (vi), and Rule 41.06, subd. 2(b)(1) and (2).

Subd. 2 . Requested Court Orders. The report shall include recommendations, if any, for modification to the services and supports in place, and for any orders necessary for the safety, protection, well-being, or best interests of the child during the trial home visit. The agency shall also recommend whether the trial home visit should continue as provided in Minnesota Statutes § 260C.201, subd. 1(a)(3).

2014 Advisory Committee Comment

Provisions of Rule 38.06, subd. 1, that reference requirements of Rule 38.02 requiring updating the Out-of-Home Placement Plan are appropriate when the child is on a trial home visit because the agency continues to have legal custody of the child, which makes the Out-of-Home Placement Plan a continued requirement even though the child is at home with the parent.

When a child is on a trial home visit at the time for the required permanency hearing under Minnesota Statutes § 260C.503, subd. 3(c), and Rule 42, a permanency petition under Minnesota Statutes § 260C.505 is not required.

Rule 38.07. Social Services Court Report – Child under State Guardianship

Subd. 1. Timing. When a hearing is required under Minnesota Statutes § 260C.607 to review the progress of the matter towards finalized adoption and the child's well-being, in addition to the requirements of Rules 38.01 and 38.02, and as appropriate to the stage of the matter, the agency shall file and serve a report addressing the elements of Minnesota Statutes § 260C.607, subd. 4.

Subd. 2. Content.

(a) **Information for Notice of Hearing.** In a document attached to the report, which shall be inaccessible to the public or to any parent of the child whose rights have been terminated or who has executed a consent to adopt the child, the agency shall include the following information required for the court to provide notice of the hearing:

(1) the child's current address, if the child is age ten (10) and older;

(2) the names and addresses of each relative of the child who has responded to the agency's notice under Minnesota Statutes § 260C.221(g) indicating a willingness to provide an adoptive home for the child unless the relative has been previously ruled out by the court as a suitable foster parent or permanency resource for the child;

(3) the name and address of the current foster or adopting parent of the child;

(4) the name and address of any foster or adopting parents of siblings of the child; and

(5) the name and address of the Indian child's tribe.

(b) **Progress towards Finalized Adoption.** The report shall describe the agency's reasonable efforts to finalize the child's adoption as required in Minnesota Statute § 260C.605, including:

(1) the steps taken to identify and place the child in a home that will timely commit to adopt the child, including:

(i) the status of any relative search under Minnesota Statutes § 260C.221;

(ii) whether any relative of the child has expressed interest in adopting the child, and, if so, the agency's consideration of the relative according to the requirements of Minnesota Statute § 260C.212, subd. 2(a) and (b);

(iii) the progress of any study required under Minnesota Statutes § 260.851, the Interstate Compact on the Placement of Children; and

(iv) whether child-specific recruitment efforts are necessary and, if so, the nature and timing of those efforts; and

(2) if the child is placed with a prospective adoptive home, expected dates for the following:

(i) completion of the adoption study required under Minnesota Statutes § 260C.611;

(ii) the execution of the adoption placement agreement;

(iii) the required notice under Minnesota Statutes § 260C.613, subd. 1(c);

(iv) the execution of an agreement regarding adoption assistance under Minnesota Statutes chapter 259A or Northstar Adoption Assistance under Minnesota Statutes chapter 256N, including the specific reasons for any delay in executing the agreement;

(v) the filing of the adoption petition; and

(vi) the final hearing on the adoption petition.

(c) **Child Well-being.** In addition to reporting on the agency's efforts to finalize adoption, the report shall address the child's well-being, including:

(1) how the child's placement is meeting the child's best interests;

(2) the quality and frequency of visitation and contact between the child and siblings and, if applicable, relatives;

(3) how the agency is meeting the child's medical, mental, and dental health needs;

(4) how the agency is planning for the child's education pursuant to Minnesota Statutes § 260C.607, subd. 4(a)(2); and

(5) when the child is age sixteen (16) or older, progress in implementing each of the elements of the child's independent living plan required under Minnesota Statutes § 260C.212, subd. 1(b)(11), while the agency continues to make reasonable efforts to finalize an adoption for the child.

Subd. 3. Requested Findings and Orders. The agency may request findings pursuant to Minnesota Statutes § 260C.607 that the agency is making reasonable efforts to finalize the adoption of the child as appropriate to the stage of the case and may request any order that will assist in achieving a finalized adoption for the child.

Subd. 4 . Adoption Placement Agreement.

(a) **Notice of Agreement.** When the agency has a fully executed adoption placement agreement under Minnesota Statutes § 260C.613, subd. 1, the agency shall report to the court that the adoptive placement has been made and the adoption placement agreement regarding the child is fully executed. The agency shall file and serve on the parties entitled to notice under Minnesota Statutes § 260C.607, subd. 2, a copy of the court report together with notice that there is a fully executed adoption placement agreement. The notice shall include a statement that if a relative or foster parent is requesting adoptive placement of the child, the relative or foster parent has thirty (30) days after receiving the notice to file a motion for an order for adoption placement of the child under Minnesota Statutes § 260C.607, subd. 6. Service of the report by a Registered User of the E-Filing System upon another Registered User shall be made in compliance with Rule 14.03 of the General Rules of Practice for the District Courts. All other service of the report shall be by personal service, U.S. mail, or e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

(b) **Notice of Termination of Agreement.** In the event an adoption placement agreement terminates, the agency shall report that the agreement and adoptive placement have terminated. The agency shall file and serve a copy of the report upon the parties entitled to notice under Minnesota Statutes § 260C.607, subd. 2, and shall send a copy of the report to the commissioner of human services by U.S. mail. Service of the report by a Registered User of the E-Filing System upon another Registered User shall be made in compliance with Rule 14.03 of the General Rules of Practice for the District Courts. All other service of the report

shall be by personal service, U.S. mail, or e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

Subd. 5. Report upon Finalized Adoption. When the adoption of a child who is under the guardianship of the commissioner has been finalized, the agency shall file and serve a report stating:

(a) the date the adoption was finalized;
(b) state and county where the adoption was finalized; and
(c) name of the judge who finalized the adoption.

2014 Advisory Committee Comment

Rule 38.07 sets out required report elements for the agency regarding its duties to a child under guardianship of the commissioner of human services. These duties include:

1. Reasonable efforts to finalize adoption. Minnesota Statutes § 260C.605 outlines required reasonable efforts to finalize the adoption of the child. The efforts to be made are different based on the amount of time the child has been under state guardianship and the particular needs and circumstances of the child. Some efforts are required to begin even prior to the child coming under the guardianship of the state, including consideration of who is going to be an appropriate adoptive home for the child in the event the child cannot return home and work on the child's social and medical history. Other efforts can only be made after the child is under state guardianship. The court report elements in Rule 38.07 are intended to organize required reasonable efforts into general topics to assist the court in conducting a meaningful review of progress towards adoption.

Under Minnesota Statutes § 260C.613, subd. 1, the agency has exclusive authority to make the adoptive placement of the child. Ideally, identification of a potential adoptive home begins as part of concurrent permanency planning as early as possible in the child's placement. The first review of efforts to find an adoptive home occurs after six months of placement in the permanency progress review hearing required under Rule 42 and Minnesota Statutes § 260C.204. When the child cannot return home and is under guardianship of the commissioner of human services, the court continues to review the agency's efforts to make an adoptive placement until the adoption is finalized. Under Minnesota Statutes § 260C.613, subd. 1, the agency must report when it has made an adoptive placement through a fully executed adoption placement agreement. "Fully executed" means the document has been signed by the adopting parent, the responsible social services agency, and the commissioner of human services. The report and notice of the agreement are sent to all who had the right to participate in the reviews required under Rule 42. The notice gives relatives and foster parents who have not been selected by the agency for adoptive placement an opportunity to ask the court to override the agency's adoptive placement decision when the agency has been unreasonable in choosing the adoptive home. This standard is set out at Minnesota Statutes § 260C.607, subd. 6.

The agency's reasonable efforts to finalize the child's adoption include negotiating an agreement with the adopting parent regarding future benefits for the child. In this regard, Rule 38.07 references both adoption assistance under Minnesota Statutes chapter 259A, in effect until December 31, 2014, and Northstar Adoption

Assistance under Minnesota Statutes chapter 256N, in effect for adoptions finalized on or after January 1, 2015.

Under Minnesota Statutes § 260C.613, subd. 1, the agency must also report in the event an adoption placement agreement is terminated.

2. Child Well-Being. Minnesota Statutes § 260C.607, subd. 4, requires the agency to report on its efforts to implement the child's Out-of-Home Placement Plan, which sets out the service plan for the child, focuses on the child's well-being, and, when the child is age 16 or older, the plan for helping the child achieve success in adulthood through the independent living planning required under Minnesota Statutes § 260C.212, subd. 1(b)(11).

Rule 38.08. Social Services Court Report – Child Not in Foster Care

In addition to the requirements of Rule 38.01, a certified report for a child not in foster care shall include the following:

(a) the child's residence and whether the child's residence has changed since the last court hearing;

(b) as applicable, a description of:

(1) the services provided to the child and parent and the agency's efforts to implement the case plan; and

(2) the parents' or legal custodian's and child's progress in complying with the plan, including anything the parents or legal custodian, and child, if appropriate, have done to alleviate the child's need for protection or services; and

(c) recommendations to the court for modification of the plan or for actions the parent or legal custodian must take to provide adequate protection or services for the child.

Rule 38.09. Social Services Court Report – Between Disposition Review Hearings

Once disposition has been ordered pursuant to Minnesota Statutes § 260C.201 and Rule 41, the responsible social services agency, through the county attorney, may ask the court for orders related to meeting the safety, protection, and best interests of the child based upon a certified report that states the factual basis for the request. Such reports shall be filed with the court, together with proof of service upon all parties, by the responsible social services agency. Within five (5) days of service of the report, any party may request a hearing regarding the agency's report. Pending hearing, if any, upon two (2) days' actual notice and, based upon the report, the court may issue an order that is in the best interests of the child. Upon a finding that an emergency exists, the court may issue a temporary order that is in the best interests of the child.

Rule 38.10. Objections to Agency's Report or Recommendations

A party may object to the content or recommendations of the responsible social services agency's report by submitting a written objection either before or at the hearing at which the

report is to be considered. The objection shall include a statement certifying the content as true based upon personal observation, first-hand knowledge, or information and belief. The certified objection shall be supported by a statement made under oath or penalty of perjury under Minnesota Statutes § 358.116, stating the party's factual basis for the objection and may state other or additional facts on information and belief and argument that the court should consider in making its determinations or orders. An objection may also be supported by reports from collateral service providers or assessors. Objections to the agency's report and recommendations may also be stated on the record, but the court shall give the agency a reasonable opportunity to respond to the party's objection.

Rule 38.11. Reports to the Court by Child's Guardian ad Litem

Subd. 1. Periodic Reports Required. The guardian ad litem for the child shall submit periodic certified written reports to the court.

Subd. 2. Timing of Filing and Service. The guardian ad litem shall file the report with the court and serve it upon all parties at least five (5) business days prior to the hearing at which the report is to be considered, including a review hearing required under Rule 41.06, permanent placement review hearing under Minnesota Statutes § 260C.204, review of a child under guardianship of the commissioner of human services under Minnesota Statutes § 260C.607, any reviews conducted regarding a child in the permanent custody of the agency under Minnesota Statutes § 260C.521, and as otherwise directed by the court.

Subd. 3. Supplementation of Report. Reports may be supplemented at or before the hearing either orally or in writing.

Subd. 4. Certificate of Distribution. Each report shall contain or have attached the certificate of distribution required under Rule 31.07, subd. 2.

Subd. 5. Report Content. Each report shall include a statement certifying the content as true based upon personal observation, first-hand knowledge, or information and belief, and shall:

(a) be captioned in the name of the case and include the court file number;

(b) include the following information:

(1) the name of the person submitting the report;

(2) the names of the child's parents or legal custodians;

(3) the date of the report;

(4) the date of the hearing at which the report is to be considered;

(5) the date the guardian ad litem was appointed by the court;

(6) a brief summary of the issues that brought the child and family into the court system;

(7) a list of the resources or persons contacted who provided information to the guardian ad litem since the date of the last court hearing;

(8) a list of the dates and types of contacts the guardian ad litem had with the child since the date of the last court hearing;

(9) a list of all documents relied upon when generating the court report;

(10) a summary of information gathered regarding the child and family since the date of the last hearing relevant to the pending hearing;
(11) a list of any issues of concern to the guardian ad litem about the child's or family's situation; and
(12) a list of recommendations designed to address the concerns and advocate for the best interests of the child.

Subd. 6. Objections to Guardian Ad Litem's Report or Recommendations. Any party may object to the content or recommendations of the guardian ad litem by submitting a written objection either before or at the hearing at which the report is to be considered. The objection shall include a statement certifying the content as true based upon personal observation, first-hand knowledge, or information and belief. The certified objection shall be supported by a statement made under oath or penalty of perjury under Minnesota Statutes § 358.116, stating the party's factual basis for the objection and may state other or additional facts on information and belief and argument that the court should consider in making its determinations or orders. An objection may also be supported by reports from collateral service providers or assessors. Objections to the guardian ad litem's report and recommendations may also be stated on the record, but the court shall give the guardian ad litem a reasonable opportunity to respond to the party's objection.

RULE 39. TRIAL

Rule 39.01. Generally

A trial is a hearing to determine whether the statutory grounds set forth in the petition are or are not proved.

Rule 39.02. Timing

Subd. 1. Trial.

(a) **Child in Need of Protection or Services Matters.** A trial regarding a child in need of protection or services matter shall commence within sixty (60) days from the date of the emergency protective care hearing or the admit/deny hearing, whichever is earlier, and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and whenever possible should be over consecutive days.

(b) **Trial Following Permanency Progress Review Hearing.** A trial required by Rule 42.04(c) and Minnesota Statutes § 260C.204(d)(2) or (3) following a Permanency Progress Review Hearing shall be commenced within sixty (60) days of the filing of a petition for transfer of legal custody or a petition for termination of parental rights, and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and whenever possible should be over consecutive days.

(c) **Termination of Parental Rights and Other Permanent Placement Matters.** Unless otherwise provided by these rules, a trial regarding a termination of parental rights matter or other permanent placement matter shall commence within sixty (60) days of the first scheduled admit/deny hearing, and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and whenever possible should be over consecutive days.

(d) Simultaneous Criminal Proceedings. If criminal charges have been filed against a parent arising out of conduct alleged to constitute egregious harm, the county attorney shall determine whether the criminal matter or the juvenile court matter should proceed to trial first, consistent with the best interests of the child and subject to the defendant's right to a speedy trial.

Subd. 2. Continuance. The court may, either on its own motion or upon motion of a party or the county attorney, continue or adjourn a trial to a later date upon written findings or oral findings made on the record that a continuance is necessary for the protection of the child, for accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown, so long as the permanency time requirements set forth in these rules are not delayed. Failure to conduct a pretrial hearing shall not constitute good cause.

Subd. 3. Effect of Mistrial; Order for New Trial. Upon a declaration of a mistrial, or an order of the trial court or a reviewing court granting a new trial, a new trial shall be commenced within thirty (30) days of the order.

Rule 39.03. Procedure

Subd. 1. Initial Procedure. At the beginning of the trial the court shall on the record:

(a) verify the name, age, race, and current address of the child who is the subject of the matter, unless stating the address would endanger the child or seriously risk disruption of the current placement;

(b) inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe has been notified;

(c) determine whether all parties are present and identify those present for the record;

(d) determine whether any child or the child's parent or legal custodian is present without counsel and, if so, explain the right to representation pursuant to Rule 25;

(e) determine whether notice requirements have been met and, if not, whether the affected person waives notice;

(f) if the child who is a party or the child's parent or legal custodian appears without counsel, explain basic trial rights;

(g) determine whether the child and the child's parent or legal custodian understand the statutory grounds and the factual allegations set forth in the petition and, if not, provide an explanation; and

(h) explain the purpose of the hearing and the possible transfer of custody of the child from the parent or legal custodian to another when such transfer is permitted by law and the permanency requirements of Minnesota Statutes § 260C.503–.521.

Subd. 2. Conduct and Procedure.

(a) **Trial Rights.** The parties and the county attorney shall have the right to:
- (1) present evidence;
- (2) present witnesses;
- (3) cross-examine witnesses;
- (4) present arguments in support of or against the statutory grounds set forth in the petition; and
- (5) ask the court to order that witnesses be sequestered.

(b) **Trial Procedure.** The trial shall proceed as follows:
- (1) the party that drafted and filed the petition pursuant to Rule 33 may make an opening statement confining the statement to the facts expected to be proved;
- (2) the other parties, in order determined by the court, may make an opening statement or may make a statement immediately before offering evidence, and the statement shall be confined to the facts expected to be proved;
- (3) the party that drafted and filed the petition pursuant to Rule 33 shall offer evidence in support of the petition;
- (4) the other parties, in order determined by the court, may offer evidence;
- (5) the party that drafted and filed the petition pursuant to Rule 33 may offer evidence in rebuttal;
- (6) the other parties, in order determined by the court, may offer evidence in rebuttal;
- (7) when evidence is presented, other parties may, in order determined by the court, cross-examine witnesses;
- (8) at the conclusion of the evidence the parties, other than the party that drafted and filed the petition pursuant to Rule 33, in order determined by the court, may make a closing statement;
- (9) the party that drafted and filed the petition pursuant to Rule 33 may make a closing statement; and
- (10) if written argument is to be submitted, it shall be submitted within fifteen (15) days of the conclusion of testimony, and the trial is not considered completed until the time for written arguments to be submitted has expired.

Rule 39.04. Standard of Proof

Subd. 1. Generally. Pursuant to Minnesota Statutes § 260C.163, subd. 1(a), and the Indian Child Welfare Act, 25 U.S.C. § 1912(e), in a child in need of protection or services matter, the standard of proof is clear and convincing evidence.

Subd. 2. Termination of Parental Rights and Other Permanent Placement Matters.

(a) **Non-Indian Child.** Pursuant to Minnesota Statutes § 260C.317, subd. 1, in a termination of parental rights or other permanency matter involving a non-Indian child, the standard of proof is clear and convincing evidence.

(b) **Indian Child. P**ursuant to the Indian Child Welfare Act, 25 U.S.C. § 1912(f), in a termination of parental rights matter involving an Indian child, the standard of proof is beyond a reasonable doubt.

1999 Advisory Committee Comment

In In Re the Matter of M.S.S., 465 N.W.2d 412 (Minn. Ct. App. 1991), the court held that the parental rights to an Indian child may not be terminated unless the county proves beyond a reasonable doubt that it has complied with section 1912(f) of the Indian Child Welfare Act, 25 U.S.C. § 1901 et. seq., requiring the county to make active efforts to prevent or avoid placement.

Rule 39.05. Decision

Subd. 1. Timing. Within fifteen (15) days of the conclusion of the testimony, during which time the court may require simultaneous written arguments to be filed and served, the court shall issue its findings and order regarding whether one or more statutory grounds set forth in the petition have been proved. The court may extend the period for issuing an order for an additional fifteen (15) days if the court finds that an extension of time is required in the interests of justice and the best interests of the child.

Subd. 2. Child in Need of Protection or Services Matters and Habitual Truant, Runaway, and Sexually Exploited Child Matters. The court shall dismiss the petition if the statutory grounds have not been proved. If the court finds that one or more statutory grounds set forth in the petition have been proved, the court shall either enter or withhold adjudication pursuant to Rule 40 and schedule the matter for further proceedings pursuant to Rule 41. The findings and order shall be filed with the court administrator who shall proceed pursuant to Rule 10.

Subd. 3. Termination of Parental Rights and Other Permanency Matters.

(a) **Generally.** If the court finds that the statutory grounds set forth in the petition are not proved, the court shall either dismiss the petition or determine that the child is in need of protection or services. If the court determines that the child is in need of protection or services, the court shall either enter or withhold adjudication pursuant to Rule 40 and schedule further proceedings pursuant to Rule 41. If the court finds that one or more statutory grounds set forth in the termination of parental rights petition are proved, the court may terminate parental rights. If the court finds that any other permanency petition is proved, the court may order relief consistent with that petition and Minnesota Statutes § 260C.513 and §

260C.515. The findings and order shall be filed with the court administrator who shall proceed pursuant to Rule 10.

(b) **Particularized Findings.** In addition to making the findings in subdivision 3(a) and Minnesota Statutes § 260C.517, the court shall also make findings regarding the following as appropriate:

(1) **Non-Indian Child.** In any termination of parental rights matter, the court shall make specific findings regarding the nature and extent of efforts made by the responsible social services agency to rehabilitate the parent and reunite the family, including, where applicable, a statement that reasonable efforts to prevent placement and for rehabilitation and reunification are not required as provided under Minnesota Statutes § 260.012(a).

(2) **Indian Child.** In any termination of parental rights proceeding involving an Indian child, the court shall make specific findings regarding the following:

(i) *Active Efforts.* The petitioner has proven beyond a reasonable doubt that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(ii) *Serious Emotional or Physical Damage.* Based upon the testimony, pursuant to Rule 49, of at least one qualified expert witness, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(3) **Best Interests of the Child.** Before ordering termination of parental rights, the court shall make a specific finding that termination is in the best interests of the child and shall analyze:

(i) the child's interests in preserving the parent-child relationship;

(ii) the parent's interests in preserving the parent-child relationship; and

(iii) any competing interests of the child.

(4) **Best interests of an Indian Child.** In proceedings involving an Indian child, the best interests of the child shall be determined consistent with the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq.

(5) **Child's Interests Paramount.** Where the interests of parent and child conflict, the interests of the child are paramount.

Subd. 4. Permanent Placement Matters. The court shall issue its decision regarding permanency consistent with Rule 42.

RULE 40. ADJUDICATION

Rule 40.01. Adjudication

If the court makes a finding that the statutory grounds set forth in a petition alleging a child to be in need of protection or services are proved, the court shall:

(a) adjudicate the child as in need of protection or services and proceed to disposition pursuant to Rule 41; or

(b) withhold adjudication of the child pursuant to Rule 40.02.

Rule 40.02. Withholding Adjudication

Subd. 1. Generally. When it is in the best interests of the child to do so, the court may withhold an adjudication that the child is in need of protection or services. The court may withhold adjudication for a period not to exceed ninety (90) days from the finding that the statutory grounds set forth in the petition have been proved. During the withholding of an adjudication, the court may enter a disposition order pursuant to Rule 41.

Subd. 2. Further Proceedings. At a hearing, which shall be held within ninety (90) days following the court's withholding of adjudication, the court shall either:

(a) dismiss the matter without an adjudication if both the child and the child's legal custodian have complied with the terms of the continuance; or

(b) adjudicate the child in need of protection or services if either the child or the child's legal custodian has not complied with the terms of the continuance. If the court enters an adjudication, the court shall proceed to disposition pursuant to Rule 41.

RULE 41. DISPOSITION

Rule 41.01. Disposition

After an adjudication that a child is in need of protection or services pursuant to Rule 40.01, the court shall conduct a hearing to determine disposition.

Rule 41.02. Timing

To the extent practicable, the court shall conduct a disposition hearing and enter a disposition order the same day it makes a finding that the statutory grounds set forth in the petition have been proved. In the event disposition is not ordered at the same time as the adjudication, the disposition order shall be issued within ten (10) days of the date the court finds that the statutory grounds set forth in the petition have been proved.

Rule 41.03. Pre-Disposition Reports

Subd. 1. Investigations and Evaluations. At any time after the court accepts or conditionally accepts an admission pursuant to Rule 35 or finds that the statutory grounds set forth in the petition have been proved, the court may, upon its own motion or the motion of a party or the county attorney, order a pre-disposition report which may include:

(a) an investigation of the personal and family history and environment of the child;

(b) medical, psychological, psychiatric, or chemical dependency evaluations of the child and any parent who is a party; and

(c) information regarding the factors set forth in Rule 41.05.

Subd. 2. Advisory. The court shall advise the persons present in court that a pre-disposition investigation is being ordered, the nature of the evaluations to be included, the date when the reports resulting from the investigation are to be filed with the court, and the right of each party to present opposing evidence and reports.

Subd. 3. Pre-Disposition Reports.

(a) **Filing and Service.** The person who intends to offer the pre-disposition report shall file the report with the court and serve the report on all parties at least forty-eight (48) hours prior to the time scheduled for the hearing. When the child or the child's parent or legal custodian is not represented by counsel, the court may limit the inspection of reports by the child or the child's parent and legal custodian if the court determines it is in the best interests of the child. Any party or the person making the pre-disposition report may by motion request a protective order limiting the release of confidential or sensitive information contained in the report.

(b) **Consideration of Reports.** Before making a disposition in a case, terminating parental rights, or appointing a legal guardian for a child, the court may consider any report or recommendation made by the responsible social services agency, probation officer, licensed child-placing agency, foster parent, guardian ad litem, tribal representative, the child's health or mental health care provider, or other authorized advocate for the child or child's family, a school district concerning the effect on student transportation of placing a child in a school district in which the child is not a resident, or any other information deemed material by the court.

Subd. 4. Discussion of Contents of Reports. The person making the pre-disposition report may discuss the contents of the report with all parties and the county attorney.

Subd. 5. Discussion of Content of Report - Limitation by Court. The court may upon a showing of good cause limit the extent of the discussion of the contents of the pre-disposition report with the parties if the court finds the limitation to be in the best interests of the child. The limitation may be made:

(a) on the court's own motion; or

(b) upon the written or on-the-record motion of a party, the county attorney, or the person making the pre-disposition report.

Rule 41.04. Procedure; Evidence

Disposition hearings shall be conducted in an informal manner designed to facilitate the opportunity for all parties to be heard.

The court may admit any evidence, including reliable hearsay and opinion evidence, which is relevant to the disposition of the matter. Privileged communications may be admitted in accordance with Minnesota Statutes § 626.556, subd. 8.

Rule 41.05. Disposition Order

Subd. 1. Findings. The disposition order shall contain written findings of fact to support the disposition ordered and shall also set forth in writing the following information:

(a) a statement explaining how the disposition serves the best interests and safety of the child;

(b) a statement of all alternative dispositions or services under the case plan or out-of-home placement plan considered by the court and why such dispositions or services are not appropriate in the instant case;

(c) if the disposition is transfer of legal custody to a responsible social services agency, a statement about whether the proposed placement meets the child's needs and is in the child's best interests and reviewing the agency's use of the factors set out below in making the child's foster care placement:
  (1) the child's current functioning and behaviors;
  (2) the medical, educational, and developmental needs of the child;
  (3) the child's history and past experience;
  (4) the child's religious and cultural needs;
  (5) the child's connection with a community, school, and faith community;
  (6) the child's interests and talents;
  (7) the child's relationship to current caretakers, parents, siblings, and relatives; and
  (8) reasonable preference of the child, if the court deems the child to be of sufficient age to express a preference; and

(d) a brief description of the efforts made to prevent or eliminate the need for removal of the child from home and to reunify the family after removal, and why further efforts could not have prevented or eliminated the necessity of removal or that reasonable efforts were not required under Minnesota Statutes §§ 260.012 or 260C.178, subd. 1.

The court may authorize or continue an award of legal custody to the responsible social services agency despite a finding that the agency's preventive or reunification efforts have not been reasonable if the court finds that further preventive or reunification efforts could not permit the child to safely remain at home.

If the child has been identified by the responsible social services agency as the subject of concurrent permanency planning, the court shall review and make findings regarding the reasonable efforts of the agency to recruit, identify, and make a placement with a foster parent or relative who has committed to providing the legally permanent home for the child in the event reunification efforts are not successful.

(e) In the case of an Indian child, the foster care placement of the child shall be ordered only upon the testimony, pursuant to Rule 49, of at least one qualified expert witness that the continued custody of the child by the parent or legal custodian or Indian custodian is likely to result in serious emotional or physical damage to the child.

Subd. 2. Content.

(a) **Mandatory Provisions.** The court shall enter an order making one of the following dispositions for the child:

(1) **Protective Supervision.** Place the child under the protective supervision of the responsible services agency or child-placing agency in the home of a parent or legal custodian under conditions directed to correction of the child's need for protection or services:

(i) the court may order the child into the home of a parent who does not otherwise have legal custody of the child, however, an order under this section does not confer legal custody on that parent;

(ii) if the court orders the child into the home of a father who has not been adjudicated as such, the order shall require the alleged or presumed father to cooperate with paternity establishment proceedings regarding the child in the appropriate jurisdiction as one of the conditions prescribed by the court for the child to continue in his home; and

(iii) the court may order the child into the home of a noncustodial parent with conditions and may also order both the noncustodial and the custodial parent to comply with the requirements of a case plan under subdivision 2; or

(2) **Transfer Legal and Physical Custody to Agency.** Transfer legal custody to a child-placing agency or the responsible social services agency, which shall have legal responsibility for the child's placement in foster care, including making an individualized determination of how the particular placement is in the child's best interests using the consideration for relatives and the best interest factors in Minnesota Statutes § 260C.212, subd. 2(b); or

(3) **Trial Home Visit.** Order a trial home visit, as defined in Rule 2.01(x), without modifying the transfer of legal custody to the responsible social services agency under subdivision 2(a)(2) of this Rule; or

(4) **Special Services.** If the child has been adjudicated as a child in need of protection or services because the child is in need of special services or care to treat or ameliorate a physical or mental disability or emotional disturbance as defined in Minnesota Statutes § 245.4871, subd. 15, the court may order the child's parent, guardian or custodian to provide it. The court may order the child's health plan company to provide mental health services to the child. Minnesota Statutes § 62Q.535 applies to an order for mental health services directed to the child's health plan company. If the health plan, child's parent, or legal custodian fails or is unable to provide the treatment or care, the court may order it provided. Absent specific written findings by the court that the child's disability is the result of abuse or neglect by the child's parent or guardian, the court shall not transfer legal custody of the child for the purpose of obtaining special treatment or care solely because the parent is unable to provide the treatment or care. If the court's order for mental health treatment is based on a diagnosis made by a treatment professional, the court may order that the diagnosing professional not provide the treatment to the child if it finds that such an order is in the child's best interests; or

(5) **Independent Living.** Allow a child sixteen (16) years old or older to live independently under appropriate supervision, if the court determines that the child has sufficient maturity and judgment, and the responsible social services agency after consultation with the court has specifically authorized this alternative.

(6) **Monitoring.** When a parent has complied with a case plan and the child is in the care of the parent, the court may order the responsible social services agency to monitor the parent's continued ability to maintain the child safely in the home under such terms and conditions as the court determines appropriate under the circumstances.

(b) **Additional Provisions.** As part of the disposition order the court shall also:

(1) approve or modify the plan for supervised or unsupervised visitation for the child's parent or legal custodian, relatives, and siblings of the child, if siblings are not in out-of-home placement together, as set out in the out-of-home placement plan; the court may set reasonable rules for visitation that contribute to the objectives of the court order and the maintenance of the familial relationship; the court may deny visitation when visitation would act to prevent the achievement of the court's disposition order or would endanger the child's physical or emotional well-being;

(2) review the case plan, make modifications supported by the evidence appropriate, and approve the plan;

(3) order all parties to comply with the approved case plan;

(4) incorporate into the order by reference the approved case plan and attach a copy of the plan only if it has been modified;

(5) give notice to the parent on the record and in writing of the requirements of Minnesota Statutes § 260C.204 and § 260C.503; and

(6) set the date and time for the admit/deny hearing pursuant to Rule 42.

(c) **Habitual Truant and Runaway Matters.** If the child is adjudicated in need of protection or services because the child is a habitual truant or a runaway, the court may order any of the following dispositions in addition to or as alternatives to the dispositions ordered under subdivisions (a) and (b):

(1) counseling for the child or the child's parent or legal custodian;

(2) place the child under the supervision of a probation officer or other suitable person in the child's own home under conditions prescribed by the court, including reasonable rules for the child's conduct and the conduct of the parent or legal custodian designed for the physical, mental, and moral well-being and behavior of the child;

(3) with the consent of the commissioner of corrections, place the child in a group foster care facility that is under the commissioner's management and supervision;

(4) subject to the court's supervision, transfer legal custody of the child to one of the following:

(i) a reputable person of good moral character; or

(ii) a county probation officer for placement in a group foster home established under the direction of the juvenile court and licensed pursuant to Minnesota Statutes § 241.021;

(5) require the child to pay a fine of up to $100, to be paid in a manner that will not impose undue financial hardship upon the child;

(6) require the child to participate in a community service project;

(7) order the child to undergo a chemical dependency evaluation and, if warranted by the evaluation, order participation by the child in a drug awareness program or an inpatient or outpatient chemical dependency treatment program;

(8) order the commissioner of public safety to cancel the child's driver's license or permit or, for a child who does not have a driver's license or permit, order a denial of driving privileges for any period up to the child's 18th birthday; or

(9) order the child's parent or legal custodian to deliver the child to school at the beginning of each school day for a period of time specified by the court.

2006 Advisory Committee Comment

Minnesota Statutes § 260C.331, subd. 1(a)(3), provides that "whenever a child is given physical or mental examinations or treatment under order of the court, and no provision is otherwise made by law for payment of the care, examination, or treatment of the child, those costs are a charge upon the welfare funds of the county in which proceedings are held upon certification of the judge of juvenile court."

Rule 41.06. Hearings to Review Disposition

Subd. 1. Timing. When disposition is an award of legal custody to the responsible social services agency, the court shall review the disposition in court at least every ninety (90) days. Any party or the county attorney may request a review hearing before ninety (90) days. When the disposition is protective supervision, the court shall review the disposition in court at least every six (6) months from the date of disposition.

Subd. 2. Procedure in Reviewing Disposition.

(a) **Legal Custody to Agency With Foster Care.** When the disposition is transfer of legal custody to the responsible social services agency, the court shall conduct a hearing at least every ninety (90) days to review whether foster care is necessary and continues to be appropriate or whether the child should be returned to the home of the parent or legal custodian from whom the child was removed. The review shall include the following:

(1) whether the out-of-home placement plan is relevant to the safety and best interests of the child;

(2) whether the agency is making reasonable or, in the case of an Indian child, active efforts to implement the requirements of the out-of-home placement plan;

(3) the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement;

(4) whether the parents or legal custodian of the child are visiting the child and, if not, what barriers exist to visitation;

(5) whether the agency has made diligent efforts to identify both parents of the child as required under Minnesota Statutes § 260C.219, and whether the case plan or out-of-home placement plan addresses the need for services of both parents;

(6) whether the child is receiving appropriate services under the out-of-home placement plan;

(7) when a child has siblings in foster care:

(i) whether the child resides with the siblings;

(ii) when the child and siblings are not placed together, whether further efforts are appropriate to place the siblings together; and

(iii) when the child and siblings are not placed together, whether there is visitation amongst siblings;

(8) when a child is not placed with a relative, whether the agency's efforts under Minnesota Statutes § 260C.221, are adequate; in the case of an Indian child, whether the placement preferences of 25 U.S.C. § 1915 are met;

(9) when the agency is utilizing concurrent permanency planning, the agency's efforts to place the child with a relative or a foster parent who has committed to providing the child's legally permanent home in the event reunification efforts are not successful; and

(10) whether the parent or legal custodian understands the requirements of Minnesota Statutes § 260C.503, subds. 1 and 3, related to the required permanency placement determination hearing, including the projected date by which the child will be returned home or the hearing will be held.

(b) **Legal Custody to Agency with Trial Home Visit.** When the disposition is a trial home visit:

(1) the responsible social services agency shall advise the court and parties within three (3) days of the date a trial home visit is terminated by the responsible social services agency without a court order;

(2) the responsible social services agency shall prepare a report for the court when the trial home visit is terminated, whether by the agency or court order, which describes the child's circumstances during the trial home visit and recommends appropriate orders, if any, for the court to enter to provide for the child's safety and stability. In the event a trial home visit is terminated by the agency by removing the child to foster care without prior court order or authorization, the court shall conduct a hearing within ten (10) days of receiving notice of the termination of the trial home visit by the agency and shall order disposition under this subdivision or conduct a permanency hearing under Rule 42. The time period for the hearing may be extended by the court for good cause shown and if it is in the best interests of the child as long as the total time the child spends in foster care without a permanent placement determination hearing does not exceed twelve (12) months;

(3) while the child is in trial home placement the matter shall be reviewed in court at least every ninety (90) days to determine whether the trial home visit continues to be necessary. At least five (5) business days prior to the hearing, the responsible social services agency shall file with the court and serve upon the parties a report describing the services provided to the child and parent and the parent's progress on the case plan; and

(c) **Protective Supervision in Home of Parent.** When the disposition is protective supervision of the child in the home of a custodial parent, the court shall conduct a review hearing at least every six (6) months. When the disposition is protective supervision of the child in the home of a noncustodial parent, the court shall conduct a review hearing at least every ninety (90) days. At the hearing, the court shall review:

(1) whether the agency has submitted a case plan for the parents or legal custodian and child as required under Rule 37;

(2) after the agency has submitted a plan to the court as required under Rule 37, whether the plan continues to be relevant to the safety and best interests of the child;

(3) whether the agency is making appropriate efforts to implement the plan;

(4) whether the agency, child's attorney and the guardian ad litem have reasonable access to the child to determine the child's safety, health, and well-being;

(5) whether the parents or legal custodian are able to utilize the services set out in the plan to correct the conditions which led to the court's determination that the child is in need of protection or services, and if not, what other services might be appropriate; and

(6) whether the child is receiving necessary services identified in the plan and whether those services are meeting the best interests of the child.

Subd. 3. Procedure. Any party or the county attorney may seek modification of a disposition order by motion made pursuant to Rule 15. The motion may be heard at the scheduled review hearing or at an earlier date or may be considered by the court without hearing if no party objects.

Subd. 4. Modification of Disposition; Modification of Case Plan or Out-of-Home Placement Plan.

(a) **Agreement.** The court, on its own motion or that of any party, may modify the disposition or order the case plan or out-of-home placement plan modified when all parties agree the modification is in the best interests of the child and:

(1) a change of circumstances requires a change in the disposition or modification of the case plan or out-of-home placement plan; or

(2) the original disposition or case plan or out-of-home placement plan is inappropriate.

(b) **Objection.** If a party objects to a proposed modification, or if the child does not have a guardian ad litem at the time the motion is made, the court shall schedule a hearing for the next available date. A party has a right to request a court review of the reasonableness of the case plan or out-of-home placement plan upon a showing of a substantial change in circumstances. The court may also:

(1) order the agency to make further efforts to identify and place a child with a relative if the court finds the agency has failed to perform duties required under Minnesota Statutes § 260C.212, subd. 2, and § 260C.221; or

(2) find that the agency has performed required duties under Minnesota Statutes § 260C.221, and no further efforts to locate relatives are required; or

(3) in the case of an Indian child, unless good cause is found under 25 U.S.C. § 1915, order the agency to make additional efforts to comply with the placement preferences of 25 U.S.C. § 1915.

Subd. 5. Notice. Notice of the review hearing shall be given to all parties and participants.

Subd. 6. Procedure. Review hearings shall be conducted pursuant to Rule 41.04.

Subd. 7. Findings and Order. In the event the disposition is modified, the court shall issue a disposition order in accordance with Rule 41.05.

2008 Advisory Committee Comment

To ensure that each child's developmental needs are timely met, federal and state statutes have established a 12-month permanent placement determination timeline. A trial home visit is a tool designed to support reunification efforts, while simultaneously ensuring the child's safety. Consistent with Rule 41.06, which requires 90-day review hearings for other types of dispositions, Rule 41.06, subd. 2(b), provides that in cases where a trial home visit has been ordered the disposition review hearing must occur at least every 90 days. However, to better support reunification efforts, the best practice is to hold such disposition review hearings more often than every 90 days and to establish the hearing frequency and date in court.

RULE 42. PERMANENT PLACEMENT AND TERMINATION OF PARENTAL RIGHTS MATTERS; POST-PERMANENCY REVIEW REQUIREMENTS

Rule 42.01. Timing

Subd. 1. Timing of Required Permanency Proceedings for Child in Need of Protection or Services Matters. In the case of a child who is alleged or found to be in need of protection or services, ordered into foster care or the home of a noncustodial or nonresident parent, and where reasonable efforts for reunification are required, the first order placing the child in foster care or the home of a noncustodial or nonresident parent shall set the date or deadline for:

(a) the 12-month admit/deny hearing commencing permanent placement determination proceedings required under Rule 42.01, subd. 5(b); and

(b) the 6-month permanency progress review hearing required under Rule 42.01, subd. 5(a).

Subd. 2. Timing of Hearing for Child on a Trial Home Visit. When the child has been ordered on a trial home visit which continues at the time the court is required to commence permanent placement determination proceedings under Rule 42.01, within twelve (12) months of the date a child is placed in foster care the court shall hold a hearing pursuant to Rule 42.13 to determine the continued status of the child.

Subd. 3. Calculating Time Period. The child shall be considered placed in foster care or the home of a noncustodial or nonresident parent at the earlier of:

(a) the date of the child's placement in foster care or in the care of a noncustodial or nonresident parent by court order; or

(b) sixty (60) days after the date on which the child has been voluntarily placed in foster care as a result of a voluntary placement agreement between the parents and the responsible social services agency.

Subd. 4. Accumulation of Out-of-Home Placement Time. The time period requiring the court to commence permanent placement determination proceedings shall be calculated as follows:

(a) during the pendency of a petition alleging a child to be in need of protection or services, all time periods during which a child is placed in foster care or in the home of a noncustodial or nonresident parent are accumulated;

(b) if a child has been placed in foster care within the previous five years under one or more previous petitions, the lengths of all prior time periods during which the child was placed in foster care within the previous five years are accumulated. If a child under this clause has been in foster care for twelve (12) months or more, the court, if it is in the best interests of the child and for compelling reasons, may extend the total time the child may continue out of the home under the current petition up to an additional six (6) months before making a permanency determination; and

(c) time spent on a trial home visit under Minnesota Statutes § 260C.201, subd. 1(a)(3), counts toward the requirement that the court commence permanency proceedings under this rule. However, if the child is on a trial home visit at the time the court is required to commence permanency proceedings, the court may conduct the hearing under Rule 42.13. If a trial home visit is ordered or continued at the time set for the court to commence permanency proceedings or if the child is ordered returned to the parent's home as a trial home visit at the conclusion of permanency proceedings under this rule, and the child is subsequently returned to foster care, the court shall re-commence proceedings to determine an appropriate permanent order for the child not later than thirty (30) days after the child returns to foster care.

Subd. 5. Notification of Timing. Not later than when the court sets the date or deadline for the admit/deny hearing commencing the permanent placement determination proceedings and the permanency progress review hearing, the court shall notify the parties and participants of the following requirements:

(a) **Requirement of Six (6) Month Hearing.** The court shall conduct a permanency progress review hearing to review the progress of the case, the parent's progress on the case plan or out-of-home placement plan, and the provision of services not later than six (6) months after the child is placed in foster care or in the home of a noncustodial or nonresident parent.

(b) **Requirement of Twelve (12) Month Hearing.** The court shall commence permanent placement determination proceedings to determine the permanent status of the child not later than twelve (12) months after the child is placed in foster care or in the home of a noncustodial or nonresident parent.

Subd. 6. Timing for Cases Where Reasonable Efforts For Reunification Are Not Required. When the court finds that the petition states a prima facie case that one or more of the circumstances under Minnesota Statutes § 260.012(a) and Rule 30.09, subd. 3, exist where reasonable efforts for reunification are not required, the court shall order that an admit/deny hearing under Rule 34 be conducted within thirty (30) days and a trial be conducted within ninety (90) days of its prima facie finding. Unless a permanency or termination of parental rights petition under Rule 33 has already been filed, the county attorney requesting the prima

facie determination shall file a permanency or termination of parental rights petition that permits the completion of service by the court at least ten (10) days prior to the admit/deny hearing.

Rule 42.02. Purpose of Permanency Progress Review Hearing and Permanent Placement Determination Proceeding

Subd. 1. Permanency Progress Review Hearing. The purpose of the permanency progress review hearing is to review the progress of the case, the parent's progress on the case plan or out-of-home placement plan, and the provision of services by the responsible social services agency. The court shall determine whether the parents or legal custodian have maintained regular contact with the child, whether the parents are complying with the court-ordered case plan or out-of-home placement plan, and whether the child would benefit from continuing this relationship.

Subd. 2. Permanent Placement Determination Proceeding. The purpose of permanent placement determination proceedings is to determine the permanent status of a child, including a review of the progress of the case and the parent's progress on the case plan or out-of-home placement plan, the services provided by the responsible social services agency, and whether or not the conditions that led to the child's placement in foster care or in the home of a noncustodial or nonresident parent have been corrected so that the child can return to the care of the parent or custodian from whom the child was removed. The court shall determine whether the child shall be returned home or, if not, order permanent placement of the child consistent with the child's best interests and the pleadings and proof presented to the court.

Subd. 3. Matters Where Reasonable Efforts for Reunification Are Not Required. The purpose of holding the trial on the petition within ninety (90) days of the prima facie determination permitted under Rule 30.09, subd. 3, and Minnesota Statutes § 260.012 in cases where reasonable efforts for reunification are not required is to ensure timely decision by the court that either:

(a) there is a sufficient evidentiary basis for an order for termination of parental rights or permanent placement of the child away from the parent and for finding the order for termination of parental rights or permanent placement away from the parent is in the child's best interests; or

(b) there is an insufficient evidentiary basis for the order or that the order is not in the best interests of the child.

Rule 42.03. Procedures for Permanency Progress Review Hearing and Permanent Placement Determination Hearing

The purpose and procedures governing a permanency progress review hearing required within six (6) months of removal from the care of a parent are set out at Minnesota Statutes § 260C.204.

Rule 42.04. Procedures for Permanent Placement Determination

The following procedures govern permanent placement determination proceedings:

(a) **Petition.** Unless the responsible social services agency recommends return of the child to the custodial parent or files a petition and motion pursuant to Rule 42.14, not later than thirty (30) days prior to the admit/deny hearing required in paragraph (b) the responsible social services agency shall file with the court a petition required under Rule 33.01 to establish the basis for the juvenile court to order permanent placement of the child according to Rules 42.06 to 42.12. A party other than the responsible social services agency may file a petition to transfer permanent legal and physical custody to a relative, but the petition must be filed not later than the date for the required admit-deny hearing under Minnesota Statutes § 260C.507; or if the agency's petition is filed under Minnesota Statutes § 260C.503, subd. 2, the petition must be filed not later than thirty (30) days prior to the trial required under Minnesota Statutes § 260C.509.

(b) **Admit/Deny Hearing on Permanency Petition.** The court shall commence and complete an admit/deny hearing pursuant to Rule 34 on the permanency petition, termination of parental rights petition, or petition for alternative permanent placement relief under Rule 33.01 not later than twelve (12) months after the child is placed in foster care or in the care of a noncustodial or nonresident parent.

(c) **Trial.** The court shall commence and complete any trial on the permanency petition within the time specified in Rule 39.

Rule 42.05. Permanent Placement Findings and Order

Subd. 1. Findings. Except in the case of an order terminating parental rights governed by Rule 42.08, an order permanently placing the child out of the home of the parent or guardian shall include the following findings:

(a) how the child's best interests are served by the order;
(b) the nature and extent of the responsible social services agency's reasonable efforts, or in the case of an Indian child active efforts, to reunify the child with the parent or guardian where reasonable efforts are required;
(c) the parent's efforts and ability to use services to correct the conditions which led to the out-of-home placement; and
(d) that the conditions which led to the out-of-home placement have not been corrected so that the child can safely return home.

Subd. 2. Order. At the conclusion of the permanent placement determination proceedings the court shall order one of the following permanency dispositions:

(a) Return the child home pursuant to Rule 42.06;
(b) Terminate parental rights pursuant to Rule 42.08;
(c) Transfer permanent legal and physical custody to a relative pursuant to Rule 42.07;
(d) Guardianship and legal custody to the commissioner of human services upon consent by the child's parent to adopt pursuant to Rule 42.09;
(e) Permanent custody to the agency pursuant to Rule 42.11; or

(f) Temporary legal custody to the agency for a specified period of time pursuant to Rule 42.12.

Rule 42.06. Return Child Home

If the court orders the child to be returned to the care of a parent, the court may enter or continue a prior finding that the child is in need of protection or services and may order conditions directed to correction of the child's need for protection or services. The court may order:

(a) the child returned on a trial home visit pursuant to Rule 41.05, subd. 2(a)(3);
(b) the child placed under the protective supervision of the responsible social services agency under Rule 41.05, subd. 2(a)(1); or
(c) monitoring of the parent's continued ability to maintain the child safely in the home under Rule 41.05, subd. 2(a)(6).

Rule 42.07. Transfer of Permanent Legal and Physical Custody to a Relative

Subd. 1. Order. The court may order transfer of permanent legal and physical custody to a fit and willing relative pursuant to Minnesota Statutes § 260C.515, subd. 4.

Subd. 2. Jurisdiction Terminated Unless Retained. If the court transfers permanent legal and physical custody to a relative, juvenile court jurisdiction is terminated unless specifically retained by the court.

Subd. 3. Further Hearings If Jurisdiction Retained. If the court retains jurisdiction, the court may order further in-court hearings at such intervals as it determines to be in the best interests of the child pursuant to subdivision 7.

Subd. 4. Modification of Order. An order transferring permanent legal and physical custody of a child to a relative may be modified using the standards under Minnesota Statutes § 518.18 and § 518.185. The motion shall be filed in the court file in the county where the order was issued and, if appropriate, a party may file a motion to transfer venue. If the order was filed prior to August 1, 2012, the motion to modify shall be filed in family court. If the order was filed on or after August 1, 2012, the motion to modify shall be filed in juvenile court. Notice of any motion to modify an order for permanent legal and physical custody issued under this rule and Minnesota Statutes § 260C.515, subd. 4, shall be provided by the court administrator to the responsible social services agency which shall be a party to the proceeding pursuant to Minnesota Statutes § 260C.521, subd. 2.

Subd. 5. Voluntary Transfer of Custody. A parent or legal custodian may voluntarily agree to transfer permanent legal and physical custody of the child to a fit and willing relative by either filing a petition to transfer permanent legal and physical custody pursuant to Rule 33.01 and establishing that such transfer is in the child's best interests under Minnesota Statutes § 260C.515, subd. 4, or by entering an admission to such a petition filed by another party and stating, under oath, that the parent or legal custodian believes such a transfer is in the child's best interests and establishes good cause for the transfer on the record before the court.

Subd. 6. Order Requirements. In addition to the findings required under Rule 42.05, the order transferring permanent legal and physical custody shall address parental and sibling visitation and ongoing services to be delivered to the child while the juvenile court has jurisdiction, and shall state whether the transfer was voluntary or involuntary. The order shall state whether a child support order exists or if the issue is reserved for future determination.

Subd. 7. Review for a Child Who is with a Relative Who Has Permanent Legal and Physical Custody

When the court orders transfer of permanent legal and physical custody to a relative under this Rule, the court may retain jurisdiction over the responsible social services agency, the parents or guardian of the child, the child, and the permanent legal and physical custodian. The court may conduct reviews at such frequency as the court determines will serve the child's best interests for the purpose of ensuring:

(a) appropriate services are delivered to the child and the permanent legal and physical custodian; or

(b) conditions ordered by the court relating to the care and custody of the child are met.

Rule 42.08. Involuntary and Voluntary Termination of Parental Rights Proceedings

Subd. 1. Involuntary Termination of Parental Rights Proceedings. Upon petition pursuant to Minnesota Statutes § 260C.301, subd. 1(b), and after an admit/deny hearing under Rule 34 or a trial under Rule 39, as appropriate, the court may issue an order granting or denying a petition to involuntarily terminate parental rights which shall include the following:

(a) a statement of the facts upon which the court bases its order;

(b) findings regarding how the order is in the best interests of the child;

(c) findings regarding the responsible social services agency's reasonable efforts, or, in the case of an Indian child active efforts, to reunify the child and the parent or that reasonable efforts for reunification are not required under Minnesota Statutes § 260.012;

(d) if the child is an Indian child, findings regarding the testimony, pursuant to Rule 49, of at least one qualified expert witness;

(e) if termination of parental rights is ordered, the specific statutory grounds under Minnesota Statutes § 260C.301, subd. 1(b), upon which the court issued its order and the facts supporting those grounds; and

(f) the effective date of the order.

Subd. 2. Voluntary Termination of Parental Rights Proceedings.

(a) **Petition and Consent.** Upon petition pursuant to Minnesota Statutes § 260C.301, subd. 1(a), and voluntary consent of the parent, the court shall conduct a hearing regarding the voluntary termination of the person's parental rights.

(b) **Oath.** At the hearing, the parent shall be placed under oath for the purpose of:

(1) asking that the petition be granted; and
(2) establishing that there is good cause for termination of parental rights and that it is in the best interests of the child to terminate parental rights.

(c) **Hearing.** During the hearing, the court shall:
(1) advise the parent of the right to representation by counsel pursuant to Rule 25;
(2) determine whether the parent fully understands the consequences of termination of parental rights and the alternatives to termination;
(3) inquire as to the true voluntary nature of the parent's consent; and
(4) obtain a waiver of the right to trial on the involuntary petition when the parent is voluntarily consenting to termination of parental rights after an involuntary termination of parental rights petition has been filed.
(5) If the parent is not present in court but has signed a voluntary consent to termination of parental rights, the court shall determine whether there has been compliance with all statutory requirements regarding a written consent to termination of parental rights and whether the parent was thoroughly advised of and understood the right to trial, the right to representation by counsel, the consequences of termination of parental rights, and the alternatives to termination.

Subd. 3. Voluntary Termination of Parental Rights in Matters Governed by the Indian Child Welfare Act

When the child is an Indian child and the matter is governed by the Indian Child Welfare Act, 25 U.S.C. § 1913, the following procedures apply to a voluntary termination of parental rights by an Indian parent.

(a) **Procedures for Consent.** The consent to terminate parental rights by the parent shall not be valid unless:
(1) executed in writing;
(2) recorded before the judge; and
(3) accompanied by the presiding judge's certificate that the terms and consequences of the consent were explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that the parent or Indian custodian fully understood the explanation in English or that it was translated into a language that the parent or Indian custodian understood.

(b) **Timing of Consent.** Any consent to termination of parental rights given prior to, or within ten days after, the birth of the Indian child shall not be valid.

(c) **Parent's Right to Withdraw Consent.** Any consent to termination of parental rights by a parent of an Indian child may be withdrawn by the parent at any time prior to the time the final order terminating the parent's rights.

Subd. 4. Notice to Parents Whose Rights Have Been Terminated. Upon entry of an order terminating the parental rights of any person who is identified as a parent on the original birth record of the child, the court shall serve upon that person at the person's last known address written notice setting forth a statement regarding:

(a) the right of the person at any time to file with the state registrar of vital statistics a consent to disclosure, as defined in Minnesota Statutes § 144.212, subd. 11;

(b) the right of the person at any time to file with the state registrar of vital statistics an affidavit stating that the information on the original birth record shall not be disclosed as provided in Minnesota Statutes § 144.2252;

(c) the effect of failure to file either a consent to disclosure or an affidavit stating that the information on the original birth record shall not be disclosed; and

(d) the right of the parent to file an appeal pursuant to Rule 47.

Subd. 5. Review When Child is Under the Guardianship of the Commissioner of Human Services. Following termination of parental rights of both of the child's parents, the court shall conduct review hearings pursuant to Rule 42.11.

2008 Advisory Committee Comment

See the 2008 Advisory Committee Comment to Rule 49.03 regarding qualified expert witness.

Rule 42.09. Guardianship to the Commissioner of Human Services Upon Consent by the Child's Parent to Adopt Under Minn. Stat. § 260C.515, subd. 3

Subd. 1. Procedures. Without terminating parental rights of the parent consenting to adoption under Minnesota Statutes § 260C.515, subd. 3, the court may award guardianship to the commissioner of human services when both parents of the child consent or when the only legal parent of the child consents under the following procedures:

(a) **Consent and Identified Prospective Adoptive Home**. The court may accept the parent's voluntary consent to adopt under Minnesota Statutes § 260C.515, subd. 3, when there is an identified prospective adoptive parent who has agreed to adopt the child, and the responsible social services agency agrees to adoption by the identified prospective adoptive parent.

(b) **Copies of Consent and Order to Commissioner of Human Services.** The court shall forward to the commissioner of human services one copy of the consent to adopt, together with a certified copy of the order transferring guardianship and legal custody to the commissioner.

Subd. 2. When Consent is Irrevocable. Consent to adoption executed by a parent under Minnesota Statute § 260C.515, subd. 3, is irrevocable upon acceptance by the court unless fraud is established and an order issues permitting revocation. In a matter governed by the Indian Child Welfare Act, 25 U.S.C. § 1913, a consent to adopt given by the parent of an Indian child is revocable at any time prior to finalization of the adoption.

Subd. 3. Ninety (90) Day Review. The matter shall be reviewed in court at least every ninety (90) days under the requirements of Rule 42.08, subd. 5, as if a termination of parental rights had occurred.

Rule 42.10. Order for Guardianship and Legal Custody When Parental Rights Are Terminated or When Parent Consents to Adoption

Subd. 1. Procedures. In addition to the findings and order for termination of parental rights requirements of Rule 42.08, or when the parent consents to adoption of the child under Rule 42.09, the court shall order guardianship and legal custody according to the following requirements:

(a) **Order When Parental Rights of Both Parents Terminated.** When an order terminates the rights of the only known living parent of the child, the rights of both parents of the child, or where the rights of the other parent of the child were previously terminated, the court shall issue an order transferring guardianship and legal custody to:

(1) the commissioner of human services;
(2) a licensed child placing agency; or
(3) an individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

(b) **Order When Parental Rights of Both Parents Not Terminated.** When the rights of both known, living parents are not terminated at the same time, the order terminating the rights of one parent, but not both parents, shall not award guardianship and legal custody to a person or entity until and unless the rights of both parents are terminated or the child is free for adoption due to consent of a parent to adoption under Minnesota Statutes § 260C.515, subd. 3. The order may continue legal custody of the child with the responsible social services agency.

(c) **Order When Parents Rights are Terminated in Separate Orders.** When the court issues separate orders terminating parental rights to a child or an order freeing a child for adoption due to consent by a parent to adoption under Minnesota Statutes § 260C.515, subd. 3, the second order terminating parental rights or freeing the child for adoption shall reference by filing date and jurisdiction the previous order and shall award guardianship to:

(1) the Commissioner of Human Services;
(2) a licensed child placing agency; or
(3) an individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

Subd. 2. Conditions - Limits on When Commissioner of Human Services May Become Guardian or Legal Custodian.

(a) **Limits on Appointment of Commissioner of Human Services When no Appointment under Probate Code.** The court may transfer guardianship to the Commissioner of Human Services if, upon petition to the juvenile court by a reputable person, including but not limited to an agency of the Commissioner of Human Services, and upon trial the court finds:

(1) that both parents or the only known legal parent are or is deceased;

(2) no appointment has been made or petition for appointment filed under Minnesota Statutes § 524.5-102 to 524.5-317; and

(3) there is no individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

(b) **Responsible Social Services Agency Has Permanency Planning Responsibility.** The court shall order transfer of guardianship and legal custody of a child to the Commissioner of Human Services only when the responsible county social services agency had legal responsibility for planning for the permanent placement of the child and the child was in foster care under the legal responsibility of the responsible county social services agency at the time the court orders guardianship and legal custody transferred to the commissioner.

Subd. 3. Certified Copy of Orders. The court administrator shall forward one certified copy of the findings and order terminating parental rights and awarding guardianship and legal custody to the Commissioner of Human Services, the agency to which guardianship is transferred, or the individual to whom guardianship is transferred. The court also shall issue a separate order for guardianship and legal custody and provide a certified copy to the guardian.

Subd. 4. Copy of Order Terminating Guardianship. If the court issues an order, other than an order for adoption, terminating guardianship with the commissioner of human services, an agency, or an individual, the court administrator shall send a copy of the order terminating the guardianship to the former guardian.

Subd. 5. Review When Child is Under the Guardianship of the Commissioner of Human Services. Following termination of parental rights of both of the child's parents, the court shall conduct review hearings pursuant to Rule 42.11.

2008 Advisory Committee Comment

Rule 42.10, subd. 2, reflects requirements of Minnesota Statutes § 260C.325, subds. 1(b) and 3. Rule 42.10, subd. 3, requires the court to issue a separate order regarding the award of guardianship to enable the guardian to demonstrate legal decision-making authority for the child without disclosing all of the findings contained in the order terminating parental rights.

Rule 42.11. Review When Child is Under the Guardianship of the Commissioner of Human Services; Contested Adoptive Placements

Subd. 1. Timing and Purpose. At least every ninety (90) days after issuing an order placing a child under the guardianship of the commissioner of human services, the court shall schedule a hearing to review the reasonable efforts of the responsible social service agency to finalize the child's adoption and the progress toward adoption consistent with the requirements of Minnesota Statutes § 260C.607. The court may conduct review hearings less frequently if the requirements of Minnesota Statutes § 260C.607, subd. 8(b), are met. Review hearings shall continue pending any appeal of the order terminating parental rights.

Subd. 2. Notice of Hearing. Notice of each hearing shall be provided by the court to persons listed in Minnesota Statutes § 260C.607, subd. 2.

Subd. 3. Content of Review Hearing. At each hearing the court shall review:

(a) the agency's reasonable efforts under Minnesota Statutes § 260C.605 to finalize an adoption for the child as appropriate to the stage of the case;

(b) the child's current out-of-home placement plan required under Minnesota Statutes § 260C.212, subd. 1, to ensure the child is receiving all services and supports required to meet the child's needs as they relate to the child's:

(1) placement;

(2) visitation and contact with siblings;

(3) visitation and contact with relatives;

(4) medical, mental, and dental health; and

(5) education; and.

(c) when the child is age 16 and older and in foster care, the agency's planning for the child's independent living after leaving foster care, including how the agency is meeting the requirements of Minnesota Statutes § 260C.212, subd, 1(c)(11), consistent with the review requirements of Minnesota Statutes § 260C.203.

Subd. 4. Relative's Request for Consideration. Any relative or the child's foster parent who believes the responsible social services agency has not reasonably considered the relative's or foster parent's request to be considered for adoptive placement as required under Minnesota Statutes § 260C.212, subd. 2, and who wants to be considered for adoptive placement of the child, shall bring a request for consideration to the attention of the court during a review required under this subdivision. The child's guardian ad litem and the child may also bring a request for a relative or the child's foster parent to be considered for adoptive placement. After hearing from the agency, the court may order the agency to take appropriate action regarding the relative's or foster parent's request for consideration under Minnesota Statutes § 260C.212, subd. 2(b).

Subd. 5. Motion and Hearing to Order Adoptive Placement; Contested Adoptive Placement.

(a) **Timing and Purpose.** At any time after the court orders the child under the guardianship of the commissioner of human services, but not later than thirty (30) days after receiving notice required under Minnesota Statutes § 260C.613, subd.

1(c), that the agency has made an adoptive placement, a relative or the child's foster parent may file a motion for an order for adoptive placement of a child who is under the guardianship of the commissioner if the requirements of Minnesota Statutes 260C.607, subd. 6, are met.

(b) **Filing and Service of Motion.** The motion shall be filed with the court conducting reviews of the child's progress toward adoption under this subdivision. The motion shall be served on all individuals and entities listed Minnesota Statutes § 260C.607, subd. 2.

(c) **Prima Facie Determination**. If the motion and supporting documents do not make a prima facie showing for the court to determine whether the agency has been unreasonable in failing to make the requested adoptive placement, the court shall dismiss the motion. If the court determines a prima facie basis is made, the court shall set the matter for evidentiary hearing.

(d) **Evidentiary Hearing Procedures and Standard of Proof.** At the evidentiary hearing, the responsible social services agency shall proceed first with evidence about the reason for not making the adoptive placement proposed by the moving party. The moving party then has the burden of proving by a preponderance of the evidence that the agency has been unreasonable in failing to make the adoptive placement.

(e) **Decision.** At the conclusion of the evidentiary hearing, if the court finds that the agency has been unreasonable in failing to make the adoptive placement and that the relative or the child's foster parent is the most suitable adoptive home to meet the child's needs using the factors in Minnesota Statutes § 260C.212, subd. 2(b), the court may order the responsible social services agency to make an adoptive placement in the home of the relative or the child's foster parent.

(f) **Appeal.** An order denying or granting a motion for adoptive placement after an evidentiary hearing is an order which may be appealed by the responsible social services agency, the moving party, the child when age ten (10) or older, the child's guardian ad litem, or any individual who had a fully executed adoption placement agreement regarding the child at the time the motion was filed if the court's order has the effect of terminating the adoption placement agreement. An appeal shall be conducted according to the requirements of the Rules of Juvenile Protection Procedure.

Rule 42.12. Permanent Custody to Agency

Subd. 1. Requirements. The court may order permanent custody to the agency only if it approves the responsible social services agency's compelling reasons that neither an award of permanent legal and physical custody to a relative nor termination of parental rights is in the child's best interests and all of the requirements of Minnesota Statutes § 260C.515, subd. 5, are met.

Subd. 2. Disruption. Pursuant to Rule 42.16, if the permanent custody to the agency placement disrupts, the responsible social services agency shall return the matter to court within ten (10) days of the disruption for review of the matter.

Subd. 3. Annual Review When Child is Ordered into Permanent Custody to Agency.

(a) **Review of Appropriateness of Order for Permanent Custody to Agency.** When a child has been ordered into permanent custody of the agency, the court shall review the matter in court at least every twelve (12) months to consider whether:

(1) permanent custody to the agency continues to be the best permanent plan for the child, and

(2) any other permanency disposition order is in the best interests of the child.

(b) **Reasonable Efforts.** The court shall also review the reasonable efforts of the agency to:

(1) identify a specific foster home or other legally permanent home for the child, if one has not already been identified;

(2) support continued placement of the child in the identified home, if one has been identified;

(3) ensure appropriate services are provided to the child during the period of permanent custody to the agency, including assisting the child to build connections to the child's family and community; and

(4) plan for the child's independence upon the child's leaving permanent custody to the agency as required under Minnesota Statutes § 260C.212, subd. 1(c)(11).

(c) **Additional Requirements for Youth Age 16 or Older.** When the child is age sixteen (16) or older, the court shall review the agency's reasonable efforts to implement the independent living plan required under Minnesota Statutes § 260C.212, subd. 1(c)(11), and the provision of services to the child related to the well-being of the child as the child prepares to leave foster care. The court's review shall include the actual plans related to each item in the plan necessary to the child's future safety and well-being when the child is no longer in foster care. The court shall make findings regarding progress toward or accomplishment of the following goals:

(1) the child has obtained a high school diploma or its equivalent;

(2) the child has completed a driver's education course or has demonstrated the ability to use public transportation in the child's community;

(3) the child is employed or enrolled in postsecondary education;

(4) the child has applied for and obtained postsecondary education financial aid for which the child is eligible;

(5) the child has health care coverage and health care providers to meet the child's physical and mental health needs;

(6) the child has applied for and obtained disability income assistance for which the child is eligible;
(7) the child has obtained affordable housing with necessary supports, which does not include a homeless shelter;
(8) the child has saved sufficient funds to pay for the first month's rent and a damage deposit;
(9) the child has an alternative affordable housing plan, which does not include a homeless shelter, if the original housing plan is unworkable;
(10) the child, if male, has registered for the Selective Service; and
(11) the child has a permanent connection to a caring adult.

(d) **Agency Responsibility for Notice When Child is Seventeen (17).** When the child is age seventeen (17), the responsible social services agency shall establish for the court that it has given the notice required under Minnesota Statutes § 260C.451, regarding the right to continued access to services for children in foster care past age eighteen (18), including the right to appeal a denial of social services under Minnesota Statutes § 256.045. If the agency is unable to establish that the notice, including the right to appeal a denial of social services, has been given, the court shall order the agency to give it.

Subd. 4. Modifying an Order for Permanent Custody to the Agency.

(a) **Modification by Parent.** A parent may seek modification of an order for permanent custody to the agency only upon motion and a showing by the parent of a substantial change in the parent's circumstances such that the parent could provide appropriate care for the child and that removal of the child from the child's permanent placement and the return to the parent's care would be in the best interest of the child.

(b) **Modification by Agency.** The responsible social services agency may ask the court to vacate an order for permanent custody to the agency upon a prima facie showing that there is a factual basis for the court to order another permanent placement under this rule and that the placement is in the child's best interests. The agency may ask the court to vacate an order for permanent custody to the agency and order another permanency disposition, including termination of parental rights based on abandonment if a parent fails to maintain visitation or contact with the child or participate in planning for the child. If the agency's request is to terminate parental rights, the county attorney shall file a petition under Rule 33 and the court shall proceed under Rule 34. If the agency's request is transfer of permanent legal and physical custody to a relative, the county attorney may file a motion under Rule 15 to modify the permanency order establishing permanent custody to the agency for the child. If a party entitled to notice of the motion opposes the transfer of permanent legal and physical custody to a fit and willing relative, the responsible social services agency and county attorney shall establish:
(1) that the relative is fit and willing; and

(2) that the transfer is in the best interest of the child.

Subd. 5. Order. Upon a hearing or trial where the court determines that there is a factual basis for vacating the order for permanent custody to the agency and that another permanent order regarding the placement of the child is in the child's best interests, the court may vacate the order for permanent custody to the agency and enter a different order for permanent placement that is in the child's best interests.

Subd. 6. Further Reasonable Efforts Not Required. The court shall not require further reasonable efforts to reunify the child with the parent or guardian as a basis for vacating the order for permanent custody to the agency and ordering a different permanent placement in the child's best interests.

Subd. 7. Jurisdiction. The court shall retain jurisdiction in a case where permanent custody to the agency is the permanent disposition as provided in Rule 51.

Rule 42.13. Temporary Legal Custody to the Agency

Subd. 1. Requirements for Compelling Reasons Why Permanent Legal and Physical Custody and Adoption is Not in the Child's Best Interests. The court may order temporary legal custody to the agency only if it approves the responsible social services agency's compelling reasons that neither an award of permanent legal and physical custody to a relative, nor termination of parental rights, is in the child's best interests and all of the requirements of Minnesota Statutes § 260C.515, subd. 6, are met.

Subd. 2. Periodic Review. If the court orders temporary legal custody to the agency, the court shall order in-court review hearings at intervals as will serve the child's best interests not to exceed a total of twelve (12) months after the date the order is entered for temporary legal custody to the agency pursuant to subdivision 3.

Subd. 3. Continued Review of Temporary Legal Custody to the Agency. If it is necessary for a child who has been ordered into temporary legal custody to the agency to be in foster care longer than one year, then not later than twelve (12) months after the time the child was ordered into temporary legal custody to the agency the matter shall be returned to court for a review of the appropriateness of continuing the child in foster care and of the responsible social services agency's reasonable efforts to finalize a permanent plan for the child. If it is in the child's best interests to continue the order for temporary legal custody to the agency past a total of twelve (12) months, the court shall set objectives for the child's continuation in foster care, specify any further amount of time the child may be in foster care, and review the plan for the safe return of the child to the parent.

Rule 42.14. Hearing for Child on Trial Home Visit at Time for Commencement of Permanency Proceedings

Subd. 1. Hearing. When the child has been ordered on a trial home visit which continues at the time the court is required to commence permanent placement determination

proceedings under Rule 42.01, the court shall hold a hearing to determine the continued status of the child on the trial home visit and shall review:

(a) the child's progress during the trial home visit;
(b) the parent's progress during the trial home visit;
(c) the agency's reasonable efforts to finalize the child's safety and permanent return to the care of the parent.

Subd. 2. Required Findings. The court shall make findings regarding the reasonableness of the agency's efforts to finalize the child's return home as the permanent order in the best interests of the child and may continue the trial home visit for a period not to exceed a total of six (6) months. If the court finds that the responsible social services agency has not made reasonable efforts to finalize the child's return home as the permanent order in the best interests of the child, the court may order other or additional efforts to support the child remaining in the care of the parent.

Subd. 3. Procedure When Child Returns to Foster Care. If an order for a trial home visit is continued at or after a hearing under subdivision 1 and the child is subsequently returned to foster care, the court shall commence proceedings to determine an appropriate permanent order for the child not later than thirty (30) days after the child returns to foster care.

Rule 42.15. Terminating Jurisdiction When Child is Continued in Voluntary Foster Care for Treatment Under Minnesota Statutes Chapter 260D

Subd. 1. Voluntary Placement as Prerequisite to Review. If a child has been ordered into foster care under Rules 30 or 41 and Minnesota Statutes § 260C.178 or § 260C.201, subd. 1, and the conditions that led to the court's order have been corrected so that the child could safely return home except for the child's need to continue in foster care for treatment due to the child's disability, the child's parent and the agency may enter into a voluntary foster care agreement under Minnesota Statutes § 260D.

Subd. 2. Motion and Petition to Terminate Jurisdiction. When the agency and the parent agree to voluntary placement of the child for treatment, the agency shall file a motion to terminate jurisdiction under Minnesota Statutes § 260C.193, subd. 6, which also terminates the order for foster care under Rules 30 or 41 and Minnesota Statutes § 260C.178 or § 260C.201, subd. 1, together with the petition required under Rule 43.04. subd. 2, and Minnesota Statutes § 260D.07(b), for permanency review and the court's approval of the voluntary arrangement.

Subd. 3. Timing of Motion and Petition. The motion and petition shall be filed no later than the time the agency is required to file a petition for permanent placement under Minnesota Statutes § 260C.505(a), but may be filed as soon as the agency and the parent agree that the child should remain in foster care under a voluntary foster care agreement, because the child needs treatment and voluntary foster care is in the child's best interest.

Subd. 4. Service. The court shall serve the motion and the petition filed under subdivision 2 together with a notice of hearing personally, by U.S. mail, through the E-Filing

System, or by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

Subd. 5. Continuous Agency Authority for Foster Care. The parent and agency may execute the voluntary foster care agreement at or before the permanency review hearing required under Rule 43.04, subd. 3, and Minnesota Statutes Chapter 260D.

Subd. 6. Permanency Review Hearing Required Under Rule 43.04. When the court grants the agency's motion to terminate jurisdiction under this rule, the court shall proceed on the Petition for Permanency Review regarding a Child in Voluntary Placement for Treatment and conduct the Permanency Review hearing required under Rule 43.04. subd. 3.

2008 Advisory Committee Comment

Rule 42.14, subd. 5, reflects the requirement under Minnesota Statutes § 260D.09(e) that, in order for the agency to have continuous legal authority to place the child, the parent and the agency shall execute a voluntary foster care agreement for the child's continuation in foster care for treatment prior to the termination of the order for foster care under Rules 30 or 41 and Minnesota Statutes § 260C.178 or § 260C.201, subd. 1.

Rule 42.16. Review of Child Who Experiences Disruption of a Permanent Placement

Subd. 1. Review Required When Child Removed from Permanent Placement Within One (1) Year. If a child is removed from a permanent placement disposition ordered under Rule 42, including transfer of permanent legal and physical custody to a relative pursuant to Rule 42.07 and Minnesota Statutes § 260C.515, subd. 4, or permanent custody to the agency pursuant to Rule 42.12 and Minnesota Statutes § 260C.515, subd. 5, or temporary custody to the agency pursuant to Rule 42.13 and Minnesota Statutes § 260C.515, subd. 6, within one year after the placement was made:

(a) the child shall be returned to the foster home where the child was placed immediately preceding the permanent placement; or

(b) the court shall conduct a hearing within ten (10) days after the child is removed from the permanent placement to determine where the child is to be placed. A guardian ad litem shall be appointed for the child for this hearing.

Subd. 2. Further Planning for Child. The court shall also review what further planning is appropriate to meet the child's need for safety and stability and to address the well-being of the child, including the child's physical and mental health and educational needs.

2008 Advisory Committee Comment (amended 2014)

Rule 42.16, subd. 2, delineates what orders are to be reviewed under Minnesota Statute § 260C.521. subd. 4.

Rule 42.17. Reestablishment of the Legal Parent and Child Relationship

The procedures for reestablishing a legal parent and child relationship are set forth in Minnesota Statutes § 260C.329.

RULE 43. REVIEW OF CHILDREN IN VOLUNTARY FOSTER CARE FOR TREATMENT

Rule 43.01. Generally

Subd. 1. Scope of Rule. This rule governs review of all voluntary foster care for treatment placements made pursuant to Minnesota Statutes § 260D.01.

Subd. 2. Jurisdiction. The court assumes jurisdiction to review the voluntary foster care placement of a child pursuant to Minnesota Statutes § 260D.01 upon the filing of a report by the responsible social services agency pursuant to Minnesota Statutes § 260D.06.

Subd. 3. Court File Required. Upon the filing of a report under this rule, the court administrator shall open a voluntary foster care for treatment file.

Rule 43.02. Report by Agency

Subd. 1. Content and Timing of Report. Within 165 days of the date of the voluntary foster care agreement the responsible social services agency shall file with the court and serve upon the county attorney; the responsible social services agency; the parent; the parent's attorney; the foster parent or foster care facility; the child, if age twelve (12) or older; the child's attorney, if one is appointed; the child's guardian ad litem, if one is appointed; and the child's Indian tribe, if the child is an Indian child, a written report which shall contain or have attached:

(a) a statement of facts that necessitate the child's foster care placement;
(b) the child's name, date of birth, race, gender, and current address;
(c) the name, race, date of birth, residence, and post office address of the child's parents or legal custodian;
(d) a statement regarding the child's eligibility for membership or enrollment in an Indian tribe and the agency's compliance with applicable provisions of Minnesota Statutes § 260.751–.835;
(e) the name and address of the child's foster parents or chief administrator of the facility in which the child is placed;
(f) a copy of the out-of-home placement plan required under subdivision 5 and Minnesota Statutes § 260C.212, subd. 1;
(g) a written summary of the proceedings of the administrative review required under Minnesota Statutes § 260C.203 and § 260D.03;
(h) a statement that the parent, representative of the foster care facility, and the child have been notified of their right to request a hearing; and
(i) any other information the agency, parent or legal custodian, child, or foster parent or other residential facility wants the court to consider.

Subd. 2. Additional Report Requirements for Child Who Is Emotionally Disturbed. In the case of a child in placement due to emotional disturbance, the written report shall include, as an attachment, the child's individual treatment plan developed by the child's treatment professional, as provided in Minnesota Statutes § 245.4871, subd. 21, or the child's individual interagency intervention plan, as provided in Minnesota Statutes § 125A.023, subd. 3(c).

Subd. 3. Additional Report Requirements for Child Who Has a Developmental Disability. In the case of a child in placement due to developmental disability or a related condition, the written report shall include, as an attachment, the child's individual service plan as provided in Minnesota Statutes § 256B.092, subd. 1b; the child's individual program plan as provided in Minnesota Rules 9525.0004, subpart 11; the child's waiver care plan; or the child's individual interagency intervention plan as provided in Minnesota Statutes § 125A.023, subd. 3(c).

Subd. 4. Report Requirement to Include Information About Child's Disagreement. If, at the time required for the report under this rule, a child age twelve (12) or older disagrees about the foster care facility or services provided under the out-of-home placement plan required under Minnesota Statutes § 260C.212, subd. 1, the agency shall include in the report information regarding the child's disagreement and, to the extent possible, the basis for the child's disagreement.

Subd. 5. Content of Case Plan. The out-of-home placement plan required under Minnesota Statutes § 260C.212, subd. 1, shall include a statement about whether the child and parent, legal custodian or Indian custodian participated in the preparation of the plan. The plan shall also include a statement about whether the child's guardian ad litem; the child's tribe, if the child is an Indian child; and the child's foster parent or representative of the residential facility have been consulted in the plan's preparation. The agency shall document whether the the child, if appropriate; the child's parent, legal custodian, or Indian custodian; the child's tribe, if the child is an Indian child; and the foster parents have received a copy of the plan. When a child is in foster care due solely to the child's emotional disturbance, the child's mental health treatment provider shall also be consulted in preparation of the plan and the agency shall document such consultation with the plan filed with the court.

Rule 43.03. Court Review and Determinations Based on Court Report

Subd. 1. Determinations Based on Report. After receiving the report required under Rule 43.02 and Minnesota Statutes § 260D.06, subd. 2, the court has jurisdiction to make the following determinations and shall do so within ten (10) days of the filing of the report, regardless of whether a hearing is requested under subdivision 2:

(a) whether the voluntary foster care arrangement is in the child's best interests;
(b) whether the parent and agency are appropriately planning for the child; and
(c) in the case of a child age twelve (12) or older who disagrees with the foster care facility or services provided under the out-of-home placement plan, whether it is appropriate to appoint counsel and a guardian ad litem for the child using standards and procedures under Minnesota Statutes § 260C.163.

Subd. 2. Hearing.

(a) **Hearing Not Required.** Unless requested by a parent, representative of the foster care facility, or child age twelve (12) or older, no in-court hearing is required in order for the court to make findings and issue an order under subdivision 3.

(b) **Hearing Requested.** If a hearing is requested by a parent, representative of the foster care facility, or child age twelve (12) or older, the hearing shall be promptly scheduled so that the judge may make the findings required in Rule 43.03 within ten (10) days of the date the report is filed.

Subd. 3. Order

(a) **Procedure When Voluntary Foster Care is in Child's Best Interests.** If the court finds that the voluntary foster care arrangement is in the child's best interests and that the agency and parent are appropriately planning for the child, the court shall issue an order containing explicit, individualized findings to support its determination. The individualized findings shall be based on the responsible social services agency's written report and other materials and information submitted to the court. The court may make this determination notwithstanding the child's disagreement, if any, reported under Rule 43.02, subd. 4.

(b) **Service.** The court shall serve a copy of the order upon the county attorney; the responsible social services agency; the parent; the parent's attorney; the foster parent or foster care facility; the child, if age twelve (12) or older; the child's attorney, if one is appointed; the child's guardian ad litem, if one is appointed; and the child's Indian tribe, if the child is an Indian child.

(c) **Required Notice of Permanency Review.** The court shall also serve the parent, the child if age twelve (12) or older, and the foster parent or representative of the foster care facility notice of the permanency review hearing required under Rule 43.04 and Minnesota Statutes § 260D.07(f).

(d) **Procedure When Voluntary Foster Care Not in Child's Best Interests.** If the court finds that continuing the voluntary foster care for treatment arrangement is not in the child's best interests or that the agency or the parent are not appropriately planning for the child, the court shall:

(1) notify the county attorney; the responsible social services agency; the parent; the parent's attorney; the foster parent or foster care facility; the child, if age twelve (12) or older; the child's attorney, if one is appointed; the child's guardian ad litem, if one is appointed; and the child's Indian tribe, if the child is an Indian child, of the court's determinations and the basis for the court's determinations; and

(2) set the matter for hearing within ten (10) days and, if a guardian ad litem has not already been appointed, appoint a guardian ad litem for the child under Minnesota Statutes § 260C.163, subd. 5.

Rule 43.04. Required Permanency Review Hearing

Subd. 1. Required Agency Action. When the court finds that the voluntary arrangement is in the child's best interests and that the agency and parent are appropriately planning for the child pursuant to the report submitted under Rule 43.02 and Minnesota Statutes § 260D.06, and the child continues in voluntary foster care for treatment as defined in Minnesota Statutes § 260D.02, subd. 5, for thirteen (13) months from the date of the voluntary foster care agreement, or has been in placement for fifteen (15) of the last twenty-two (22) months, and the agency determines there are compelling reasons to continue the voluntary foster care arrangement, the agency shall request judicial approval of its determination.

Subd. 2. Petition. When the agency requests the court's approval of its determination that there are compelling reasons to continue the voluntary foster care arrangement, the agency shall file a "Petition for Permanency Review Regarding a Child in Voluntary Foster Care for Treatment."

(a) **Drafted or Approved by County Attorney.** The "Petition for Permanency Review Regarding a Child in Voluntary Foster Care for Treatment" shall be drafted or approved by the county attorney.

(b) **Oath and Content.** The petition shall be under oath or penalty of perjury under Minnesota Statutes § 358.116 and include:

(1) the date of the voluntary foster care agreement;
(2) whether the voluntary foster care placement is due to the child's developmental disability or emotional disturbance;
(3) the plan for the ongoing care of the child and the parent's participation in the plan;
(4) a description of the parent's visitation and contact with the child;
(5) either:
  (i) the date of the court finding that the voluntary foster care placement was in the best interests of the child, if required under Minnesota Statutes § 260D.06, or
  (ii) the date the agency filed the motion under Rule 42.14 and Minnesota Statutes § 260D.09(b);
(6) the agency's reasonable efforts to finalize the permanency plan for the child, including returning the child to the care of the child's family;
(7) the length of time, including cumulated time, the child has been in foster care;
(8) a citation to Minnesota Statutes Chapter 260D as the basis for the petition; and
(9) a statement of what findings are requested from the court.

(c) **Out-of-Home Placement Plan.** An updated copy of the out-of-home placement plan required under Minnesota Statutes § 260C.212, subd. 1, shall be filed with the petition.

(d) **Manner of Service.** The court shall serve the petition together with a notice of hearing personally, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court, upon the county attorney; the responsible social services agency; the parent; the parent's attorney; the foster parent or foster care facility; the child, if age twelve (12) or older; the child's attorney, if one is appointed; the child's guardian ad litem, if one is appointed; and the child's Indian tribe, if the child is an Indian child.

Subd. 3. Hearing Regarding Petition for Child in Voluntary Foster Care for Treatment.

(a) **Timing.** The court shall conduct a permanency review hearing on the petition:

(1) no later than fourteen (14) months after the date of the voluntary foster care agreement; or

(2) within thirty (30) days of the filing of the petition when the child has been in placement fifteen (15) of the last twenty-two (22) months; or

(3) within fifteen (15) days of a motion to terminate jurisdiction and to dismiss an order for foster care under Minnesota Statutes § 260C.201, subd. 1, as provided in Minnesota Statutes § 260D.09(b) and Rule 42.14.

(b) **Conduct of Hearing; Inquiries of Parents and Others.** At the permanency review hearing, the court shall:

(1) inquire of the parent whether the parent has reviewed the "Petition for Permanency Review Regarding a Child in Voluntary Foster Care for Treatment," whether the petition is accurate, and whether the parent agrees to the continued voluntary foster care arrangement as being in the child's best interests;

(2) inquire of the parent whether the parent is satisfied with the agency's reasonable efforts to finalize the permanent plan for the child, including whether there are services available and accessible to the parent that might allow the child to safely be with the child's family;

(3) inquire of the parent whether the parent consents to the court entering an order that:

(i) approves the agency's reasonable efforts to finalize the permanent plan for the child, which includes ongoing future planning for the safety, health, and best interests of the child; and

(ii) approves the agency's determination that there are compelling reasons why the continued voluntary foster care arrangement is in the child's best interests; and

(4) inquire of the child's guardian ad litem and any other party whether the guardian ad litem or the party agrees that:

(i) the court should approve the responsible agency's reasonable efforts to finalize the permanent plan for the child, which includes ongoing and future planning for the safety, health, and best interests of the child; and

(ii) the court should approve of the responsible agency's determination that there are compelling reasons why the continued voluntary foster carearrangement is in the child's best interests.

(c) **Court Actions Based on Consent of Parent.** At the permanency review hearing, the court may take the following actions based on the contents of the petition and the consent of the parent:

(1) approve the agency's compelling reasons that the voluntary foster care arrangement is in the best interests of the child; and

(2) find that the agency has made reasonable efforts to finalize a plan for the permanent plan for the child.

(d) **Objection by Child.** A child age twelve (12) or older may object to the agency's request that the court approve its compelling reasons for the continued voluntary arrangement and may be heard on the reasons for the objection. After hearing from the child, and notwithstanding the child's objection, the court may approve the agency's compelling reasons and the voluntary arrangement.

(e) **Findings and Order Approving Continued Voluntary Arrangement.** When the court approves the responsible social services agency's compelling reasons for the child to continue in voluntary foster care for treatment, and finds that the agency has made reasonable efforts to finalize a permanent plan for the child, the court shall issue an order approving the continued voluntary foster care for treatment arrangement, and continuing the matter under the court's jurisdiction for the purpose of reviewing the child's placement every twelve (12) months while the child is in foster care.

(f) **Continued Voluntary Arrangement Not in Child's Best Interests.** If the court does not approve the voluntary arrangement after hearing from the child or the child's guardian ad litem, the court shall dismiss the petition. The agency shall either:

(1) return the child to the care of the parent; or

(2) when there is a legal basis, file a petition under Minnesota Statutes § 260C.141 requesting appropriate relief under Minnesota Statutes § 260C.201, subd. 11, or § 260C.301.

(g) **Notice of Required Annual Review.** At the Permanency Review Hearing and in the Notice of Filing of the Order from the hearing, the court shall give notice to the parent, child if age twelve (12) or older, and the foster parent or foster care facility of the continued review requirements under Rule 43.05 and Minnesota Statutes § 260D.09.

2008 Advisory Committee Comment

When the timing requirements in Rule 43.04, subd. 1, are met or when otherwise appropriate and the agency determines there are not compelling reasons to continue the voluntary arrangement, Minnesota Statutes § 260D.10 permits the agency to terminate the voluntary foster care agreement and return the child home or to file a petition for the termination of parental rights when there are grounds to do so.

Under Minnesota Statutes § 260D.07(l), a finding that the court approves the continued voluntary placement means that the responsible social services agency has continued legal authority to place the child while the voluntary foster care agreement remains in effect. The parent or the agency may terminate a voluntary agreement as provided in Minnesota Statutes § 260D.10. Termination of a voluntary foster care placement of an Indian child by a parent is governed by Minnesota Statutes § 260.765, subd. 4.

Rule 43.05. Annual Review

Subd. 1. Required Annual Review.

(a) **Timing.** After the court conducts a permanency review hearing under Rule 43.04 and Minnesota Statutes § 260D.07, the matter shall be returned to the court for further review of the child's foster care placement at least every twelve (12) months while the child is in foster care.

(b) **Annual Report to the Court.** When the child continues in foster care, the responsible social services agency shall annually file a report that sets forth facts that address the required determinations the court shall make under subdivision 2. The agency's report shall be accompanied by proof of the agency's service of the report by U.S. Mail upon the parent, the child if age twelve (12) or older, the child's guardian ad litem, if one has been appointed, and counsel for any party and the child. Service of the report by a Registered User of the E-Filing System upon another Registered User shall be made in compliance with Rule 14.03 of the General Rules of Practice. All other service of the report shall be by personal service, U.S. mail, or e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court. The report shall be filed with the court at least thirty (30) days prior to the time required for annual review under this rule.

(c) **Timing of Hearing.** The court shall set a date for the annual review hearing not later than twelve (12) months after the permanency review hearing and at least every twelve (12) months thereafter as requested in the report from the agency.

(d) **Service.** At least ten (10) days prior to the date set for the annual review hearing, the court shall give notice of the date and time of the hearing to the county attorney; the responsible social services agency; the parent; the parent's attorney; the foster parent or foster care facility; the child, if age twelve (12) or older; the child's attorney, if one is appointed; the child's guardian ad litem, if one is appointed; and the child's Indian tribe, if the child is an Indian child. The notice

may be served personally, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

Subd. 2. Conduct of Hearing.

(a) **Required Reasonable Efforts Determination.** At the annual review the court shall determine whether the agency made reasonable efforts to finalize the permanency plan for the child, which means the exercise of due diligence by the agency to:

(1) ensure that the agreement for voluntary foster care is the most appropriate legal arrangement to meet the child's safety, health, and best interests and to conduct a genuine examination of whether there is another permanency disposition order under Minnesota Statutes Chapter 260C, including returning the child home, that would better serve the child's need for a stable and permanent home;

(2) engage and support the parent in continued involvement in planning and decision making for the needs of the child;

(3) strengthen the child's ties to the parent, relatives, and community;

(4) implement the out-of-home placement plan required under Minnesota Statutes § 260C.212, subd. 1; and

(5) ensure that the plan requires the provision of appropriate services to address the physical health, mental health, and educational needs of the child.

(b) **Review for Youth Age 16 or Older**. When a child is age sixteen (16) or older, the court shall also review the agency's reasonable efforts to implement the independent living plan required under Minnesota Statutes § 260C.212, subd. 1(c)(11), and the provision of services to the child related to the well-being of the child as the child prepares to leave foster care. The court's review shall include the findings and review required under Rule 42.11, subd. 4(c).

Subd. 3. Order. At the conclusion of the hearing or within five (5) days of the hearing, the court shall issue an order making the findings required under subdivision 2(a) and (b), as appropriate.

Subd. 4. Service of Order. The court administrator shall serve the order upon the county attorney; the responsible social services agency; the parent; the parent's attorney; the foster parent or foster care facility; the child, if age twelve (12) or older; the child's attorney, if one is appointed; the child's guardian ad litem, if one is appointed; and the child's Indian tribe, if the child is an Indian child.

RULE 44. REVIEW OF VOLUNTARY PLACEMENT MATTERS

Rule 44.01. Generally

Subd. 1. Scope of Review. This rule governs review of all voluntary foster care placements made pursuant to Minnesota Statutes § 260C.227.

Subd. 2. Jurisdiction. The court assumes jurisdiction to review a voluntary foster care placement of a child pursuant to Minnesota Statutes § 260C.227, upon the filing of a petition pursuant to Minnesota Statutes § 260C.141, subd. 2.

Subd. 3. Court File Required. Upon the filing of a petition under this Rule, the court administrator shall open a juvenile protection file which is part of the juvenile protection case record related to the matter. If a child in need of protection or services file regarding this child already exists, the petition shall be filed in that file.

Rule 44.02. Petition and Hearing

Subd. 1. Timing of Petition. When the responsible social services agency expects the child's need for voluntary foster care placement will not exceed a total of 180 days and the child's safety, health, and best interests do not require the court to order the child in foster care, a petition shall be filed within ninety (90) days of the date of the voluntary placement agreement and shall state the reasons why the child is in placement, the progress on the out-of-home placement plan required pursuant to Minnesota Statutes § 260C.212, subd. 1, and the statutory basis for the petition pursuant to Minnesota Statutes § 260C.007, subd. 6. A copy of the out-of-home placement plan shall be filed with the petition.

Subd. 2. Service of Petition. Upon the filing of the petition, the court administrator shall serve the petition, together with out-of-home placement plan, upon the parties and shall schedule a hearing pursuant to subdivision 3. The petition shall be served personally, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

Subd. 3. Timing of Hearing. When a petition is filed under subdivision 1, the matter shall be set for hearing within twenty (20) days of service of the petition.

Subd. 4. Initial Hearing.

(a) **Agreement to Continue.** At the initial hearing following the filing of a petition under subdivision 1, if all parties agree to the findings under paragraph (b) of this subdivision, the matter may be continued without the requirement of the parent or legal custodian entering an admission or denial to the petition. The matter may be continued for up to a total of ninety (90) more days during which time the child may continue in foster care on a voluntary basis.

(b) **Findings.** When all parties agree and the court finds that it is in the best interests of the child, the court may find the petition states a prima facie case that:

(1) the child's needs are being met;

(2) the placement of the child in foster care is in the best interests of the child;

(3) reasonable efforts to reunify the child and the parent or legal custodian are being made; and

(4) the child will be returned home in the next ninety (90) days.

(c) **Approval of Placement.** If the court makes the findings required pursuant paragraph (b), the court shall approve the voluntary arrangement and continue the matter for up to ninety (90) days to ensure the child returns to the parent's home or that the matter is returned to court as required under subdivision 5(b).

Subd. 5. Further Proceedings.

(a) **Agency Report to Court Upon Child's Return Home.** The responsible social services agency shall report to the court when the child returns home and the progress made by the parent on the case plan required pursuant to Minnesota Statutes § 260C.212, subd. 1. Upon receiving the report that the child has returned home, the court shall dismiss the petition.

(b) **Return to Court When Child Not Home.** If the child does not return home within the ninety (90) days approved by the court:

(1) the matter shall be returned to court for:

(i) an emergency protective care hearing pursuant to Rule 30 if the petition filed under item (2) of this paragraph asks the court to order protective care, or

(ii) for an admit/deny hearing pursuant to Rule 34 if the petition does not ask the court to order protective care; and

(2) the responsible social services agency shall file a new petition alleging the child's need for protection or services and explaining why the child's foster care placement shall exceed the 180-day statutory maximum permitted for voluntary placements under Minnesota Statutes § 260C.212, subd. 8. The petition shall:

(i) state a prima facie basis for the court to order the child to continue in foster care under Rule 30 and Minnesota Statute § 260C.178; or

(ii) have sufficient facts to support a disposition of legal custody to the agency for continued foster care under Rule 41.

(c) **Trial.** If the petition is not admitted at the hearing scheduled under subdivision 4(a), the matter shall be set for trial.

Subd. 6. Disagreement with Voluntary Placement. If any party or the child disagrees with the voluntary placement or the sufficiency of the services offered by the responsible social services agency at the time of the initial hearing, or if the court finds that the placement or case

plan is not in the best interests of the child, the court shall schedule a trial to determine what is in the best interests of the child.

Subd. 7. Calculating Time Period. When a child is placed in foster care pursuant to a voluntary placement agreement pursuant to Minnesota Statutes § 260C.227, the time period the child is considered to be in foster care for purposes of determining whether to proceed pursuant to Minnesota Statutes § 260C.503, subd. 1, is sixty (60) days after the voluntary placement agreement is signed, or the date the court orders the child in protective care, whichever is earlier.

2008 Advisory Committee Comment

Rule 44.02, subds. 5(a) and (b), deal with the child's return home. A child may not continue in foster care on a voluntary basis longer than 180 days unless the child is in foster care treatment under Minnesota Statutes Chapter 260D. See Minnesota Statutes § 260C.212, subd. 8. The parent may agree that the child needs to continue in foster care longer than 180 days, in which case the parent may admit a petition alleging the child in need of protection or services which states the basis for the child's need to continue in foster care. Under these circumstances the court has a legal basis to order the child to continue in foster care. If the parent does not agree, the agency shall return the child to the care of the parent unless there is a basis for an order for emergency protective care under Rule 30 and Minnesota Statutes § 260C.178.

Rule 44.03. Procedures When Court-Ordered Foster Care, Permanent Placement, or Termination of Parental Rights Sought

Subd. 1. Applicable Rules When Other than Voluntary Review is Sought. When a child enters foster care pursuant to a voluntary placement agreement under Minnesota Statutes § 260C.227 and there is a sufficient evidentiary basis, the responsible social services agency may file a petition for termination of parental rights, a petition for permanent placement of the child away from the parent, or a petition alleging the child to be in need of protection or services stating sufficient facts to meet any definition of Minnesota Statutes § 260C.007, subd. 6. The matter shall proceed under:

(a) Rule 30 if the petition requests an order for protective care under Rule 30.10 and Minnesota Statutes § 260C.178; or

(b) Rule 34 if an order for protective care is not requested.

Subd. 2. Timing of Hearing. When a petition is filed under subdivision 1, timing of the required hearing shall be pursuant to:

(a) Rule 30.01 if the petition requests an order for protective care under Rule 30.10 and Minnesota Statutes § 260C.178; or

(b) Rule 34.02 if an order for protective care is not requested.

RULE 45. POST-TRIAL MOTIONS

Rule 45.01. Procedure and Timing

Subd. 1. Timing. All post-trial motions shall comply with Rule 15 and shall be filed with the court and served upon the parties within ten (10) days of the service of notice by the court administrator of the filing of the court's order finding that the statutory grounds set forth in the petition are or are not proved. Any response to a post-trial motion shall comply with Rule 15 and shall be filed with the court and served upon the parties within five (5) days of service of the post-trial motion.

Subd. 2. Basis of Motion. A post-trial motion shall be made and decided on the files, exhibits, and minutes of the court. Pertinent facts that would not be a part of the minutes may be shown by affidavit except as otherwise provided by these rules. A full or partial transcript of the court reporter's notes of the testimony taken at the trial or other verbatim recording thereof may be used in deciding the motion.

Subd. 3. Time for Serving Affidavits. When a post-trial motion is based upon affidavits, such affidavits shall be served with the notice of motion. The parties and the county attorney shall have five (5) days after such service in which to serve opposing affidavits pursuant to Rule 15. The court may permit reply affidavits so long as the time for issuing a decision is not extended beyond the time permitted in Rule 45.05.

Subd. 4. Hearing. If the trial court grants a hearing on a post-trial motion, the hearing shall take place within ten (10) days of the date the post-trial motion is filed.

Rule 45.02. New Trial on Court's Own Motion

Not later than fifteen (15) days after finding that the statutory grounds set forth in the petition are or are not proved, the court may upon its own initiative order a new trial for any reason for which it might have granted a new trial on a motion. After giving appropriate notice and an opportunity to be heard, the court may grant a motion for a new trial, timely served, for reasons not stated in the motion. In either case, the court shall specify in the order the basis for ordering a new trial.

Rule 45.03. Amendment of Findings

Upon motion, the court may amend its findings or make additional findings, and may amend the order accordingly. The motion may be made with a motion for a new trial and may be made on the files, exhibits, and minutes of the court. The question of sufficiency of the evidence to support the findings may be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend the order.

Rule 45.04. Grounds for New Trial

A new trial may be granted on all or some of the issues for any of the following reasons:

(a) irregularity in the proceedings of the court, referee, or prevailing party, or any order or abuse of discretion whereby the moving party was deprived of a fair trial;
(b) misconduct of counsel;
(c) fraud, misrepresentation, or other misconduct of the county attorney, any party, their counsel, or their guardian ad litem;
(d) accident or surprise that could not have been prevented by ordinary prudence;
(e) material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the trial;
(f) errors of law occurring at the trial and objected to at the time, or if no objection need have been made, then plainly assigned in the motion;
(g) a finding that the statutory grounds set forth in the petition are proved is not justified by the evidence or is contrary to law; or
(h) if required in the interests of justice.

Rule 45.05. Decision

The court shall rule on all post-trial motions within ten (10) days of the conclusion of the hearing, which shall include the time for filing written arguments, if any. The findings and order shall be filed with the court administrator, who shall proceed pursuant to Rule 10.

Rule 45.06. Relief

In response to any post-trial motion, including a motion for a new trial, the court may:
(a) conduct a new trial;
(b) reopen the proceedings and take additional testimony;
(c) amend the findings of fact and conclusions of law; or
(d) make new findings and conclusions as required.

RULE 46. RELIEF FROM ORDER

Rule 46.01. Clerical Mistakes

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 may be so corrected with leave of the appellate court.

Rule 46.02. Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud

Upon motion and upon such terms as are just, the court may relieve a party or the party's legal representatives from a final order or proceeding, including a default order, and may order a new trial or grant such other relief as may be just for any of the following reasons:
(a) mistake, inadvertence, surprise, or excusable neglect;

(b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial;
(c) fraud (whether denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
(d) the judgment is void; or
(e) any other reason justifying relief from the operation of the order.

The motion shall be made within a reasonable time, but in no event shall it be more than ninety (90) days following the service of notice by the court administrator of the filing of the court's order.

Rule 46.03. Invalidation of Action Under ICWA

Subd. 1. Petition or Motion. Pursuant to 25 U.S.C. § 1914, any Indian child who is the subject of any action for foster care placement or termination of parental rights, any parent or Indian custodian from whose custody an Indian child was removed, or the Indian child's tribe may seek to invalidate the action upon a showing that such action violates the Indian Child Welfare Act, 25 U.S.C. §§ 1911 – 1913.

(a) ***Motion.*** A motion to invalidate may be brought regarding a pending juvenile protection matter.

(b) ***Petition.*** A petition to invalidate may be brought regarding a juvenile protection matter in which juvenile court jurisdiction has been terminated.

Subd. 2. Form and Service. A motion or petition to invalidate shall be in writing pursuant to Rule 15.01 and shall be filed and served pursuant to Rule 15.02. Both a motion and a petition to invalidate shall be processed by the court as a motion. Upon receipt of a petition to invalidate a proceeding in which juvenile court jurisdiction has been terminated, the court administrator shall re-open the original juvenile protection file related to the petition.

Subd. 3. Hearing. Within thirty (30) days of the filing of a motion or petition to invalidate, the court shall hold an evidentiary hearing of sufficient length to address the issue raised in the motion or petition. A motion filed thirty (30) or more days prior to trial shall be heard prior to trial and the decision shall be issued prior to trial. A motion filed less than thirty (30) days prior to trial shall not delay commencement of the trial and the decision shall be issued as part of the trial decision.

Subd. 4. Findings and Order. Within fifteen (15) days of the conclusion of the evidentiary hearing on the motion or petition to invalidate, the court shall issue findings of fact, conclusions of law, and an order regarding the petition or motion to invalidate.

2008 Advisory Committee Comment

Grounds for Petition to Invalidate. Rule 46.03 establishes a procedure for filing a petition or motion to invalidate an action under the Indian Child Welfare Act (ICWA). 25 U.S.C. § 1914. Section 1914 of the ICWA permits an Indian child, the Indian child's

parent or Indian custodian, or the Indian child's tribe to petition the court to invalidate any action for foster care placement or termination of parental rights upon a showing that the action violated the ICWA § 1911 (dealing with exclusive jurisdiction and transfer to tribal court), § 1912 (dealing with notice to the Indian child's tribe regarding the district court proceedings, appointment of counsel, examination of reports, and testimony of a qualified expert witness), or § 1913 (dealing with voluntary consent to foster care placement and termination of parental rights). Section 14 of the ICWA is silent about the time for bringing a petition to invalidate, the relief available, and whether relief is available even if there was no objection below.

Time Limit for Filing Petition to Invalidate. Although there is no time limit for bringing a petition to invalidate contained in section 1914 of the ICWA, the Alaska Supreme Court has held that a challenge to an adoption under section 1914 shall be brought within a year. In re Adoption of Erin G., 140 P.3d 886, 891 (Alaska 2006). In a slightly later case, the Alaska Supreme Court suggested that the time limit in an ICWA challenge brought under 42 U.S.C. § 1983 would be two years. Dept. of Health & Soc. Servs. v. Native Village of Curyung, 151 P.3d 388, 411 (Alaska 2006). The authors of A Practical Guide to the Indian Child Welfare Act do not cite any other cases, but they disagree that there should be time limits which vary from state to state. Native American Rights Fund, A Practical Guide to the Indian Child Welfare Act 161 (2007). The authors of The Indian Child Welfare Act Handbook recommend using the two-year time limit contained in § 1913(d). B.J. Jones, M. Tilden & K. Gaines-Stoner, The Indian Child Welfare Act Handbook: A Legal Guide to the Custody and Adoption of Native American Children 156 (2d ed. 2008).

Reach of Relief Available. There are a number of cases which hold that section 1914 of the ICWA is not available to attack an ICWA violation occurring during the foster care placement proceeding (i.e., child in need of protection or services (CHIPS)) as part of the termination of parental rights proceeding. In Re Welfare of the Children of S.W., et.al., Parents, 727 N.W.2d 144 (Minn. Ct. App. 2007); Interest of J.D.B., 584 N.W.2d 577 (Iowa Ct. App. 1998); Interest of J.W., 528 N.W.2d 657, 661 (Iowa Ct. App. 1995); D.E.D. v. State, 704 P.2d 774, 782 (Alaska 1985); In Re M.E.M., 679 P.2d 1241, 1243-44 (Mont. 1984). Although these courts have rejected this sort of collateral attack, there is some suggestion in all four of these cases that a different decision might have resulted if the termination of parental rights judge had made extensive use of the evidence introduced in the foster care placement proceeding in which the violations occurred. The North Dakota Supreme Court appears to agree. See B.R.T. v. Social Serv. Bd., 391 N.W.2d 594, 600 n.10 (N.D. 1986).

The Native American Rights Fund cites three cases that, it says, compel vacation of the adjudication for specific ICWA violations: Interest of H.D., 729 P.2d 1234, 1240-41 (Kansas Ct. App. 1986); In Re L.A.M., 727 P.2d 1057, 1060 (Alaska 1986); and Morgan v. Morgan et al., 364 N.W.2d 754, 758 (Mich. Ct. App. 1985). Native American Rights Fund, A Practical Guide to the Indian Child Welfare Act 162 (2007). But none of these three cases invalidates a subsequent termination of parental rights because of ICWA violations occurring during the foster care placement proceeding.

In an American Bar Association treatise on the subject, the authors argue a broader role for section 1914, including collateral attack in federal court. See B.J. Jones, M. Tilden & K. Gaines-Stoner, The Indian Child Welfare Act Handbook: A Legal

Guide to the Custody and Adoption of Native American Children, pp. 153-56 (2d ed. 2008).

Necessity of Objection During Trial Court Proceeding. Although it is not a section 1914 case, Matter of L.A.M., 727 P.2d 1057, 1059 (Alaska 1986), specifically holds that objection during the trial court proceeding is not required to preserve an objection on appeal to a section 1912 violation. The Native American Rights Fund lists two cases which hold that an objection below is not necessary to seek relief under section 1914: In re S.R.M., 153 P.3d 438 (Colo. Ct. App. 2006); and In re S.M.H., 103 P.3d 976, 982 (Kan. Ct. App. 2005). Native American Rights Fund, A Practical Guide to the Indian Child Welfare Act 161 (2007).

RULE 47. APPEAL

Rule 47.01. Applicability of Rules of Civil Appellate Procedure

Except as provided in Rule 47.02 and Rule 47.07, appeals of juvenile protection matters shall be in accordance with the Rules of Civil Appellate Procedure.

Rule 47.02. Procedure

Subd. 1. Appealable Order. An appeal may be taken by the aggrieved person from a final order of the juvenile court affecting a substantial right of the aggrieved person, including but not limited to an order adjudicating a child to be in need of protection or services, neglected and in foster care.

Subd. 2. Timing of Filing Notice of Appeal. Any appeal shall be taken within twenty (20) days of the service of notice by the court administrator of the filing of the court's order. In the event of the filing and service of a timely and proper post-trial motion under Rule 45, or motion for relief under Rule 46 if the motion is filed within the time specified in Rule 45.01, subd. 1, the provisions of Minnesota Rules of Civil Appellate Procedure Rule 104.01, subd. 2 and 3, apply, except that the time for appeal runs for all parties from the service of notice by the court administrator of the filing of the order disposing of the last post-trial motion.

2004 Advisory Committee Comment—2006 Amendment

Minnesota Statutes § 260C.415 provides that an appeal shall be taken within 30 days of the filing of the appealable order and "as in other civil cases" under the Rules of Civil Appellate Procedure. The Committee recognizes that the timing provision of Rule 47.02, subd. 2, which provides that the appeal time begins to run from the court administrator's service of notice of the filing of the order, is a departure from the Rules of Civil Appellate Procedure. This departure is intended to expedite the appellate process, which the Committee deems to be in the best interests of the child. The appeal time and procedures are governed by these rules, specifically established for juvenile protection proceedings, and not by the more general provisions of the appellate rules. See In re Welfare of J.R., Jr., 655 N.W.2d 1 (Minn. 2003).

Subd. 3. Service and Filing of Notice of Appeal. Within the time allowed for an appeal, as provided in subdivision 2, the party appealing shall:

(a) serve a notice of appeal upon the county attorney and all parties or their counsel if represented, including notice of the correct case caption pursuant to Rule 8.08; and

(b) file with the clerk of appellate courts a notice of appeal, together with proof of service upon all parties, including notice of the correct case caption pursuant to Rule 8.08.

A notice of appeal shall be accompanied by a copy of the request for transcript required by subdivision 5.

Subd. 4. Notice to Court Administrator. At the same time as the appeal is filed, the appellant shall provide notice of the appeal to the court administrator. Failure to notify the court administrator does not deprive the court of appeals of jurisdiction.

Subd. 5. Request for Transcript. At or before the time for serving the notice of appeal, the appellant shall serve on the court reporter a written request for a transcript. At the same time, the appellant shall also provide the court reporter with a signed Certificate as to Transcript, which the court reporter shall sign and file with the clerk of appellate courts, with a copy to the trial court, unrepresented parties, and counsel of record, within ten (10) days of the date the transcript was ordered.

Subd. 6. Failure to File Proof of Service. Failure to file proof of service does not deprive the court of appeals of jurisdiction over the appeal, but is grounds only for such action as the court of appeals deems appropriate, including a dismissal of the appeal.

Subd. 7. Notice to Legal Custodian. The court administrator shall notify the child's legal custodian of the appeal. Failure to notify the legal custodian does not affect the jurisdiction of the court of appeals.

Subd. 8. Timing of Briefs. Rule 131.01 of the Rules of Civil Appellate Procedure applies to the timing of briefs in juvenile protection matters, except that the respondent shall serve and file a brief and any appendix within twenty (20) days after service of the brief of the appellant; within twenty (20) days after service of the last appellant's brief, if there are multiple appellants; or within twenty (20) days after delivery of a transcript ordered by respondent pursuant to Civil Appellate Procedure Rule 110.02, subd. 1, whichever is later.

Rule 47.03. Application for Stay of Trial Court Order

The service and filing of a notice of appeal does not stay the order of the juvenile court. The order of the juvenile court shall stand pending the determination of the appeal, but the juvenile court may in its discretion and upon application stay the order. If the juvenile court denies an application for stay pending appeal, upon motion, a stay may be granted by the court of appeals.

Rule 47.04. Right to Additional Review

Upon an appeal, any party or the county attorney may obtain review of an order entered in the same case which may adversely affect that person by filing a notice of review with the clerk of appellate courts. The notice of review shall specify the order to be reviewed, shall be served and filed within fifteen (15) days after service of the notice of appeal, and shall contain proof of service.

Rule 47.05. Transcript of Proceedings

The requirements regarding preparation of a transcript shall be governed by Rule 110.02 of the Rules of Civil Appellate Procedure, except that the estimated completion date contained in the certificate of transcript shall not exceed thirty (30) days from the date the request for transcript is received.

Rule 47.06. Time for Rendering Decision by Minnesota Court of Appeals

All decisions regarding juvenile protection matters shall be issued by the appellate court within forty-five (45) days of the date the case is deemed submitted pursuant to the Rules of Civil Appellate Procedure.

Rule 47.07. Petition in Supreme Court for Review of Decisions of the Court of Appeals

Rule 117 of the Rules of Civil Appellate Procedure applies to petitions for review of decisions of the court of appeals in juvenile protection matters, except that any petition for further review shall be filed with the clerk of the appellate courts and served upon the parties within fifteen (15) days of the filing of the court of appeals' decision, and any response to such petition shall be filed with the clerk of appellate courts and served upon the parties within ten (10) days of service of the petition.

RULE 48. TRANSFER TO CHILD'S TRIBE

Rule 48.01. Transfer of Juvenile Protection Matter to the Tribe

Subd. 1. Motion or Request to Transfer. An Indian child's parent, Indian custodian, or tribe may request transfer of the juvenile protection matter to the Indian child's tribe by:

(a) filing with the court and serving a motion or any other written document pursuant to Rule 15; or

(b) making an on-the-record request which shall be reflected in the court's findings.

Subd. 2. Service and Filing Requirements for Motion, Request, or Objection to Transfer Matter to Tribe.

(a) When a motion or other written document is filed pursuant to subdivision 1(a), the service and notice provisions of Rule 15.02, subd. 1, apply.

(b) When an on-the-record request is made pursuant to subdivision 1(b), the objection and continuance provisions of Rule 15.01, subd. 3, apply.

Subd. 3. Transfer Required Absent Objection by Parent or Good Cause Finding. Upon motion or request of an Indian child's parent, Indian custodian, or tribe pursuant to subdivision 1, the court shall issue an order transferring the juvenile protection matter to the Indian child's tribe absent objection by either parent pursuant to subdivision 4 or a finding of good cause to deny transfer pursuant to subdivision 6(b), and shall proceed pursuant to Rule 48.02. The order transferring the juvenile protection matter to the Indian child's tribe shall order jurisdiction of the matter retained pursuant to subdivision 7 until the Indian child's tribe exercises jurisdiction over the matter.

Subd. 4. Objection to Transfer by Parent. A parent of an Indian child may object to transfer of a juvenile protection matter to the Indian child's tribe.

(a) **Form of Objection.** The parent's objection shall be in writing or stated on the record. The writing may be in any form sufficient for the court to determine that the parent objects to the request to transfer the matter to the Indian child's tribe.

(b) **Timing of Filing and Service.** Any written objection shall be filed with the court and served upon those who are served with the motion pursuant to Rule 15.02, subd. 1, either:

(1) within fifteen (15) days of service of the motion, written request, or on-the-record request to transfer the juvenile protection matter to the Indian child's tribe under subdivision 1; or

(2) at or before the time scheduled for hearing on a motion to deny transfer for good cause, if any, under subdivision 6.

(c) **Method of Filing and Service.** Any written objection by a Registered User of the E-Filing System shall be served upon another Registered User in compliance with Rule 14.03 of the General Rules of Practice for the District Courts. All other service of the written objection shall be made by personal service, U.S. mail, or e-mail or other electronic means agreed upon in writing by the person to be served. Service of the written objection shall be accomplished by the parent's attorney or by the court administrator when the parent is not represented by counsel. The court shall include a parent's on-the-record objection to the transfer as a finding in its order denying the motion to transfer.

(d) **No Hearing Required.** A hearing on an objection to transfer by parent is not required.

(e) **Decision and Order.** Upon objection by a parent, the court shall deny the request to transfer the juvenile protection matter to the Indian child's tribe and issue its findings and order pursuant to Rule 10.01.

Subd. 5. Request to Deny Transfer by Child or Party Who is Not a Parent.

(a) **Child.** A child age twelve (12) or older, regardless of party status, may request that the juvenile protection matter not be transferred to the Indian child's tribe by filing with the court, within fifteen (15) days of receiving the request to transfer the matter to the tribe, a written document stating the child's request to deny transfer. The writing may be in any form. If the child is represented by an attorney, the attorney shall serve the written document and the notice of hearing. If the child is not represented by an attorney, the court administrator shall serve the written request and notice of hearing. Service of the written document and the notice of hearing by either the child's attorney or the court administrator shall be pursuant to Rule 15.02, subd. 1.

(b) **Party Who is Not a Parent.** A party who is not a parent may request that the juvenile protection matter not be transferred to the Indian child's tribe by filing with the court and serving a notice of motion and motion pursuant to subdivision 1(a) and Rule 15 within fifteen (15) days of receiving the request to transfer the matter to the tribe. The party opposing transfer shall provide a written explanation of the reason for the opposition.

(c) **Establishment of Good Cause.** The child or party opposing transfer of the juvenile protection matter has the burden of establishing good cause not to transfer. The request to deny transfer shall be scheduled for hearing pursuant to subdivision 6.

Subd. 6. Hearing on Request to Deny Transfer to Tribal Court.

(a) **Hearing.** Within fifteen (15) days of the filing of a written request to deny transfer of the juvenile protection matter to the Indian child's tribe, the court shall conduct a hearing to determine whether good cause exists to deny the transfer to the tribe pursuant to 25 U.S.C. § 1911(b).

(b) **Decision.** The court shall make findings regarding the existence of good cause to deny transfer. If good cause to deny transfer is not found, the court shall order the matter transferred to tribal court and shall proceed pursuant to Rule 48.02. If good cause to deny transfer is found, the court may either deny the request to transfer or order the matter transferred to tribal court.

(c) **Order.** The court shall issue its findings and order pursuant to Rule 10.01.

Subd. 7. Retention of District Court Jurisdiction until Notice from the Indian Child's Tribe.

(a) **District Court Jurisdiction**. The district court shall retain jurisdiction over the juvenile protection matter by written order until the district court judge receives information from the tribal court that the tribe has exercised jurisdiction over the

matter. Pending exercise of jurisdiction by the Indian child's tribe, the district court has continued authority to:

(1) approve or modify services to be provided to the child and the child's family pursuant to Rule 30.10; or

(2) approve or modify the case plan pursuant to Rules 41.05 and 41.06; and

(3) make other orders that ensure a smooth transition of the matter to the tribe.

(b) **Hearings in District Court Pending Dismissal.** The district court may conduct hearings as required by Minnesota Statutes Chapter 260C and these Rules and shall conduct a review hearing at least every ninety (90) days until the Indian child's tribe exercises jurisdiction over the juvenile protection matter or the tribal court declines the transfer in response to the district court's order to transfer the matter to the tribe. Such hearings shall be for the purpose of reviewing the provision of services under the case plan or the provision of services to the child and family and to update the court regarding exercise of jurisdiction over the matter by the Indian child's tribe.

(c) **Exercise of Jurisdiction by Indian Child's Tribe.** The district court may accept and rely on any reasonable form of communication indicating the tribe has exercised jurisdiction over the juvenile protection matter. The district court shall acknowledge receipt of the communication and the exercise of jurisdiction over the matter by the tribe by forwarding to the tribal court of, or designated by, the Indian child's tribe an order terminating the district court's jurisdiction over the matter under paragraph (e).

(d) **Declination of Transfer by Tribal Court.** Upon declination of the exercise of jurisdiction over the juvenile protection matter by a tribal court, the district court shall proceed as if the matter was not transferred to tribal court.

(e) **Order Terminating District Court Jurisdiction.** After issuing the order transferring the juvenile protection matter to the Indian child's tribe pursuant to subdivision 6(b), and once the district court judge receives information that the tribe has exercised jurisdiction over the matter pursuant to paragraph (a), the district court judge shall issue an order terminating jurisdiction over the matter which shall include provisions:

(1) stating the factual basis for the judge's determination that the Indian child's tribe has exercised jurisdiction;

(2) terminating jurisdiction over all parties, the Indian child's parent or Indian custodian, and the Indian child;

(3) terminating the responsible social services agency's legal responsibility for the Indian child's placement when the district court has ordered the child into protective care under Rule 30.10 and Minnesota Statute § 260C.178;

(4) terminating the responsible social services agency's legal custody of the child when the court has transferred legal custody to the responsible social

services agency under Rule 41.05 and Minnesota Statute § 260C.201, subdivision 1;

(5) discharging the Commissioner of Human Services as guardian and terminating the order for legal custody to the commissioner when the court has ordered guardianship and legal custody to the commissioner; and

(6) discharging court appointed attorneys and the guardian ad litem for the child and for the parent, if any.

2008 Advisory Committee Comment

"Tribe," "Tribal Court," and "Tribal Social Services." Throughout the Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901-1963, the phrases "tribe," "tribal court," and "tribal social services" are used. In an effort to remain consistent with the ICWA, Rule 48 mirrors the use of those phrases.

Tribe's Method of Communicating Exercise of Jurisdiction. Rule 48.01, subd. 7(c), provides "The district court may accept and rely on any reasonable form of communication indicating the tribe has exercised jurisdiction over the juvenile protection matter." The information received may be in a written order or letter, a telephone call, a faxed or emailed message, a copy of a hearing notice setting the matter for hearing in tribal court, or any other form of communication between the tribe and the district court judge regarding the tribe's action in regard to the district court order transferring the matter to the Indian child's tribe.

Transfer of Juvenile Protection Matter After Termination of Parental Rights. The Indian Child Welfare Act (ICWA) does not preclude the transfer of matters to tribal court following termination of parental rights. Rule 48.04, subd. 7(e)(5), recognizes the practice of transferring cases to the tribe after termination of parental rights and requires certain orders when such a transfer is made, inter alia, discharging the Commissioner of Human Services as the guardian for the child.

Transfer to Tribe Other Than Indian Child's Tribe. The Indian Child Welfare Act (ICWA) provides for the transfer of jurisdiction from State court to the "the Indian child's tribe." 25 U.S.C. § 1911. Rule 48.01, subd. 7(c), recognizes that some Indian tribes are exercising jurisdiction over child custody proceedings by designating other tribes to act on their behalf to receive the transferred case.

"Good Cause" to Deny Transfer. Consistent with the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1911(b), Rule 48.01, subd. 3, mandates that transfer to the Indian child's tribe must occur upon motion absent objection by a parent or a finding of "good cause to deny transfer." "Good cause" is not defined in the ICWA. Good cause not to transfer a proceeding may exist if a child age twelve (12) or older objects to the transfer. Bureau of Indian Affairs Guidelines for State Courts: Indian Child Custody Proceedings, 44 Fed Reg. 67584, 67590 at C3(b)(i) (Nov. 26, 1979) [hereinafter "BIA Guidelines"]. "Good cause" is discussed in the BIA Guidelines. 44 Fed Reg. at 67583, 67590 at C.3 Commentary (Nov. 26, 1979). See also In Re the Welfare of the Child of: T.T.B. & G.W., 724 NW2d 300 (Minn. 2006), and In Re the Welfare of the Children of R.M.B. & R.E.R., 735 NW2d 348 (Minn. Ct. App. 2007) rev. denied (Minn. Sept. 26, 2007). See BIA Guidelines, 44 Fed. Reg. 67,584, 67,591 at C.3(b)(i)-(iv), (c), (d) (Nov. 26, 1979) (as modified).

Rule 48.02. Communication Between District Court and Tribal Court Judges

Subd. 1. Child Ward of Tribal Court.

(a) When the child is a ward of tribal court, prior to directing the return of the child to tribal court, pursuant to subdivision 4 the district court judge shall communicate with a tribal court judge to:

(1) inform the tribal court judge that the district court has ordered the emergency removal of the ward; and

(2) inquire of the tribal court judge about any orders regarding the safe transition of the ward so that such orders can be enforced by the district court pursuant to the full faith and credit provisions of 25 U.S.C. § 1911(d) and Minnesota General Rules of Practice for the District Courts Rule 10.

(b) The district court judge may order the responsible social services agency and attorney for the parties to communicate with their respective tribal counterparts or to take any other reasonable steps to ensure that the ward's tribe is timely aware of the district court's order for emergency removal of the ward.

(c) Communication permitted under this rule shall facilitate expeditious return of the ward to the jurisdiction of the Indian child's tribe and consultation regarding the safe transition of the child.

Subd. 2. Child Domiciled or Residing on a Reservation.

(a) When the child resides or is domiciled on a reservation, prior to ordering transfer of the juvenile protection matter to tribal court, the district court judge shall, pursuant to subdivision 4, communicate with a tribal court judge to:

(1) inform the tribal court judge that the district court has ordered the emergency removal of an Indian child; and

(2) inquire of the tribal court judge about any requirements or conditions that should be put in place regarding the safe transition of the child to the jurisdiction of the child's tribe.

(b) The district court judge may order the responsible social services agency and attorneys for the parties to communicate with their respective tribal counterparts or to take any other reasonable steps to ensure that the Indian child's tribe is timely aware of the request to transfer the matter to the tribe.

(c) Communication permitted under this rule shall facilitate timely transfer of the matter to tribal court or return of the Indian child to the child's parent or Indian custodian.

Subd. 3. Child Not a Ward of Tribal Court, Not a Resident or Domiciliary of the Reservation.

(a) When a child is not a ward of tribal court, or does not reside on or is not domiciled on the reservation, prior to ordering transfer of the juvenile protection matter to tribal court the district court judge shall, pursuant to subdivision 4, communicate with a tribal court judge to:

(1) inquire whether the tribal court will accept the transfer and, if so, order the transfer absent objection by either parent pursuant to Rule 48.01, subd. 4, or a finding of good cause to deny the transfer pursuant to Rule 48.01, subd. 6(b), and proceed pursuant to Rule 48.01, subd. 7; and

(2) inquire of the child's tribe what district court orders should be made regarding the child's safe transition to the jurisdiction of the Indian child's tribe when 25 U.S.C. § 1911(b) applies.

(b) The district court judge may order the responsible social services agency and counsel for the parties to communicate with their respective tribal counterparts or to take any other reasonable steps to ensure that the Indian child's tribe is timely aware of the request to transfer the matter to the tribe.

(c) Communication permitted under this rule shall facilitate timely transfer of the matter to tribal court.

Subd. 4. Method of Communication; Inclusion of Parties; Recording

(a) **Method of Communication.** Communication between the district court judge and the tribal court judge may be in writing, by telephone, or by electronic means.

(b) **Inclusion of Parties.** The district court judge may allow the parties to participate in the communication with the tribal court judge. Participation may be in any form, including a hearing on-the-record or a telephonic communication.

(c) **Record of Communication.** Except as otherwise provided in paragraph (d), a record shall be made of a communication under this rule. If the parties or any party did not participate in the communication, the court shall promptly inform the parties of the communication and grant access to the record. The record may be a written or on-the-record summary of any telephone or verbal communication or a copy of any electronic communication.

(d) **Administrative Communication.** Communication between courts on administrative matters may occur without informing the parties and a record need not be made.

2008 Advisory Committee Comment

Rule 48.02, subd. 4, regarding communication between courts includes language similar to certain provisions in the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Minn. Stat. § 518D.110. Not all provisions in the "communication between courts" provisions of the UCCJEA are included in this Rule because the

UCCJEA is not applicable when the case is governed by the ICWA. See Minn. Stat. § 518D.104(a). The purpose of requiring court-to-court communication is to facilitate expeditious return or transfer by timely and direct contact between judges. Nothing in this rule shall be construed to delay return or transfer of the matter to tribal court. Administrative matters may include schedules, calendars, court records, and similar matters. Communication may include receipt of a tribal court order.

Rule 48.03. Court Administrator's Duties

Upon receiving an order transferring a juvenile protection matter to tribal court, the court administrator shall file the order and serve it on all parties, participants, the Indian child's parents, and the Indian child according to the requirements of Rule 10**.** The court administrator shall forward a certified copy of the complete court file personally, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the tribal court official, as otherwise directed by the transferor court, or any other means calculated to ensure timely receipt of the file by the tribal court.

RULE 49. QUALIFIED EXPERT WITNESS REQUIREMENT UNDER THE INDIAN CHILD WELFARE ACT

Rule 49.01. Timing – Temporary Emergency Custody

Absent extraordinary circumstances, temporary emergency custody of an Indian child shall not be continued for more than ninety (90) days without a determination by the court, supported by the testimony of at least one qualified expert witness that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Rule 49.02. Foster Care Placement

In the case of an Indian child, foster care placement shall not be ordered in the absence of testimony of at least one qualified expert witness, as defined in Rule 2.01(21), that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Rule 49.03. Termination of Parental Rights

In the case of an Indian child, termination of parental rights shall not be ordered in the absence of testimony of at least one qualified expert witness that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

2008 Advisory Committee Comment

Voluntary Versus Involuntary Termination of Parental Rights. Minnesota law distinguishes between voluntary and involuntary termination of parental rights. The

Indian Child Welfare Act (ICWA) does not distinguish between voluntary and involuntary termination of parental rights and, for that reason, Rule 49 simply restates the ICWA.

Qualified Expert Witness. Rule 49 recognizes the unique requirements for and qualifications of the qualified expert witness whose testimony must be presented to the court before the court may order foster care placement or termination of parental rights under the ICWA. Rule 49.03 is a restatement of the Bureau of Indian Affairs Guidelines for State Courts; Indian Child Custody Proceedings (hereinafter BIA Guidelines) regarding the timing of qualified expert testimony when there is an emergency removal of an Indian child. See BIA Guidelines, 44 Fed. Reg. 67,584, 67,589-90 at B.7(d) (Nov. 26, 1979). Compliance with the requirement for a qualified expert witness is best achieved by timely notice to the child's tribe, ensuring that the county agency works with the child's tribe to discuss the need for placement, identifying extended family who can serve as placement resources and support for the family, ensuring that culturally appropriate services are delivered to the family, and requesting qualified expert witness testimony from the tribe or elsewhere. When the court has determined that the ICWA applies, but the child's tribe has not participated in planning for the child, or when the child's tribe does not support placement of the child in foster care or termination or parental rights, the requirements of this rule may be met by a person who meets the criteria of Rule 2.01(21)(b) or (c).

RULE 50. PARENTAGE MATTER

Rule 50.01. Scope

Subd. 1. Parentage Matter and Juvenile Protection Matter Brought at the Same Time. The establishment of a parent and child relationship or the declaration of the nonexistence of the parent and child relationship shall occur pursuant to the requirements of Minnesota Statutes § 257.51–.74 in a separate file in family court. A parentage matter regarding the child may be brought at the same time as a juvenile protection matter.

Subd. 2. Original and Exclusive Jurisdiction in Juvenile Court. The juvenile court has original and exclusive jurisdiction under Minnesota Statutes § 260C.101 over any determinations or decisions under Minnesota Chapter 260C, including:

(a) removal of the child from the care of a parent and placement of the child on a temporary basis under Minnesota Statutes § 260C.178 or § 260C.201, subd. 1;

(b) removal of the child from the care of a parent and placement on a permanent basis under Minnesota Statutes § 260C.515; and

(c) review of any orders under Minnesota Statutes § 260C.519 and § 260C.521 or Minnesota Statutes § 260C.325, including review of the child's progress towards adoption and finalization of adoption under Minnesota Statutes § 260C.603–.637.

Subd. 3. Family Court Jurisdiction. When a parentage matter and a juvenile protection matter regarding the same child are pending at the same time, the family court has jurisdiction to determine parentage, the child's name, and child support. The family court shall

not make determinations regarding custody or parenting time until the juvenile court makes an order under Rule 50.06, subd. 2.

2014 Advisory Committee Comment

Children involved in juvenile protection matters who have two known, legal parents have significant advantages. When a child does not have a legal relationship with a parent, timely establishment of parentage helps ensure:

(1) that the rights and obligations of both parents are considered throughout the juvenile protection matter, including the agency's obligation, when the child is removed from one parent, to consider the other parent for day-to-day care of the child (see Minnesota Statutes § 260C.219);

(2) that maternal and paternal relatives are considered for placement in a timely manner when the child is in foster care (see Minnesota Statutes § 260C.212, subd. 2, and § 260C.221); and

(3) a timely permanency decision for a child in foster care through required planning and services for both parents and involvement of relatives (see Minnesota Statutes § 260.012; § 260C.001, subd. 2(b)(7)(ii); § 260C.219; and § 260C.221).

The purpose of Rule 50 is to help expedite decision-making in parentage matters in family court when a juvenile protection matter is pending. But, there are differences between juvenile protection and parentage matters. Judges, professionals, and families involved in both should understand the differences between the two, recognize the benefits to the child in making the two systems work together, and work to deliver known advantages of having two legal parents for the child. Significant dissimilarities in the two types of matters include:

(1) confidentiality and access to information under Minnesota Statutes § 257.70 (parentage matters) and access to information under Minnesota Statutes § 260C.171, subd. 2, and Rule 8 (juvenile protection matters);

(2) parties under Minnesota Statutes § 257.57 or § 257.60 (parentage matters) and Rules 21 and 22 (juvenile protection matters);

(3) the right to appointed counsel under Minnesota Statutes § 257.69 (parentage matters) and Minnesota Statutes § 260C.163, subd. 3 (juvenile protection matters); and

(4) procedural rules, including rules of discovery and rules governing appeals. The Rules of Civil Procedure apply to parentage matters under Minnesota Statutes § 257.65, but do not apply in Juvenile Protection Matters under Rule 3.01. The Rules of Civil Appellate Procedure apply to both types of matters, but are modified for juvenile protection matters under Rule 47.

Note that Rule 50.01 cites the entire Parentage Act, Minnesota Statutes § 257.51–74. However, provisions in Minnesota Statutes § 257.74 relating to adoption do not apply to children under state guardianship whose matters are governed by Minnesota Statutes § 260C.601–.637.

Rule. 50.02. Judicial Assignment and Calendaring

Subd. 1. Assignment and Calendaring. With the consent of the judicial officer assigned to the juvenile protection matter, a parentage matter commenced in family court under Minnesota Statutes § 257.51–.74 may be assigned to the same judicial officer assigned to the

juvenile protection matter regarding the same child. Hearings in the parentage matter may be calendared at the same time as hearings on the juvenile protection matter.

Subd. 2. Communication between Judicial Officers. When different judicial officers are assigned to handle a juvenile protection matter and a parentage matter regarding the same child, the judicial officers may communicate with each other as permitted under the Code of Judicial Conduct.

2014 Advisory Committee Comment

The Committee recognizes that juvenile protection matters and parentage matters are assigned and calendared differently in different counties and that the assignment of such matters to the same judicial officer as contemplated in Rule 50.02, subd. 1, may not be feasible in counties with separate family and juvenile divisions.

When the matters cannot be calendared together and are assigned to different judicial officers, subdivision 2 supports communication between the judicial officers responsible for handling each matter so decision-making is coordinated and timely.

In implementing the permission to communicate under subdivision 2, Rule 2.9 (3) of the Code of Judicial Conduct provides the following parameters:

> *A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.*

Rule 50.03. Applicable Statutes and Rules

Parentage matters under Minnesota Statutes § 257.51–.74 calendared at the same time as juvenile protection matters regarding the same child continue to be governed by:

(a) the provisions of Minnesota Statutes § 257.70 limiting access to hearings and records;
(b) the right to appointed counsel under Minnesota Statutes § 257.69;
(c) the Rules of Civil Procedures; and
(d) the Rules of Civil Appellate Procedure.

2014 Advisory Committee Comment

Rule 50.03 alerts judges, professionals, and others involved in juvenile protection matters and parentage matters of some of the major differences between juvenile protection and parentage matters.

Rule 50.04. Responsible Social Services Agency to Provide Copy of Petition and Orders to County Child Support Enforcement Agency

Subd. 1. Copy of Petition and Interim Orders Provided to Child Support Agency. The responsible social services agency shall provide a copy of the juvenile protection petition and any orders related to the status and progress of the case plan in the juvenile protection matter to the appropriate county child support enforcement agency whenever parentage is an issue in the juvenile protection matter.

Subd. 2. Copy of Orders to be Provided to County Child Support Enforcement Agency. The responsible social services agency shall provide a copy of any order listed in Rule 50.06, subd. 2 to the appropriate county child support enforcement agency when the order is issued regarding a child who is the subject of both a juvenile protection matter and a parentage matter.

2014 Advisory Committee Comment

Rule 50.04 assists the responsible social services agency to fulfill its obligation under Minnesota Statutes § 260C.219(a)(1) to require the nonadjudicated parent to cooperate with paternity establishment procedures as part of a required case plan. Requiring the responsible social services agency to provide a copy of the petition and orders from juvenile court to the appropriate county child support enforcement agency whenever there is a parentage issue in a juvenile protection matter will support the responsible social services agency and the county child support enforcement agency to work together with the family to resolve parentage issues.

Rule 50.05. No Extension of Permanency Timelines

The pendency of a parentage matter shall not extend the permanency timelines set forth in these rules and Minnesota Statutes § 260C.503.

Rule 50.06. Notification to Family Court of Juvenile Protection Orders.

Subd. 1. Required Notification. When a parentage matter is pending regarding a child who is the subject of a juvenile protection matter and the family court has not issued an order regarding child support, legal and physical custody, or parenting time, the court administrator shall send notification to the family court administrator and the assigned family court judicial officer of the filing of any order listed subdivision 2.

Subd. 2. Types of Juvenile Protection Orders for Which Notification to Family Court Required. When a parentage matter is pending regarding a child who is the subject of a juvenile protection matter, the court administrator shall send notification of the filing of any of the following juvenile protection orders to the family court administrator and the family court judicial officer:

(a) an order for guardianship to the commissioner of human services under Minnesota Statutes § 260C.515, subd. 3, or § 260C.325, in which case the family court may close the parentage file;

(b) an order for permanent legal and physical custody to a relative, including an order for one of the child's parents to be the permanent legal and physical custodian pursuant to Minnesota Statutes § 260C.515, subd. 4, in which case the family court may make a determination regarding child support in the parentage matter;

(c) an order for permanent custody to the agency pursuant to Minnesota Statutes § 260C.515, subd. 5, or temporary custody to the agency under Minnesota Statutes § 260C.515, subd. 6, in which case the family court may make a determination of child support in the parentage matter;

(d) unless preceded by an order under paragraphs (a) to (c):

(1) an order for dismissal of the child from the only or last pending juvenile protection matter under Minnesota Statutes § 260C.193, subd. 1, in which case the family court may make determinations regarding child support, legal and physical custody, and parenting time; or

(2) an order for termination of juvenile court jurisdiction over the child in the only or last pending juvenile protection matter under Minnesota Statutes § 260C.193, subd. 6(b) or (c), in which case the family court may make determinations regarding child support, legal and physical custody, and parenting time; and

(e) any other order required by the juvenile court judicial officer to be filed in a pending parentage matter in family court.

2014 Advisory Committee Comment

Rule 50.06 is intended to facilitate completion of a parentage matter when the family court judicial officer has deferred decisions in the parentage matter regarding child support, legal and physical custody, and parenting time during a pending juvenile protection matter. When these decisions have been deferred, the parentage matter is not considered complete (see Minnesota Statutes § 257.66, subd. 3). So that the parentage matter can be completed, Rule 50.06, subd. 2, requires notification of the specified orders issued in the juvenile protection file to be given to the family court administrator and family court judicial officer assigned to the matter. Local practice will dictate how this notification is made by juvenile court to family court. See also the 2014 Advisory Committee Comment to Rule 10.03, subd. 4.

The orders listed in Rule 50.06, subd. 2, are orders which:

(1) dispose of all issues in the pending parentage matter (an order for guardianship to the commissioner of human services based on termination of parental rights or consent to adopt);

(2) dispose of some of the issues in the pending parentage matter (an order for permanent legal any physical custody to a relative, including a parent, or permanent or temporary custody to the agency that resolves custody and parenting time issues but does not address child support); or

(3) do not dispose of any of the pending issues in the parentage matter (an order for termination or dismissal of jurisdiction).

The required filing of the juvenile protection orders listed in Rule 50.06, subd. 2, and notice to the judicial officer hearing the parentage matter, permits the family court judicial officer to decide any remaining issues regarding child support, legal and physical custody, or parenting time in the parentage matter.

RULE 51. JURISDICTION TO AGE 18 AND CONTINUED REVIEW AFTER AGE 18

Rule 51.01. Continuing Jurisdiction to Age 18

Unless terminated by the court pursuant to Minnesota Statutes § 260C.193, subd. 6(b), jurisdiction of the court shall continue until the child becomes eighteen (18) years of age.

Rule 51.02. Continuing Jurisdiction to Age 19

The court may continue jurisdiction over an individual and all other parties to the proceeding to the individual's 19th birthday when continuing jurisdiction is in the child's best interest under Minnesota Statutes. § 260C.193, subd 6(c).

Rule 51.03. Continuing Jurisdiction and Review after Child's Eighteenth Birthday

Subd. 1. Jurisdiction over Children in Foster Care. Jurisdiction over a child in foster care pursuant to Minnesota Statutes § 260C.451 shall continue to age twenty-one (21) for the purpose of conducting the reviews required under Minnesota Statutes § 260C.203; § 260C.317, subd. 3; or § 260C.515, subds. 5 or 6.

Subd. 2. Orders for Guardianship or Legal Custody Terminate. Any order establishing guardianship under Minnesota Statutes § 260C.325 and § 260C.515, subd. 3, any legal custody order under Minnesota Statutes § 260C.201, subd. 1, and any order for legal custody associated with an order for permanent custody under Minnesota Statutes § 260C.515, subd. 5, terminates on the child's 18th birthday. The responsible social services agency has legal responsibility for the individual's placement and care when the matter continues under court jurisdiction pursuant to Minnesota Statutes § 260C.193 or when the individual and the responsible agency execute a voluntary placement agreement pursuant to Minnesota Statutes § 260C.229.

Subd. 3. Notice of Termination of Foster Care. When a child in foster care between the ages of 18 and 21 ceases to meet one of the eligibility criteria of Minnesota Statutes § 260C.451, subd. 3a, termination of the child's ability to remain in foster care shall be addressed according to the requirements of Minnesota Statutes § 260C.451, subd. 8.

Subd. 4. Required Notice to Child. Jurisdiction over a child in foster care pursuant to Minnesota Statutes § 260C.451 shall not be terminated without giving the child notice of any motion or proposed order to terminate jurisdiction and an opportunity to be heard on the appropriateness of the termination.

Subd. 5. Terminating Jurisdiction when Child Age 18 or Older Leaves Foster Care. When a child age 18 or older in foster care pursuant to Minnesota Statutes § 260C.451 asks to leave foster care or actually leaves foster care, the court may terminate its jurisdiction.

Subd. 6. Review after Re-entry into Foster Care after Age 18. When a child re-enters foster care after age eighteen (18) pursuant to Minnesota Statutes § 260C.451, subd. 6, the child's placement shall be pursuant to a voluntary placement agreement with the child under Minnesota Statute § 260C.229. If the child is not already under court jurisdiction pursuant to Minnesota Statutes § 260C.193, subd. 6, review of the voluntary placement agreement between the child and the agency shall be according to Minnesota Statutes § 260C.229(b).