

MINNESOTA RULES OF ADOPTION PROCEDURE
WITH AMENDMENTS EFFECTIVE AS OF JULY 1, 2014

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RULE 1. SCOPE AND PURPOSE

Rule 1.01. Scope

These rules govern the procedure in the juvenile courts of Minnesota for all adoptions pursuant to Minnesota Statutes § 259.20–.89 and adoptions of children under the guardianship of the commissioner of human services pursuant to Minnesota Statutes § 260C.601–.637. These rules do not apply to a change of name under Minnesota Statutes § 259.10 –.13. Rules 39, 42, 43, and 44 regarding contested adoptions do not apply to children under the guardianship of the commissioner of human services.

Rule 1.02. Purpose

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

- (a) the best interests of adopted persons are met in the planning and granting of an adoption, including, in the adoption of a child, an individualized determination of the child’s needs and how the adoptive placement will serve the child’s needs;
- (b) there is recognition of the diversity of Minnesota’s population and the diverse needs of persons affected by adoption; and
- (c) the processes are culturally responsive.

2004 Advisory Committee Comment

Rule 1.02 reflects the policy set forth in Minn. Stat. § 259.20 and § 259.29. The purpose statement also 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, stable, permanent home for 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, subd. 3, to be the biological father of the child.

(2) **“Adoption case records”** means all records of the court regarding a particular adoption matter, including all records filed with the court, all records maintained by the court, and all reporter’s notes and tapes, electronic recordings, and transcripts of hearings and trials relating to the adoption matter.

(3) **“Adult adoption”** means the adoption of a person at least 18 years of age.

(4) **“Adoption matter”** means any proceeding for adoption of a child or an adult in the juvenile courts of Minnesota, including a stepparent adoption, relative adoption, direct placement adoption, intercountry adoption, adoption resulting from a juvenile protection matter, proceeding under Minnesota Statutes § 260C.601–.637, and any other type of adoption proceeding under Minnesota Statutes Chapter 259.

(5) **“Adoption placement agreement”** has the meaning given under Minnesota Statutes § 260C.603, subd. 3.

(6) **“Adoptive placement”** has the meaning given under Minnesota Statutes § 260C.603, subd. 5.

(7) **“Agency,”** as defined in Minnesota Statutes § 259.21, subd. 6, and as referenced in Minnesota Statutes § 245A.02 to § 245A.16 and § 260C.007, subd. 2, means an organization or department of government designated or authorized by law to place children for adoption or any person, group of persons, organization, association, or society licensed or certified by the commissioner of human services to place children for adoption, including a Minnesota federally recognized tribe.

(8) **“Birth relative,”** for purposes of entering into a communication or contact agreement pursuant to Rule 34.01, subd. 2, means a parent, stepparent, grandparent, brother, sister, uncle, or aunt of a child. This relationship may be by blood, adoption, or

marriage. “Birth relative” of an Indian child 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, also includes any person age eighteen (18) or older who is the Indian child’s niece, nephew, first or second cousin, brother-in-law, or sister-in-law as provided in the Indian Child Welfare Act, 25 U.S.C. § 1903(2).

(9) **“Child”** means a person under the age of 18 years.

(10) **“Child placing agency”** means a private agency making or supervising an adoptive placement.

(11) **“Commissioner”** means the commissioner of human services of the State of Minnesota or any employee of the Department of Human Services to whom the commissioner has delegated authority regarding children under the commissioner’s guardianship.

(12) **“Contested adoption”** means an adoption matter where:

- (a) there are two or more adoption petitions regarding the same child;
- (b) a party has filed a written challenge to the adoption; or
- (c) a legal custodian or legal guardian who is not a parent has withheld

consent.

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

(14) **“Direct placement adoption”** means the placement of a child by a biological parent or legal guardian, other than an agency, under the procedure for adoption authorized by Minnesota Statutes § 259.47.

(15) **“Father.”** See “adjudicated father” and “putative father” as defined in this Rule.

(16) **“Indian child,”** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(1)(4), and modified by Minnesota Statutes § 260.755, subd. 8, means any

unmarried person who is under age eighteen (18) and is either (1) a member of an Indian tribe or (2) eligible for membership in an Indian tribe.

(17) **“Indian custodian,”** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(1)(6), and Minnesota Statutes § 260.755, subd. 10, means an Indian person who has legal custody of an Indian child pursuant to tribal law or custom or under State law, or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

(18) **“Indian tribe,”** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(1)(8), and Minnesota Statutes § 260.755, subd. 12, means an Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any band under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1602(c).

(19) **“Individual related to child,”** as defined under Minnesota Statutes § 245A.02, subd. 13, means a spouse, a parent, a biological or adopted child or stepchild, a stepparent, a stepbrother, a stepsister, a niece, a nephew, an adoptive parent, a grandparent, a sibling, an aunt, an uncle, or a legal guardian. Distinguish “relative” under Rule 2.01(28).

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

(21) **“Legal guardian”** means a person who is the court-appointed legal guardian of the child pursuant to Minnesota Statutes § 260C.325, subs. 1 and 3, or Minnesota Statutes Chapter 525 or an equivalent law in another jurisdiction.

(22) **“Local social services agency”** means the agency in the county of the petitioner’s residence.

(23) **“Parent”** means the biological or adoptive parent of a child, including an adjudicated father. Pursuant to Minnesota Statutes § 260.755, subd. 14, “parent” also means the biological parent of an Indian child, or any Indian person who has lawfully adopted an Indian child, including a person who has adopted a child by tribal law or

custom. “Parent” does not mean an unmarried father whose paternity has not been acknowledged or established.

(24) **“Petitioner”** means a person, with a spouse, if any, petitioning for the adoption of any person pursuant to Minnesota Statutes § 259.20–.89. “Petitioner” also means the responsible social services agency petitioning for the adopting parent to adopt a child under state guardianship pursuant to Minnesota Statutes § 260C.623.

(25) **“Placement”** means the transfer of physical custody of a child from a biological parent, legal guardian, or agency with placement authority to a prospective adoptive home.

(26) **“Placement activities”** means any of the following:

- (a) placement of a child;
- (b) arranging or providing short-term foster care pending an adoptive placement;
- (c) facilitating placement by maintaining a list, in any form, of biological parents or prospective adoptive parents;
- (d) completing or updating a child’s social and medical history as required under Minnesota Statutes § 259.41 and § 260C.611;
- (e) conducting an adoption study;
- (f) witnessing consents to an adoption; or
- (g) engaging in any activity listed in clauses (1) to (6) for purposes of fulfilling any requirements of the Interstate Compact on the Placement of Children, Minnesota Statutes § 260.851.

(27) **“Putative father”** means a man, including a male who is less than eighteen (18) years of age, who may be a child’s father, but who:

- (a) is not married to the child’s mother on or before the date that the child was or is to be born; and
- (b) has not established paternity of the child according to Minnesota Statutes § 257.57 in a court proceeding before the filing of an adoption petition regarding the child; or

(c) has not signed a recognition of parentage under Minnesota Statutes § 257.75, which has not been revoked or vacated.

(28) **“Relative”** 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, any person age eighteen (18) or older who is the Indian child’s grandparent, aunt, uncle, brother, sister, niece, nephew, first or second cousin, brother-in-law, sister-in-law, or step-parent as provided in the Indian Child Welfare Act of 1978, 25 U.S.C. § 1903(2). Distinguish “individual related to child” under Rule 2.01(19).

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

(30) **“Working day”** refers solely to revocation of consents and means Monday through Friday, excluding any holiday as defined under Minnesota Statutes § 645.44, subd. 5.

(31) **“Intercountry adoption”** means adoption of a child by a Minnesota resident under the laws of a foreign country or the adoption under the laws of Minnesota of a child born in another country.

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 adoption matters.

Rule 3.02. Rules of Evidence

The Minnesota Rules of Evidence apply to adoption matters.

Rule 3.03. Rules of Guardian Ad Litem Procedure

The Minnesota Rules of Guardian Ad Litem Procedure apply to adoption matters.

Rule 3.04. Indian Child Welfare Act and Other Minnesota Statutes

Adoption matters concerning an Indian child shall be governed by the Indian Child Welfare Act, 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 3.05. Court Interpreter Statutes, Rules, and Court Policies

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

Rule 3.06. Interstate Compact on the Placement of Children

Adoption matters concerning children crossing state lines for the purpose of adoption are subject to the provisions of the Interstate Compact on the Placement of Children, Minnesota Statutes § 260.851.

Rule 3.07. Human Services Licensing Act

The Human Services Licensing Act, Minnesota Statutes § 245A.03, applies to adoption matters.

2004 Advisory Committee Comment

The Human Services Licensing Act establishes that only Minnesota licensed adoption agencies or county social services agencies are authorized

to complete adoption “placement activities” defined under Rule 2.01(v).
Minn. Stat. § 245A.03, subds. 1 and 2.

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

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

RULE 4. TIME; TIMELINES

Rule 4.01. Computation of Time

Unless otherwise provided by statute or these rules, the day of the act or event from which the designated period of time begins shall not be included in the computation of time. The last day of the period shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday. When a period prescribed or allowed is three (3) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in these rules, “legal holiday” includes New Year’s Day, Martin Luther King’s Birthday, Washington’s Birthday (Presidents’ Day), Memorial Day, Independence Day, Labor Day, Veteran’s Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Day, and any other day designated as a holiday by the President, Congress of the United States, or by the State. For purposes of calculating time for the revocation of consent under Rule 33, the definition of “working day” under Rule 2.01(z) applies.

Rule 4.02. Additional Time After Service by Means Other Than Mail

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 paper served by mail, three (3) days shall be

added to the prescribed period. If service is made by any means other than 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 5. CONTINUANCES

Rule 5.01. Findings

Upon its own motion or motion of a party, the court may continue a scheduled hearing or trial to a later date. To grant a continuance, the court shall make written findings or oral findings on the record that the continuance is necessary for the accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown. A final hearing pursuant to Rule 41 and a trial pursuant to Rule 44 shall be commenced and completed not sooner than ninety (90) days after the child is placed, unless there is a waiver of the residency requirement pursuant to Rule 35, but not later than ninety (90) days after the petition is filed.

Rule 5.02. Notice of Continuance

The court shall provide written notice to the parties 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 Minnesota Statutes § 259.20 to § 259.89.

RULE 6. REFEREES AND JUDGES

Rule 6.01. Referee Authorization to Hear Matter

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

Rule 6.02. Objection to Referee Presiding Over Matter

A party may object to having a referee preside over an adoption matter. A party's right to object shall be deemed waived unless the objection is in writing, filed with the court, and served upon all other parties 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 adoption matter.

Rule 6.03. Removal of Particular Referee

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

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

Subd. 3. Assignment of Another Referee. Upon the filing of a notice to remove a particular referee, or if a party makes an affirmative showing of prejudice against a

substitute referee, the chief judge of the judicial district shall assign another juvenile court referee or a judge to hear the matter.

2004 Advisory Committee Comment

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

Rule 6.04. Transmittal of Referee's Findings and Recommended Order

Subd. 1. Transmittal. Upon the conclusion of a hearing, the referee shall provide to a judge the written findings and recommended order, including the findings of fact, conclusions of law, order for judgment, and adoption decree required pursuant to Rule 45. 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, 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 6.05. 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 within five (5) days of the filing of the referee's findings and recommended order. Upon the filing of a motion for review, the court administrator shall notify each party of the name of the judge to whom the review has been assigned.

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

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 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.

2004 Advisory Committee Comment

If a party 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 6.06. 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 three (3) days of the transmittal of the findings and proposed order.

Rule 6.07. 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 adoption matter if that judge is interested in its determination or if that judge might be excluded for bias from acting as a juror in the matter. If there is no other judge of the district who is qualified, the chief judge shall immediately notify the Chief Justice of the Minnesota Supreme Court.

Subd. 3. Notice to Remove.

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

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

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

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

RULE 7. ACCESS TO ADOPTION CASE RECORDS AND BIRTH RECORD INFORMATION

Rule 7.01. Access to Adoption Case Records Limited

Adoption case records and files maintained by the court relating to adoption matters shall not be available for inspection or copying by any person except:

- (a) the court and court personnel;
- (b) the Commissioner of Human Services or the Commissioner's representatives, including the responsible social services agency, local social services agency, or child placing agency;
- (c) an agency acting under Minnesota Statutes § 259.47, subd. 10; or
- (d) upon an order of the court expressly permitting inspection and copying pursuant to a petition filed as provided in Rule 7.02.

2004 Advisory Committee Comment

Rule 7.01 mirrors Minn. Stat. § 259.61, which does not permit party access to adoption case records or court files relating to adoption matters.

Rule 7.02. Petition to Access Adoption Case Records and Birth Record Information

Subd. 1. Content of Petition. A person not listed in Rule 7.01 may only access adoption case records or birth record information relating to an adoption matter by filing with the court in the county which issued the final adoption decree a petition which sets forth the reasons why the person is requesting access to the case records or birth record information and shall include the following, if known:

- (a) the procedural history of the adoption proceeding, including the date of adoption or of adoptive placement;
- (b) the names and addresses of all persons who may be affected by the request;
- (c) a factual statement about how granting the petitioner access to the adoption case records would be of greater benefit than not granting access;
- (d) the particular information sought, including whether the request for disclosure includes the name of the biological parent;
- (e) the date the petitioner contacted the Department of Health requesting identifying information on a birth record, if the petitioner is requesting identifying information in a birth record; and
- (f) the legal basis, if any, given to the petitioner by the Department of Health, the Department of Human Services, or agency responsible for supervising the adoptive placement for the Department's or agency's refusal to disclose the requested information.

Subd. 2. Service of Petition.

(a) **Request for Access to Identifying Information in Birth Record – Commissioner of Health.** Where access to identifying information in the birth record is sought, the court administrator shall serve the petition on the Commissioner of Health by U.S. mail. Upon service of the petition on the Commissioner of Health, the Commissioner shall supply to the court any affidavit of notification it has from the Department of Human Services pursuant to Minnesota Statutes § 259.89 and any other information the Commissioner of Health has regarding the legal basis for its refusal to disclose the requested information, including whether:

(1) the biological parent has consented to disclosure of identifying information in the adoption record or birth record;

(2) the biological parent has filed an affidavit objecting to the release of identifying information which remains unrevoked; and

(3) the biological parent is living or deceased.

(b) Request for Access to Agency Records – Agency Supervising Adoptive Placement. When access to records of the agency responsible for supervising the adoptive placement is requested, the court administrator shall serve the petition on the director of the agency by U.S. mail.

(c) Other Persons. The court may order the petition to be served on such other persons as are necessary to its determination regarding whether nondisclosure of the requested information is of greater benefit than disclosure. If the court orders service upon the biological parent when the biological parent’s address is known to the Department or the agency, the court may order the Department or the agency to disclose the biological parent’s name and address to the court administrator who shall maintain the information in a confidential manner and cause the petition to be served on the biological parent in a confidential manner by certified U.S. mail designated “deliver to addressee only.”

Subd. 3. Access to Information – Other Agencies. The court shall forward data and information to agencies and others as required by statute or these rules.

Subd. 4. Tribal Affiliation Information. Upon application by an Indian person who has reached the age of eighteen (18) and who was the subject of an adoptive placement, the court which entered the final adoption decree shall inform such individual of the tribal affiliation, if any, of the individual’s biological parents and provide such other information as may be necessary to protect any rights flowing from the individual’s tribal relationship.

Subd. 5. Counsel Sharing Record with Client. Unless otherwise expressly ordered by the court, counsel for a party may only share adoption case records with that party consistent with state and federal access rules.

2004 Advisory Committee Comment

Rule 7.01, subd. 4, sets forth the substantive law of the Indian Child Welfare Act.

Rule 7.03. Stepparent Adoption

In a stepparent adoption, upon written request from a parent whose parental rights would be or have been severed by the adoption under Minnesota Statutes § 259.59, the court may confirm in writing whether or not the adoption decree has been granted, and if so, the date of the adoption decree.

Rule 7.04. Disclosure to Employer and Military Prohibited

Adoption case records and court files relating to adoption matters shall not be inspected, copied, disclosed, or released to the military services or to any present or prospective employer of the adopted person.

Rule 7.05. Protective Order

Upon motion pursuant to Rule 15, and for good cause shown, the court may at any time issue a protective order regarding any adoption case record or portion of such a record.

Rule 7.06. Suitability of Proposed Adoptive Parents

Pursuant to Minnesota Statutes § 259.53, subd. 3(b), a judge of the court having jurisdiction of the adoption matter shall upon request disclose to a party to the proceedings or the party's counsel any portion of a report or record that relates only to the suitability of the proposed adoptive parents. In this disclosure, the judge may withhold

the identity of individuals providing information in the report or record. When the judge is considering whether to disclose the identity of individuals providing information, the agency with custody of the report or record shall be permitted to present reasons for or against disclosure.

Rule 7.07. Release of Identifying Information

Subd. 1. Request for Identifying Information. After first accessing or attempting to access the requested information pursuant to Minnesota Statutes §§ 259.83 and 259.89, an adopted person who is age nineteen (19) or older may petition the court for release of identifying information about a biological parent.

Subd. 2. Notice to Biological Parent. Upon petition for release of identifying information under Rule 7.02, including service of the petition on the agency that supervised the adoptive placement, the court may order such agency to locate and identify the biological parent's current address, including contacting the biological parent in a confidential manner as required under Minnesota Statutes § 259.83. Pursuant to Minnesota Statutes § 259.83, the agency may charge the petitioner a reasonable fee for its efforts to locate the biological parent. Not later than ninety (90) days after the order, or sooner if exigent circumstances exist, the agency shall inform the court of the results of the search.

Subd. 3. Biological Parent's Response to Notice.

(a) **Biological Parent's Consent.** If the biological parent has been located and consents to release of the identifying information, the petitioner shall advise the court when the requested identifying information is received at which time the court shall dismiss the petition.

(b) **Biological Parent's Refusal.** If the biological parent refuses release of identifying information, including through an affidavit objecting to the release of identifying information under Minnesota Statutes § 259.83, the agency shall inform the court of the parent's refusal. If the parent's address is known, it shall be provided to the court

administrator who shall maintain it in a confidential manner. Upon receipt of the parent's address, the court shall serve a copy of the petition requesting release of information and any supporting documentation on the biological parent by certified U.S. Mail designated "deliver to addressee only".

(c) **Biological Parent Cannot be Located.** If the agency is unable to locate the biological parent's address, the agency shall inform the court about the efforts made to locate the parent's address. The court may then either direct the agency to conduct further search or grant the request for release of identifying information.

Subd. 4. Objection to Release of Identifying Information. A biological parent objecting to the release of identifying information shall have the opportunity to present evidence to the court that nondisclosure of identifying information is of greater benefit to the biological parent than disclosure to the adopted person. Such an objection shall be filed with the court within thirty (30) days of the contact and such objection shall be maintained by the court in a confidential manner.

Rule 7.08. Access to Original Birth Record Information; Decision

Subd. 1. Adoptions Prior to August 1, 1977. A person adopted prior to August 1, 1977, may petition the court for disclosure of the original birth record. The petition shall include information necessary for the court to make the decision required in subdivision 2. Pursuant to Minnesota Statutes § 259.89, for adoptions occurring prior to August 1, 1977, and after consideration of the interests of all known persons involved, if the biological parent is deceased and the court determines that disclosure of the birth record information would be of greater benefit than nondisclosure, the court shall grant the petition and order the Commissioner of Health to disclose identifying information including the name of the biological parent on the original birth record.

Subd. 2. Adoptive Placements After August 1, 1982. Pursuant to Minnesota Statutes § 259.83 for adoptive placements made on or after August 1, 1982, and after

consideration of the interests of all known persons involved, if a living biological parent has filed an unrevoked affidavit objecting to the release of identifying information and the court determines that disclosure of the birth record information would be of greater benefit than nondisclosure, the court shall grant the petition and order the agency responsible for supervising the adoptive placement to disclose identifying information retained by the agency including the name of the biological parent, the biological parent's last known address, the birth date, and birth place of the biological parent named on the adopted person's original birth record.

2004 Advisory Committee Comment

In many situations where adult adopted persons seek information about their adoptions including the names of biological parents, the Department of Health or the agency responsible for supervising the adoptive placement have legal authority to release the requested information. The instances where the Department of Health and responsible agencies do not have such legal authority are covered by Rule 7.08.

Rule 7.09. Information to Adopted Persons and Others About Access to Birth and Adoption Records

Upon inquiry from an adopted person, a biological or adopted parent, or an adult genetic sibling, the court administrator shall give information about access to information about original birth records or adoption records as provided in Minnesota Statutes §§ 259.83 and 259.89 on an information sheet prepared by the State Court Administrator's Office.

RULE 8. PRESENCE AT HEARINGS

Rule 8.01. Attendance at Hearings

Only the parties, their legal counsel, their witnesses, persons entitled to notice pursuant to Rule 31, and any other persons authorized by the court may attend hearings relating to adoption matters.

Rule 8.02. Absence Does Not Bar Hearing

The absence from a hearing of any person who is entitled to notice of the hearing, except the petitioners, shall not prevent the hearing from proceeding, provided appropriate notice has been served.

Rule 8.03. Exclusion of Persons Who Have Right to Attend Hearings

In any hearing the court may temporarily exclude the presence of any person other than counsel or the guardian ad litem when it is in the best interests of the child to do so. If a person other than counsel or the guardian ad litem engages in conduct that disrupts the court, the person may be excluded from the courtroom. The exclusion of the person shall not prevent the court from proceeding with the hearing.

Rule 8.04. Record of Exclusion and Right to Continued Participation

Any exclusion of a person who has the right to attend a hearing shall be noted on the record and the reasons for the exclusion given. The counsel and guardian ad litem of the excluded person have the right to remain and participate in the hearing.

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 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.

2004 Advisory Committee Comment

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

Rule 9.02. Disclosure

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

RULE 10. ORDERS

Rule 10.01. Written or Oral Orders

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 44.06, all orders shall be filed with the court administrator within fifteen (15) days of the conclusion of the hearing. An order shall remain in full force and effect pursuant to law or until the occurrence of any of the following:

- (a) issuance of an inconsistent order; or
- (b) the order ends pursuant to the terms of the order.

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. Delivery; Mailing

Subd. 1. Court Orders. Court orders shall be delivered at the hearing or mailed by the court administrator to each party and such other persons as the court may direct. If a party is represented by counsel, delivery or service shall be upon such counsel. Filing and mailing of an order by the court administrator shall be accomplished within ten (10) days of the date the judicial officer delivers the order to the court administrator.

Subd. 2. Adoption Decree. The findings of fact, conclusions of law, order for judgment, and adoption decree issued pursuant to Rule 45 shall be delivered at the hearing or mailed by the court administrator to:

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

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

Subd. 3. Replacement Birth Record. Upon the court administrator's receipt of the fee for the replacement birth record made payable to the Department of Health or equivalent agency in another state, the court administrator shall complete the certificate of adoption and send it to the Commissioner of Health in Minnesota or to the equivalent agency in any other state so that a replacement birth record may be generated. Any fee

required by the Department of Health or equivalent agency in another state for a replacement birth record shall be paid by the petitioner. Any such fee shall be submitted by the petitioner to the court administrator at the time the request for a replacement birth record is made and shall be forwarded by the court administrator to the Department of Health.

Rule 10.04. Notice of Filing of Order and Adoption Decree

Each order or adoption decree delivered or mailed pursuant to Rule 10.03 shall be accompanied by a notice of filing of order. 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 shall be available only to the parties or their counsel if represented.

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 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 by telephone or interactive video where testimony is not required and to resolve procedural matters.

Rule 12.02. Hearings and Taking Testimony

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

Rule 12.03. In Court Appearance Not Precluded

This rule shall not preclude a party 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, the court administrator shall issue a subpoena for a witness in an adoption matter pending before the court.

Rule 13.02. Form; Purpose; Notice

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

Subd. 2. Purpose. A subpoena shall command each person to whom it is directed to, at a specified time and place:

(a) attend and give testimony at a final hearing pursuant to Rule 41, a deposition pursuant to Rule 17, or trial pursuant to Rule 44;

(b) bring the child to court; or

(c) 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 13.07.

Rule 13.03. Service

A subpoena may be served by the sheriff, a deputy sheriff, or any other person over the age of eighteen (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 a person of suitable age and discretion residing at such abode. A subpoena may be served by mail upon agreement of the witness.

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 of motion and motion to the deponent, request an order requiring compliance with the subpoena.

Rule 13.06. Subpoena for Taking Deposition; Place of Deposition

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 a deposition 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 designated by order of the court. A nonresident of the state may be required to attend in any county of the state.

Rule 13.07. Expenses

Subd. 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, move for an order directing the amount of such compensation at any time before the taking of the deposition.

Rule 13.08. 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 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.

RULE 14. CONTEMPT

Rule 14.01. Initiation

Contempt proceedings shall be initiated upon the alleged contemnor by personal service of an order to show cause, 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. When possible, the supporting affidavit and the responsive affidavit shall contain paragraphs numbered to correspond to the paragraphs of the motion.

Rule 14.03. Hearing

The alleged contemnor shall appear in person before the court to be afforded an 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 shall be served upon the defaulting party, unless the person is shown to be avoiding service.

Subd. 2. Writ of Attachment or Bench Warrant. The writ of attachment or bench warrant 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 or bench warrant 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. Motions may be made for any purpose authorized by statute or these rules.

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;
- (e) be accompanied by a supporting affidavit; and
- (f) be accompanied by a memorandum of law, if appropriate.

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 to Requirement of Written Motion. Unless another party objects, a party 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 Motion

Subd. 1. Upon Whom. 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, on all parties and any other persons designated by the court.

Subd. 2. How Made. Service of a motion may be made by personal service, by mail, or by transmitting a copy by facsimile transmission.

Subd. 3. Time.

(a) **Motion.** Except for motions pursuant to Rule 29, no motion shall be heard until the moving party serves a copy of the following documents on the other parties and files the original with the court administrator at least fourteen (14) days prior to the hearing:

- (1) notice of motion and motion;
- (2) proposed order;
- (3) any affidavits and exhibits to be submitted in conjunction with the motion; and
- (4) any memorandum of law the party intends to submit.

(b) Response. Any party responding to the motion shall serve a copy of the following documents on the moving party and other interested parties and shall file the original with the court administrator at least seven (7) days prior to the hearing:

- (1) any memorandum of law the party intends to submit; and
- (2) any relevant affidavits and exhibits.

(c) Reply Memorandum. The moving party may submit a reply memorandum, limited to new legal or factual matters raised by an opposing party's response to a motion, by serving a copy of such memorandum upon the party or parties and filing the original with the court administrator at least three (3) days before the hearing.

Rule 15.03. Ex Parte Motion

A motion may be made ex parte without a hearing when permitted by statute or these rules. Upon issuance of an ex parte order, a hearing shall be scheduled at the earliest possible date upon the request of a party.

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

Rule 16.01. Signing of Pleadings, Motions and Other Documents

Subd. 1. Party Represented by an Attorney. When a party is represented by an attorney, every pleading, motion, and other similar document filed with the court shall be personally signed by at least one attorney of record in the attorney's individual name and shall state the attorney's address, telephone number, and attorney registration number.

Subd. 2. Party Not Represented by an Attorney. A party who is not represented by an attorney shall personally sign the pleading, motion, or other similar document filed with the court and shall state the party's address and telephone number. If a party asserts that providing the address and telephone number is not in the best interests of the child, the address and telephone number may be provided to the court in a

separate informational statement and shall not be accessible to the public or to the parties. Upon notice of motion and motion, the court may disclose the address and telephone number as it deems appropriate.

Subd. 3. Signing Constitutes Certification. Except when otherwise specifically provided by rule or statute, pleadings need not be verified by affidavit or accompanied by affidavit. The signature of an attorney or party constitutes a certification that:

- (a) the pleading, motion, or other document has been read;
- (b) to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, the pleading, motion, or other document is well-grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
- (c) it is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

When authorized by order of the Minnesota Supreme Court, the filing, serving, or submitting of a document using an E-Filing system established by order of the court constitutes certification of compliance with the signature requirements of these rules.

Advisory Committee Comment-2012 Amendment

Rule 16.01, subd. 3, is amended to add the last paragraph, 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. 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, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, including sanctions permitted pursuant to Rule 11 of the Minnesota Rules of Civil Procedure, 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. Applicability

These discovery rules apply only to contested adoption matters and only to the extent permitted and upon the conditions ordered by the court. To the extent that there are any discovery issues that arise out of an uncontested adoption matter, any requests for information shall be addressed to the court which shall determine whether such discovery will be allowed and, if so, in what form and whether any protective order shall be issued.

Rule 17.02. Regulation of Discovery

Discovery in adoption matters shall be governed by Rules 26 through 37 of the Minnesota Rules of Civil Procedure, except discovery for a contested adoptive placement under Minnesota Statutes § 260C.607 is governed by the Rule 17 of the Rules of Juvenile Protection Procedure.

2014 Advisory Committee Comment

Rule 17.02 provides clarification that discovery in the case of a contested adoptive placement for a child under the guardianship of the commissioner of human services is governed by the Rules of Juvenile

Protection Procedure. This results from changes to the requirements of Minnesota Statutes Chapters 259 and 260C. In 2012, most adoption procedures regarding children under the guardianship of the commissioner were moved from Minnesota Statutes Chapter 259 to Minnesota Statutes Chapter 260C. The relevant provisions in Minnesota Statutes Chapter 260C include:

1. Requirements for reasonable efforts to finalize the adoption (see Minnesota Statutes § 260C.605);
2. Strengthening provisions related to concurrent permanency planning, especially:
 - a. early court review of requirements for ensuring the child's relatives are notified of the child's foster care placement and of the need for a home, including the potential need for a legally permanent home if the child cannot return to the parent (see Minnesota Statutes § 260C.221); and
 - b. giving relatives the right to notice of court hearings and to ask to be considered as a placement resource for the child (see Minnesota Statutes § 260C.221, § 260C.204, and § 260C.607); and
3. Clearly articulated state policy giving the responsible social services agency exclusive authority to make the adoptive placement while also providing opportunities for relatives or foster parents who want to be considered for placement to ask the court to direct the agency to take appropriate action to consider them and to challenge the agency's decision regarding the adoptive placement (see Minnesota Statutes § 260C.204 and § 260C.607).

The purpose of the statutory amendments regarding a child under guardianship of the commissioner of human services and accompanying provisions strengthening relative search and concurrent permanency

planning requirements is to help reduce the length of time the child is in foster care and the number of moves the child experiences.

Rule 17.01 of the Minnesota Rules of Juvenile Protection Procedure provides for 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 in a motion under Minnesota Statutes § 260C.607 is the entity that brought the action making the child a ward of the commissioner of human services because the motion is brought in the context of the review of progress towards adoption. In the event that access to the file and materials in the petitioner's possession does not provide sufficient information for the movant, Rule 17.04 of the Rules of Juvenile Protection Procedure allows the judge to order additional discovery, including depositions.

Providing that the discovery rule in the Rules of Juvenile Protection Procedure applies to motions challenging adoptive placement decisions of the responsible agency made under Minnesota Statutes Chapter 260C accomplishes two things:

1. It strikes a balance between the need for expedited decision-making and the child's need for stability with the parties' need to access information, especially when the party has had the ongoing right to raise issues about the agency's placement decision from very early in the proceedings; and

2. It continues the Rules of Juvenile Protection Procedure in effect until an adoption petition is filed. This is a bright line that helps avoid confusion about which rules or parts of rules (the Juvenile Protection Rules or Adoption Rules) apply to proceedings up to the point an adoption petition is filed.

RULE 18. DEFAULT

Rule 18.01. Procedure

If a party fails to appear, as that term is defined in Rule 5.01 of the Minnesota Rules of Civil Procedure, after being properly served with a notice pursuant to Rule 31, the court may take testimony in support of the petition. If the court determines that the petition is proven in accordance with the applicable standard of proof and the adoption is in the best interests of the child, the court shall enter an order granting the relief sought. The court shall not grant a default if a party was not served with notice within the time period set forth in Rule 31. The court shall not grant a default regarding the issue of consent to adopt.

2004 Advisory Committee Comment

If consent is required and has not been given, the procedure that must be followed is to initiate a termination of parental rights proceeding pursuant to the Minnesota Rules of Juvenile Protection Procedure.

RULE 19. SETTLEMENT

Rule 19.01. Generally

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

Rule 19.02. Partial Settlement

The parties may enter into a settlement of one or more issues and shall proceed to final hearing pursuant to Rule 41. Any remaining contested issues shall proceed to trial pursuant to Rule 44.

Rule 19.03. Content of Settlement Agreement

Any settlement agreement shall include information that identifies:

- (a) the parties to the agreement;

- (b) the attorneys for the parties, if any;
- (c) the judicial officer receiving the settlement;
- (d) the date, time, and place the settlement was reached;
- (e) any and all necessary statutory grounds and factual allegations to support the settlement agreement; and
- (f) signatures and notarizations of all parties to the settlement.

Rule 19.04. 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 settlement agreement and voluntarily consents to the agreement. If the court approves the settlement agreement, it shall issue an order, judgment, or decree as appropriate. If the court rejects the settlement agreement, it shall advise the parties of this decision in writing or on the record and the matter shall proceed as any other contested adoption matter.

RULE 20. PARTIES

Rule 20.01. Party Status

Parties to an adoption matter shall include:

- (a) the child's guardian ad litem;
- (b) the adoptee, if age ten (10) or older;
- (c) the child's legal custodian;
- (d) the child's legal guardian;
- (e) the petitioner;
- (f) the adopting parent, in cases where the social services agency is the petitioner;
- (g) the child's biological parent, if the consent of the biological parent is required and has not been executed pursuant to Rule 33;

(h) the child's Indian tribe, if the child is an Indian child and the tribe is or was a party in an underlying juvenile protection matter as defined in Rule 2.01(18) of the Minnesota Rules of Juvenile Protection Procedure;

(i) the responsible social services agency, if the child is under the guardianship of the commissioner of human services;

(j) the child placing agency, if applicable;

(k) any person who intervenes as a party pursuant to Rule 21; and

(l) any person who is joined as a party pursuant to Rule 22.

Rule 20.02. Rights of Parties

A party shall have the right to:

(a) notice pursuant to Rule 31;

(b) legal representation pursuant to Rule 23;

(c) be present at all hearings unless excluded pursuant to Rule 8;

(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) ask the court to order that witnesses be sequestered;

(l) request review of the referee's findings and recommended order pursuant to Rule 6, if a referee presides over the matter;

(m) bring post-trial motions pursuant to Rules 46 and 47;

(n) appeal from orders of the court pursuant to Rule 48; and

(o) any other rights as set forth in statute or these rules.

Rule 20.03. Parties' 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. It shall be the responsibility of each party to inform the court administrator of any change of address. For good cause shown, the court may grant a party's request to keep the party's address confidential.

RULE 21. INTERVENTION

Rule 21.01. Intervention of Right

Subd. 1. Child. A child younger than age ten (10) who is the subject of the adoption matter has the right to intervene as a party at any point in the proceeding.

Subd. 2. Indian Tribe. In any adoption matter relating to an Indian child, if the child's Indian tribe is not already a party pursuant to Rule 20.01(g), the child's tribe has the right to intervene as a party at any point in the proceeding.

Subd. 3. Local Social Services Agency. The local social services agency has the right to intervene as a party at any point in the proceeding.

Subd. 4. Procedure. A child younger than age ten (10), the child's Indian tribe, or the local social services agency may intervene as a party by filing with the court and serving upon the parties a notice of intervention as a matter of right. The notice of intervention form shall be available from the court administrator. The intervention shall be deemed accomplished upon service of the notice of intervention, unless a party files and serves a written objection within ten (10) days of the date of service.

Rule 21.02. Parent Intervention Prohibited

No parent who has executed a valid consent to the adoption or whose parental rights to the child who is the subject of the adoption petition have been terminated may intervene in an adoption matter.

Rule 21.03. Permissive Intervention

Subd. 1. Generally. Any person or agency may be permitted to intervene as a party if the court finds that such intervention is in the best interests of the child.

Subd. 2. Procedure. A person or agency seeking permissive intervention shall file with the court and serve upon all parties a notice of motion and motion to intervene pursuant to Rule 15. The motion form shall be available from the court administrator and 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 21.04. Effect of Intervention

The court may conduct hearings, make findings, and issue orders at any time before intervention is accomplished or denied. The intervention shall be effective as of the date accomplished or granted and shall not affect prior proceedings and decisions of the court, unless otherwise ordered by the court or required by the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq.

RULE 22. JOINDER

Rule 22.01. Procedure

The court sua sponte, or upon notice of motion and motion of a party 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 and the person proposed to be joined.

RULE 23. RIGHT TO REPRESENTATION; APPOINTMENT OF COUNSEL

Rule 23.01. Right to Representation

Every party has the right to be represented by counsel in an adoption matter, including through appeal if any. This right attaches no later than when the party first appears in court.

Rule 23.02. Appointment of Counsel

Subd. 1. Adoptee. Pursuant to Minnesota Statutes § 259.65, in any adoption matter the court may appoint an attorney for the person being adopted. The court may inquire into the ability of the adopting parent to pay for the attorney's services and, after giving the adopting parent a reasonable opportunity to be heard, may order the adopting parent to pay the attorney's fees.

Subd. 2. Putative Father. Pursuant to Minnesota Statutes § 259.52, subd. 12, upon proof of indigency, a putative father who has registered with the Minnesota Fathers' Adoption Registry, has received a notice to registered putative father, and has timely filed an intent to claim paternal rights form with the court administrator, shall be appointed counsel at public expense.

2004 Advisory Committee Comment

Rule 23.01 sets forth the basic principle that each party appearing in court has the right to be represented by counsel. Each party, however, does not necessarily have the right to court appointed counsel as provided in Rule 23.02. The phrase "at public expense" is not defined in the statute.

Rule 23.01, subd. 1, is consistent with Minn. Stat. § 259.65, which provides: “In any adoption proceeding, the court may appoint an attorney or guardian ad litem, or both, for the person being adopted. The court may order the adopting parents to pay the costs of services rendered by guardians or attorneys appointed, . . . provided that such parents be given a reasonable opportunity to be heard.”

Rule 23.02, subd. 2, is consistent with Minn. Stat. § 259.52, subd. 12, which provides: “Upon proof of indigency, a putative father who has registered with the Minnesota Fathers’ Adoption Registry, has received a notice to registered putative father, and has timely filed an intent to claim paternal rights form with the court administrator must have counsel appointed at public expense.”

Rule 23.03. Representation of Responsible Social Services Agency

In any adoption matter in which the Commissioner of Human Services is the legal guardian for the child, the responsible social services agency shall be represented by its county attorney.

Rule 23.04. Biological Parent Counsel in Direct Placement Adoption

Subd. 1. Right to Counsel. Pursuant to Minnesota Statutes § 259.47, subd. 5, in a direct placement adoption, upon the request of a biological parent, separate legal counsel shall be made available to the biological parent at the expense of the prospective adoptive parents for legal services provided in a direct placement adoption. The prospective adoptive parent shall be required to provide legal counsel for only one parent unless the biological parents elect joint legal representation.

Subd. 2. Waiver of Right to Counsel. A biological parent may waive the right to counsel only by written waiver signed and filed with the court at the time the

biological parent's consent to the adoption is executed pursuant to Minnesota Statutes § 259.47, subd. 7.

Subd. 3. Expiration of Right to Counsel. The right to legal counsel shall continue until consents become irrevocable, but not longer than seventy (70) days after placement. If the parent's consent to adoption has not been executed within sixty (60) days of placement, the right to counsel under Rule 23 and Minnesota Statutes § 259.47, subd. 5, shall end at that time.

Subd. 4. Dual Representation Prohibited. Representation of a biological parent and a prospective adoptive parent by the same attorney is prohibited.

Rule 23.05. Certificate of Representation

An attorney representing a client in an adoption 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 23.06. Withdrawal of Counsel

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

- (a) all proceedings in the matter have been completed;
- (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; 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 23.07. Appointment of Counsel in Adoption Involving an Indian Child

Subd. 1. Parent or Indian Custodian. In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court appointed counsel in any removal, placement, or termination proceeding.

Subd. 2. Indian Child. The court may, in its discretion, appoint counsel for an Indian child upon a finding that such appointment is in the best interests of the child.

RULE 24. GUARDIAN AD LITEM

Rule 24.01. Appointment

Subd. 1. Generally. A guardian ad litem appointed to serve in a juvenile protection matter, as defined in Rule 2.01(16) of the Minnesota Rules of Juvenile Protection Procedure, shall continue to serve in the adoption matter following a transfer of guardianship to the commissioner of human services. In any other adoption matter, the court may appoint a guardian ad litem. The guardian ad litem shall advocate for the best interests of the child and shall continue to serve until the adoption decree is entered pursuant to Rule 45.

Subd. 2. 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.

2004 Advisory Committee Comment

Rule 24.01, subd. 1, is consistent with Minn. Stat. § 259.65, which provides: "In any adoption proceeding, the court may appoint an attorney or a guardian ad litem, or both, for the person being adopted."

Rule 24.01 is intended to reflect the clear legislative mandate that the guardian ad litem in a juvenile protection matter shall continue to serve until the adoption decree is entered. See Minn. Stat. § 260C.317, subd.

3(b), and Rule 26.03 of the Minnesota Rules of Juvenile Protection Procedure. It is preferable that the same individual serve continuously as the child's guardian ad litem for both the juvenile protection matter and the adoption matter. However, if that is not practicable, the guardian ad litem program shall assign another individual to serve as the child's guardian ad litem in the adoption matter following the termination of parental rights in the juvenile protection matter. Upon the assignment of a new individual to serve as guardian ad litem, the court shall issue a new appointment order.

Rule 24.02. Responsibilities

The guardian ad litem shall carry out the responsibilities set forth in the Minnesota Rules of Guardian Ad Litem Procedure. The guardian ad litem shall have the rights and powers set forth in the Minnesota Rules of Guardian Ad Litem Procedure.

Rule 24.03. Reimbursement

The court may inquire into the ability of the adopting parent to pay for the guardian ad litem's services and, after giving the adopting parent a reasonable opportunity to be heard, may order the adopting parent to pay the guardian ad litem's fees.

2004 Advisory Committee Comment

Rule 24.03 is consistent with Minn. Stat. § 259.65, which provides: "The court may order the adopting parents to pay the costs of services rendered by guardians or attorneys appointed, . . . provided that such parents shall be given a reasonable opportunity to be heard."

RULE 25. METHODS OF FILING AND SERVICE

Rule 25.01. Types of Filing

Subd. 1. Generally. Any document may be filed with the court either personally, by U.S. mail, or by facsimile transmission. When authorized by order of the Minnesota Supreme Court, documents may be filed electronically by following the procedures of that order and will be deemed filed in accordance with the provisions of that order.

Subd. 2. Filing by Facsimile Transmission. Any document may be filed with the court by facsimile transmission. Filing shall be deemed complete at the time 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.

Subd. 3. Fees; Original Document. Within five (5) days after the court has received the facsimile transmission, the party filing the document shall forward the following to the court:

- (a) 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;
- (b) any bulky exhibits or attachments; and
- (c) the applicable filing fee or fees, if any.

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.

Subd. 4. Noncompliance. Upon failure to comply with the requirements of this rule, the court 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 adoption matter, proceeding, or any part thereof.

Rule 25.02. Types of Service

Subd. 1. Personal Service. Personal service means personally delivering the original 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 the court authorizes service by publication.

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

Subd. 3. Publication. Service by publication means the publication in full of the summons, notice of hearing, or other papers in the regular issue of a qualified newspaper, once each week for the number of weeks specified pursuant to Rule 31.04, subd. 2. Service by publication substitutes for personal service where authorized by the court. The court shall authorize service by publication only if the petitioner has filed a written statement or affidavit describing unsuccessful efforts to locate the party to be served. Service by publication shall be completed by the petitioner in a location approved by the court. If the summons is required to be published, the case caption shall identify the child by the child's initials rather than by full name. 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. Facsimile Service. Service by facsimile means transmission by facsimile equipment that satisfies the published criteria of the supreme court, addressed to the person to be served.

Subd. 5. Electronic Service. When authorized by order of the Minnesota Supreme Court, documents, except those required by these rules to be served personally or by registered mail return receipt requested, may be served by electronic means other

than facsimile transmission by following the procedures of that order and will be deemed served in accordance with the provisions of that order.

Advisory Committee Comment-2012 Amendment

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

Rule 25.03. Service by Facsimile Transmission

Unless these rules require personal service, any document may be served by facsimile transmission upon agreement of the parties. The facsimile shall have the same force and effect as the original.

Rule 25.04. Service Upon Counsel; Social Services Agency

Unless personal service upon a party is required, service upon counsel for a party shall be deemed service upon the party. Service upon the county attorney shall be deemed to be service upon the responsible social services agency.

Rule 25.05. Service of Subpoena

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

Rule 25.06. Completion of Service

Service by mail is complete upon mailing to the last known address of the person to be served. Service by facsimile is complete upon completion of the facsimile transmission.

Rule 25.07. Proof of Service

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) how the document was served;
- (c) the person on whom the document was served; and
- (d) the date, time, and place of service.

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

RULE 26. COMMENCEMENT OF ADOPTION MATTER

Rule 26.01. Commencement of an Adoption Matter

An adoption matter is commenced by filing:

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

2014 Advisory Committee Comment

A motion for waiver of agency placement is not available for a child under the guardianship of the commissioner of human services. Under Minnesota Statutes § 260C.613, subd. 1, the responsible social services

agency has exclusive authority to make an adoptive placement for a child under the guardianship of the commissioner. A challenge to the agency's adoptive placement of a child under the guardianship of the commissioner is brought in a hearing under Minnesota Statute § 260C.607, subd. 6.

Rule 26.02. Post-Permanency Review Hearings Continue

The filing of an adoption petition does not terminate the in-court review hearings required at least every ninety (90) days under Rule 41.06 of the Minnesota Rules of Juvenile Protection Procedure.

RULE 27. STEPPARENT ADOPTION

A stepparent adoption shall be commenced by the filing of a petition pursuant to Rule 35. All other Rules apply to stepparent adoptions, except for Rule 28 dealing with agency adoptions, Rule 29 dealing with direct placement adoptions, and Rule 30 dealing with intercountry adoptions.

RULE 28. AGENCY ADOPTION

An agency adoption shall be commenced by the filing of a petition pursuant to Rule 35. All other Rules apply to agency adoptions, except for Rule 27 dealing with stepparent adoptions, Rule 29 dealing with direct placement adoptions, and Rule 30 dealing with intercountry adoptions.

RULE 29. DIRECT PLACEMENT ADOPTION

Rule 29.01. Notice of Motion and Motion for a Preadoptive Custody Order

In a direct placement adoption, whether involving an emergency or non-emergency situation, the petitioner shall file with the court and serve a notice of motion and motion for a preadoptive custody order upon:

- (a) the biological mother;
- (b) the biological father if his consent is required;

- (c) any parent whose consent is required; and
- (d) the Indian tribe, if the child is an Indian child.

Rule 29.02. Timing

A notice of motion and motion for a preadoptive custody order may be filed up to sixty (60) days before the adoptive placement is to be made and may be filed prior to the birth of the baby.

Rule 29.03. Content

Subd. 1. Non-Emergency Direct Placement. In a non-emergency situation, a notice of motion and motion for a preadoptive custody order in a direct placement adoption shall be in writing and shall contain or have attached:

- (a) a statement that the biological parents have:
 - (1) provided the social and medical history to the prospective adoptive parent using the form prescribed by the Commissioner of Human Services;
 - (2) received a written statement of their legal rights and responsibilities prepared by the Department of Human Services; and
 - (3) been notified of their right to receive counseling;
- (b) the name of the agency chosen by the adoptive parent to supervise the adoptive placement and complete the post-placement assessment;
- (c) affidavits from the biological parents stating their support of the motion or, if there is no affidavit from the biological father, an affidavit from the biological mother that describes her good faith efforts, or efforts made on her behalf, to identify and locate the biological father for purposes of securing his consent. In the following circumstances the biological mother may instead submit an affidavit stating on which of the following grounds she is exempt from making efforts to identify and locate the father:
 - (1) the child was conceived as the result of incest or rape;

(2) efforts to locate the biological father by the affiant or anyone acting on the affiant's behalf could reasonably result in physical harm to the biological mother or the child; or

(3) efforts to locate the biological father by the affiant or anyone acting on the affiant's behalf could reasonably result in severe emotional distress of the biological mother or child;

(d) a statement that the prospective adoptive parent meets the residence requirements;

(e) an affidavit of intent to remain a resident of the state for at least three (3) months after the child is placed in the prospective adoptive home;

(f) a notice of intent to file an adoption petition;

(g) the adoption study report required pursuant to Rule 37;

(h) an itemized statement of expenses that have been paid and an estimate of expenses that will be paid by the prospective adoptive parents to the biological parents, any agency, attorney, or other party in connection with the prospective adoption; and

(i) the name of counsel for each party, if any.

Subd. 2. Emergency Direct Placement. In an emergency situation, a notice of motion and motion for a preadoptive custody order in a direct placement adoption shall be in writing and shall contain or have attached:

(a) affidavits from the prospective adoptive parents and biological parents stating that an emergency order is needed because of the unexpected premature birth of the child or other extraordinary circumstances which prevented the completion of the requirements under subdivision 1;

(b) affidavits from the biological parents stating their support of the motion or, if there is no affidavit from the biological father, an affidavit from the biological mother that describes her good faith efforts, or efforts made on her behalf, to identify and locate the biological father for purposes of securing his consent. In the following circumstances

the biological mother may instead submit an affidavit stating on which of the following grounds she is exempt from making efforts to identify and locate the father:

(1) the child was conceived as the result of incest or rape;

(2) efforts to locate the father by the affiant or anyone acting on the affiant's behalf could reasonably result in physical harm to the biological mother or child;
or

(3) efforts to locate the father by the affiant or anyone acting on the affiant's behalf could reasonably result in severe emotional distress of the biological mother or child;

(c) a statement that the biological parents:

(1) have received the written statement of their legal rights and responsibilities prepared by the Department of Human Services; and

(2) have been notified of their right to receive counseling; and

(d) either:

(1) the adoption study report pursuant to Rule 37; or

(2) sworn affidavits stating whether the prospective adoptive parents or any person residing in the household has been convicted of a crime.

Rule 29.04. Decision and Order

Subd. 1. Non-Emergency Direct Placement. In a non-emergency situation, the court shall decide a motion for a preadoptive custody order within fifteen (15) days of the filing of the motion or by the anticipated placement date stated in the motion, whichever is earlier.

Subd. 2. Emergency Direct Placement.

(a) **Expedited Emergency Order.** An order granting or denying a motion for an emergency preadoptive custody order shall be issued within twenty-four (24) hours of the time it is filed. Any district court judge may decide a motion for emergency preadoptive custody. An order granting the motion shall direct that an adoption study be

commenced immediately, if that has not already occurred, and that the agency conducting the study shall supervise the emergency placement.

(b) **Expiration of Emergency Order.** A court may issue an emergency order granting preadoptive custody of a child to a prospective adoptive parent for up to fourteen (14) days. An emergency order under this Rule expires fourteen (14) days after it is issued. If the requirements for direct placement under this Rule are completed and a preadoptive custody motion is filed on or before the expiration of the emergency order, placement may continue until the court decides on the motion. The court shall decide the preadoptive custody motion within seven (7) days of filing.

RULE 30. INTERCOUNTRY ADOPTIONS

Rule 30.01. Adoption of a Child by a Resident of Minnesota Under the Laws of a Foreign Country

Subd. 1. Validity of a Foreign Adoption. The adoption of a child by a resident of Minnesota under the laws of a foreign country is valid and binding under the laws of Minnesota if the validity of the foreign adoption has been verified by the granting of an IR-3 visa for the child by the United States Citizenship and Immigration Services.

Subd. 2. New Birth Record.

(a) **Petition.** The adoption of a child under the laws of a foreign country is valid in Minnesota pursuant to Rule 30.01 and the petitioner may petition the court in petitioner's county of residence for a decree:

- (1) confirming and recognizing the adoption;
- (2) changing the child's legal name, if requested; and
- (3) authorizing the Commissioner of Health to create a new birth record

for the child pursuant to Minnesota Statutes § 144.218, subd. 2.

(b) **Documents to be Submitted.** The court shall issue the decree described in subdivision 2(a) upon receipt of the following documents:

- (1) a signed, sworn, and notarized petition by the adoptive parent:

- (i) stating that the adoptive parent completed the adoption of the child under the laws of a foreign county;
 - (ii) stating that the adoption is valid in this state under Rule 30.01; and
 - (iii) requesting that the court issue a decree confirming and recognizing the adoption and authorizing the Commissioner of Health to issue a new birth record for the child;
- (2) a copy of the child's original birth record, if available;
 - (3) a copy of the final adoption certificate or equivalent as issued by the foreign jurisdiction;
 - (4) a copy of the child's passport, including the United States visa indicating IR-3 immigration status; and
 - (5) a certified English translation of any of the documents listed in (2) through (4) above.

Subd. 3. Action Upon Issuance of Adoption Decree. Upon issuing an adoption decree under this Rule, the court shall forward a copy of the adoption decree to the Commissioner of Human Services. The court shall also complete and forward to the Commissioner of Health the certificate of adoption, unless another form has been specified by the Commissioner of Health.

Rule 30.02. Adoption Under the Laws of Minnesota of a Child Born in Another Country

Subd. 1. Agency Adoption. An adoption of a child placed by an agency shall be commenced by the filing of a petition or other document pursuant to Rule 35 and thereafter shall proceed pursuant to Rule 28 dealing with agency adoptions.

Subd. 2. Direct Placement Adoption. A direct placement adoption of a child born in another country shall be commenced by the filing of a petition or other document

pursuant to Rule 35 and thereafter shall proceed pursuant to Rule 29 dealing with direct placement adoptions.

Rule 30.03. Post-Adoption Report

If a child is adopted by a resident of Minnesota under the laws of a foreign country or if a resident of Minnesota brings a child into the state under an IR-3 or IR-4 visa issued for the child by the United States Citizenship and Immigration Services, the post-adoption reporting requirements of the country in which the child was adopted, applicable at the time of the child's adoption, shall be given full faith and credit by the courts of Minnesota and apply to the adoptive placement of the child.

RULE 31. NOTICE OF FINAL HEARING OR TRIAL

Rule 31.01. Notice

Subd. 1. Definition. A notice of hearing is a document providing notice of the specific date, time and place of a hearing or trial upon an adoption petition.

Subd. 2. Upon Whom.

(a) **Generally.** Except as provided in paragraph b, the petitioner shall serve a notice of hearing and adoption petition upon:

- (1) all parties under Rule 20;
- (2) the parent of a child if:
 - (i) the person's name appears on the child's birth record as a parent;
 - (ii) the person has substantially supported the child;
 - (iii) the person either was married to the person designated on the birth record as the biological mother within the 325 days before the child's birth or married that person within the ten (10) days after the child's birth;
 - (iv) the person is openly living with the child or the person designated on the birth record as the biological mother of the child, or both;

- (v) the person has been adjudicated the child's parent;
 - (vi) the person has filed a paternity action within thirty (30) days after the child's birth and the action is still pending; or
 - (vii) the person and the mother of the child signed a declaration of parentage before August 1, 1995, which has not been revoked or a recognition of parentage which has not been revoked or vacated;
- (3) a person who has timely registered pursuant to Minnesota Statutes § 259.52;
 - (4) the responsible social services agency;
 - (5) any parent who has abandoned the child or who has lost custody of the child through a divorce decree or dissolution of marriage; and
 - (6) the child's Indian tribe, if the child is an Indian child.

(b) **Child Under Guardianship of Commissioner of Human Services.** For a child under the guardianship of the commissioner of human services, the court administrator shall serve a notice of hearing and petition, unless service of the petition has already been accomplished, upon:

- (1) the child's tribe if the child is an Indian child;
- (2) the responsible social services agency;
- (3) the child's guardian ad litem;
- (4) the child, if the child is age ten or over;
- (5) the child's attorney;
- (6) the adopting parent; and
- (7) the county attorney.

Rule 31.02. Notice Not Required

Without express order of the court, a notice of the hearing and petition shall not be served upon:

- (a) persons whose parental rights have been terminated or who have consented to the adoption of the child;

(b) persons who have not timely registered pursuant to Minnesota Statutes § 259.52;

(c) persons who have waived notice of hearing pursuant to Minnesota Statutes § 259.49, subd. 1;

(d) a putative father who has timely registered with the Minnesota Fathers' Adoption Registry pursuant to Minnesota Statutes § 259.52, but who fails to timely file an intent to claim parental rights form with the court; and

(e) a putative father who has registered with the Minnesota Fathers' Adoption Registry pursuant to Minnesota Statutes § 259.52 and who has filed a completed denial of paternity form and a consent to adoption form.

Rule 31.03. Content of Notice of Hearing

A notice of hearing shall contain or have attached:

- (a) an adoption petition;
- (b) a statement setting forth the time and place of the hearing;
- (c) a statement describing the purpose of the hearing as either:
 - (1) a final hearing pursuant to Rule 41 if it is an uncontested adoption matter; or
 - (2) a pretrial conference pursuant to Rule 43 if it is a contested adoption matter;
- (d) a statement explaining the right to representation pursuant to Rule 23;
- (e) a statement explaining intervention pursuant to Rule 21;
- (f) a statement explaining that if the person fails to appear at the hearing, the court may still conduct the hearing and grant the adoption pursuant to Rule 18; and
- (g) a statement explaining that it is the responsibility of the individual to notify the court administrator of any change of address.

Rule 31.04. Service of Notice of Hearing

Subd. 1. Timing. A notice of hearing shall be served, within or without the state, at least ten (10) days before the date of a final hearing in an uncontested matter and at least thirty (30) days before the date of the commencement of the trial in a contested matter.

Subd. 2. Method of Service – Parent.

(a) **Personal Service.** The petitioner shall serve the notice of hearing upon the child's parents by personal service.

(b) **Service by Publication.** If personal service cannot be made upon the parent, the petitioner or petitioner's attorney shall file an affidavit setting forth the effort that was made to locate the parent, and the names and addresses of the known kin of the child. If satisfied that the parent cannot be served personally, the court shall order three (3) weeks of published notice to be given, the last publication to be at least ten (10) days before the date set for the hearing. Service by publication shall be completed by the petitioner in a location approved by the court. Where service is made by publication, the court may cause such further notice to be given as it deems just. If, in the course of the proceedings, the court determines that the interests of justice will be promoted, it may continue the proceeding and require that such notice as it deems proper shall be served on any person. In the course of the proceedings the court may enter reasonable orders for the protection of the child if the court determines that the best interests of the child require such an order.

Subd. 3. U.S. Mail. The petitioner shall serve the notice of hearing by U.S. mail upon the child's guardian ad litem; the child, if age ten (10) or older; the child's Indian custodian, if the child is an Indian child; the child's legal custodian or legal guardian, if other than the Commissioner of Human Services; any person who has intervened as a party; any person who has been joined as a party; the responsible social services agency;

and any person who has timely complied with the requirements of Minnesota Statutes § 259.52.

Subd. 4. Registered Mail. The petitioner shall serve the notice of hearing by registered mail with return receipt requested upon the Indian tribe if the child is an Indian child.

RULE 32. MINNESOTA FATHERS' ADOPTION REGISTRY

Rule 32.01. Requirement to Search Minnesota Fathers' Adoption Registry Before Adoption Petition Granted; Proof of Search

Subd. 1. Requirement to Search Registry. Except for intercountry adoptions, an adoption petition for a child born on or after January 1, 1998, shall not be granted unless the Minnesota Fathers' Adoption Registry has been searched to determine whether a putative father is registered in relation to the child who is the subject of the adoption petition. The search shall be conducted no sooner than thirty-one (31) days following the birth of the child.

Subd. 2. Proof of Search. A search of the registry may be proven by the production of a certified copy of the registration form or by a certified statement of the Commissioner of Health that after a search no registration of a putative father in relation to a child who is or may be the subject of an adoption petition could be located. Certification that the Minnesota Fathers' Adoption Registry has been searched shall be filed with the court prior to entry of any final adoption decree. The filing of a certified copy of the order from a juvenile protection matter containing a finding that certification of the requisite search of the Minnesota Fathers' Adoption Registry was filed with the court in that matter shall constitute proof of search.

2004 Advisory Committee Comment

For children born before January 1, 1998, the Advisory Committee recommends that the best practice is for the petitioner to include with the petition a confirmation from the Department of Health that no one has filed a notice of intent to retain parental rights.

Rule 32.02. Fees for Minnesota Fathers' Adoption Registry

Pursuant to Minnesota Statutes § 259.52, subd. 14, in addition to any other filing fees, the court administrator shall assess an adoption filing fee surcharge on each adoption petition filed in the district court for the purpose of implementing and maintaining the Minnesota Fathers' Adoption Registry. The court administrator shall forward fees collected under this rule to the Commissioner of Finance for deposit into the state government special revenue fund to be appropriated to the Commissioner of Health to administer the Minnesota Fathers' Adoption Registry. The fee shall not be assessed in adoptions or re-adoptions of children adopted in intercountry adoptions.

RULE 33. CONSENT TO ADOPTION

Rule 33.01. Persons and Agencies Required to Consent

Subd. 1. Generally. Except as provided in subdivision 2, written consent to an adoption is required by the following:

- (a) the child to be adopted, if the child is fourteen (14) years of age or older, and the child's consent must be consent to adoption by a particular person;
- (b) the adult to be adopted, whose consent shall be the only consent required;
- (c) a registered putative father, if pursuant to Rule 32 he has:
 - (1) been notified under the Minnesota Fathers' Adoption Registry;
 - (2) timely filed an intent to claim parental rights form; and
 - (3) timely filed a paternity action;
- (d) the child's parents or legal guardian, except:
 - (1) a parent not entitled to notice of the proceedings;

(2) a parent who has abandoned the child or a parent who has lost custody of the child through a divorce decree or a decree of dissolution and upon whom notice has been served as required under Rule 31; and

(3) a parent whose parental rights to the child have been terminated by a juvenile court order or through a decree in a prior adoption matter; and

(e) if there is no parent or legal guardian qualified to consent to the adoption, the consent shall be given by the agency having authority to place the child for adoption, which shall have the exclusive right to consent to the adoption of such child.

Subd. 2. Child Under Guardianship of Commissioner of Human Services.

(a) Any consent by a parent whose rights to the child have not been terminated shall be pursuant to Minnesota Statutes § 260C.515, subd. 3, and that consent shall be irrevocable upon acceptance by the court except as otherwise provided in Minnesota Statutes § 260C.515, subd. 3(2)(i). A parent of an Indian child may consent to the adoption of the child according to the Indian Child Welfare Act, 25 U.S.C § 1913, and that consent may be withdrawn for any reason at any time before the entry of a final decree of adoption.

(b) When the child to be adopted is age fourteen (14) years or older, the child's written consent to adoption by the adopting parent is required.

(c) Consent by the responsible social services agency or the commissioner of human services is not required because the adoptive placement has been made by the responsible social services agency according to Minnesota Statutes § 260C.613, subd. 1.

2004 Advisory Committee Comment

The Advisory Committee recommends that, with respect to a parent who has abandoned the child or a parent who has lost custody of the child through a divorce decree or a decree of dissolution, it is best practice to either obtain a parent's consent as provided under Rule 31 or to commence

a termination of parental rights proceeding pursuant to the Minnesota Rules of Juvenile Protection Procedure.

2014 Advisory Committee Comment

When a child, age 14 or older, is under the guardianship of the commissioner of human services, the child must give consent to adoption by the particular person seeking to adopt the child. The child may not withhold “general consent” to the responsible social services agency working to find an appropriate adoptive home and making reasonable efforts to finalize adoption. See Minnesota Statutes § 260C.605, subd. 2.

Rule 33.02. Notice of Intent to Consent to Adoption

Subd. 1. Consent of Biological Parents. Unless all biological parents from whom consent is required under Rule 33.01 are involved in making the adoptive placement and intend to consent to the adoption, a biological parent who intends to execute a consent to an adoption shall give notice to the child’s other biological parent of the intent to consent to the adoption prior to or within seventy-two (72) hours following the placement of the child if the other biological parent’s consent to the adoption is required under Rule 33.01. Notice of intent to consent to adoption shall be provided to the other biological parent according to the Minnesota Rules of Civil Procedure for service of a summons and complaint. The biological parent who receives notice shall have sixty (60) days after the placement of the child to serve upon the other biological parent either a consent pursuant to Rule 33.01 or a written objection to the adoption. If the biological parent who receives notice fails to consent or to respond with a written objection to the adoption within sixty (60) days after the adoptive placement, that parent shall be deemed to have irrevocably consented to the child’s adoption.

Subd. 2. Consent of Minors. If an unmarried parent who consents to the adoption of a child is under eighteen (18) years of age, the consent of the minor parent’s

parents or legal custodian or legal guardian, if any, also shall be required. If either or both parents are not required to consent pursuant to Rule 33.01(d), the consent of such parent shall be waived and the consent of the legal custodian or legal guardian only shall be sufficient. If there be neither parent nor legal custodian or legal guardian qualified to give such consent, the consent may be given by the commissioner of human services. The responsible social services or child placing agency overseeing the adoption matter shall ensure that the minor parent is offered the opportunity to consult with an attorney, a member of the clergy, or a physician before consenting to adoption of the child. The advice or opinion of the attorney, clergy member, or physician shall not be binding on the minor parent. If the minor parent cannot afford the cost of consulting with an attorney, a member of the clergy, or a physician, the county shall bear that cost. A parent or legal custodian or legal guardian of a minor or incapacitated person may not delegate the power to consent to adoption of a minor ward under Minnesota Statutes §§ 524.5-101 to 524.5-502.

Rule 33.03. Execution of Consent to Adoption

Subd. 1. Requirements of Consent.

(a) **Generally.** Except as provided in subdivision 3, all consents to an adoption shall:

- (1) be in writing;
- (2) be executed before two competent witnesses;
- (3) be acknowledged by the consenting party;
- (4) include a notice to the parent of the substance of Minnesota Statutes § 259.24, subd. 6a, providing for the right to withdraw consent; and

(5) include the following written notice in all capital letters at least one-eighth inch high: “The agency responsible for supervising the adoptive placement of the child will submit your consent to adoption to the court. If you are consenting to adoption by the child’s stepparent, the consent will be submitted to the court by the petitioner in your child’s adoption. The consent itself does not terminate your parental rights.

Parental rights to a child may be terminated only by an adoption decree or by a court order terminating parental rights. Unless the child is adopted or your parental rights are terminated, you may be asked to support the child.”

(b) **Child Under Guardianship of Commissioner of Human Services.** Pursuant to Minnesota Statutes § 260C.515, subd. 3, consents for children under the guardianship of the commissioner of human services shall:

(1) be on a form prescribed by the commissioner of human services;

(2) be executed before two competent witnesses;

(3) be confirmed by the consenting parent before the court or executed before the court; and

(4) include notice that the consent is irrevocable upon acceptance by the court and shall result in an order that the child is under the guardianship of the commissioner of human services, unless:

(a) fraud is established and an order is issued permitting revocation for fraud pursuant to Minnesota Statutes § 260C.515, subd. 3(2)(i), and § 259.24; or

(b) the matter is governed by the Indian Child Welfare Act, 25 U.S.C. § 1913(c).

Subd. 2. Consents Taken Outside of Minnesota. A consent executed and acknowledged outside of Minnesota, either in accordance with the law of this state or in accordance with the law of the place where executed, is valid.

Subd. 3. Exceptions to Consent Requirements. The requirements of subdivision 1 do not apply to:

- (a) consents to adoption given by:
- (1) the Commissioner of Human Services, when required by Minnesota Statutes § 259.24, subd. 2;
- (2) a licensed child-placing agency;

- (3) an adult adoptee;
 - (4) the child's parent in a petition for adoption by a stepparent; or
 - (5) a parent or legal guardian when executed, together with a waiver of notice of hearing, before a judicial officer;
- (b) a Minnesota Fathers' Adoption Registry consent to adoption; or
 - (c) consent to the adoption of an Indian child.

Rule 33.04. Timing of Consent

A consent to adoption form shall not be signed sooner than seventy-two (72) hours after the birth of a child. The seventy-two (72) hours is computed excluding the date of the birth and including Saturdays, Sundays, and legal holidays. A consent to adoption shall be executed by any person whose consent is required under Rule 33 within sixty (60) days after the child's placement in a prospective adoptive home.

Rule 33.05. Failure to Execute Consent

With the exception of cases where a person receives notice under Minnesota Statutes § 259.24, subd. 2a, if a biological parent whose consent is required under Rule 33 does not execute a consent by the end of the period specified in Rule 33.04, the child placing agency shall notify the court and the court shall issue an order regarding continued placement of the child. The court shall order the local social services agency to determine whether to commence proceedings for termination of parental rights on grounds of abandonment as defined in Minnesota Statutes § 260C.301, subd. 2. The court may disregard the six-month and twelve-month requirements of Minnesota Statutes § 260C.301 in finding abandonment if the biological parent has failed to execute a consent within the time required under Rule 33.04 and has made no effort to obtain custody of the child.

Rule 33.06. Agreement Conferring Authority to Place for Adoption

Subd. 1. Parties to Agreement. The parents and legal custodian or legal guardian, if there be one, of a child may enter into a written agreement with the Commissioner of Human Services or an agency giving the Commissioner or such agency authority to place the child for adoption. If an unmarried parent is under eighteen (18) years of age, the written consent of the parents and legal custodian or legal guardian, if any, of the minor parent also shall be required. If either or both of the parents are disqualified from giving such consent for any of the reasons enumerated in Minnesota Statutes § 259.24, subd. 1, the written consent of the legal custodian or legal guardian shall be required.

Subd. 2. Format of Agreement. The agreement and consent shall be in the form prescribed by the Commissioner of Human Services and shall contain notice to the parent of the substance of Minnesota Statutes § 259.59, subd. 2a, providing for the right to revoke the agreement.

Subd. 3. Content of Agreement. The agreement and consent shall contain the following written notice in all capital letters at least one-eighth inch high: “This agency will submit your consent to adoption to the court. The consent itself does not terminate your parental rights. Parental rights to a child may be terminated only by an adoption decree or by a court order terminating parental rights. Unless the child is adopted or your parental rights are terminated, you may be asked to support the child.”

Subd. 4. Execution of Agreement. The agreement shall be executed by the Commissioner of Human Services or agency, or one of their authorized agents, and all other necessary parties, and shall be filed, together with the consent, in the proceedings for the adoption of the child. If, after the execution of an agreement and consent under this rule, the child is diagnosed with a medical or psychological condition that may present a substantial barrier to adoption, the child-placing agency shall make reasonable

efforts to give notice of this fact to a party to the agreement and consent. If a child is not adopted within two (2) years after an agreement and consent are executed under this rule, the agency that executed the agreement shall so notify a parent who was a party to the agreement and request the parent to take custody of the child or to file a petition for termination of parental rights. This notice shall be provided to the parent in a personal and confidential manner. A parent who has executed an agreement under this rule shall, upon request to the agency, be informed of whether the child has been adopted.

Rule 33.07. Consent to a Direct Placement Adoption Under Minnesota Statutes § 259.47

Subd. 1. Presence of Legal Counsel for Biological Parent. If a biological parent has chosen to have legal counsel pursuant to Rule 23.04, the attorney shall be present at the execution of any consent. If a biological parent waives counsel, the parent's written waiver shall be filed with the consent to the adoption.

Subd. 2. Execution of Consent Before Judicial Officer – When Required. A biological parent whose consent to a direct placement adoption is required under Minnesota Statutes § 259.24 and who has chosen not to receive counseling through a licensed agency or a licensed social services professional trained in adoption issues, shall appear before a judicial officer at a consent hearing as described in subdivision 4 to execute consent to the adoption.

Subd. 3. Execution of Consent Before Judicial Officer – When Optional. A biological parent whose consent to a direct placement adoption is required under Minnesota Statutes § 259.24 and who has received counseling through a licensed agency or a licensed social services professional trained in adoption issues, or any other parent or legal guardian whose consent to a direct placement adoption is required under Minnesota Statutes § 259.24, subd. 2, may choose to execute consent to the adoption under the

procedures set forth in Minnesota Statutes § 259.24, subd. 5, and Rule 33.03, subd. 1, or at a consent hearing as described in subdivision 4.

Subd. 4. Consent Hearing. Notwithstanding where the prospective adoptive parent resides, a consent hearing may be held in any county in this state where the biological parent is found. If the consent hearing is held in a county other than where the prospective adoptive parent resides, the court shall forward the executed consent to the district court in the county where the prospective adoptive parent resides.

Subd. 5. Consent Format. The written consent form to be used in a direct placement adoption under this rule shall be on a form prepared by the Commissioner of Human Services and made available to agencies and court administrators for public distribution. The form shall state:

(a) the biological parent has had the opportunity to consult with independent legal counsel at the expense of the prospective adoptive parent, unless the biological parent knowingly waived the opportunity;

(b) the biological parent has been notified of the right to receive counseling at the expense of the prospective adoptive parent and has chosen to exercise or waive that right; and

(c) the biological parent has been informed that if the biological parent withdraws consent, the prospective adoptive parent cannot require the biological parent to reimburse any costs the prospective adoptive parent has incurred in connection with the adoption, including payments made to or on behalf of the biological parent.

Rule 33.08. Revocation of Consent to Adoption of a Non-Indian Child Under Minnesota Statutes § 259.24

A parent's consent to adoption may be withdrawn for any reason within ten (10) working days after the consent is executed and acknowledged or pursuant to the law of the state where the consent is executed. Written notification of withdrawal of consent

shall be received by the agency to which the child was surrendered no later than the tenth working day after the consent is executed and acknowledged. On the day following the tenth working day after execution and acknowledgment, the consent shall become irrevocable, except upon order of a court of competent jurisdiction after written findings that the consent was obtained by fraud. In proceedings to determine the existence of fraud, the adoptive parents and the child shall be made parties. The proceedings shall be conducted to preserve the confidentiality of the adoption process. There shall be no presumption in the proceedings favoring the biological parents over the adoptive parents. Failure to comply with the terms of a communication or contact agreement order entered by the court under Rule 34 is not grounds for revocation of a written consent to an adoption after that consent has become irrevocable.

Rule 33.09. Consent to Adoption of an Indian Child

Subd. 1. Requirements of Consent. If the child to be adopted is an Indian child, the consent of the parent or Indian custodian shall not be valid unless:

- (a) executed in writing;
- (b) recorded before the judge; and
- (c) 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. Any consent given prior to, or within ten (10) days after, the birth of the Indian child shall not be valid.

Subd. 2. Revocation of Consent to Adoption of an Indian Child. In any voluntary proceeding for adoptive placement of an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of an adoption decree and the child shall be returned to the parent.

Subd. 3. Vacation of an Adoption Decree of an Indian Child. After the entry of an adoption decree of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption of an Indian child which has been effective for at least two (2) years may be invalidated under the Indian Child Welfare Act, 25 U.S.C. § 1913, unless otherwise permitted under state law.

2004 Advisory Committee Comment

Rule 33.09 mirrors the provisions of the Indian Child Welfare Act, 25 U.S.C. § 1913. The Guidelines of the Bureau of Indian Affairs provide additional guidance as follows:

“A consent to termination of parental rights or adoption may be withdrawn by the parent at any time prior to entry of a *final decree of voluntary termination or adoption* by filing an instrument executed under oath by the parent stipulating his or her intention to withdraw such consent. The clerk of court where the withdrawal of consent is filed shall promptly notify the party or agency by or through whom the adoptive placement has been arranged of such filing and that party or agency shall insure the return of the child to the parent as soon as practicable.” The *Commentary* to the guideline further provides that “This provision recommends that the clerk of court be responsible for notifying the family with whom the child has been placed that consent has been withdrawn. The court’s involvement frequently may be necessary [because] the biological parents are often not told who the adoptive parents are.”

Bureau of Indian Affairs Guidelines for State Courts – Indian Child Custody Proceedings, Section E.4 and *Commentary (emphasis included in original)*.

RULE 34. COMMUNICATION OR CONTACT AGREEMENT

Rule 34.01. Persons Who May Enter Into a Communication or Contact Agreement

Subd. 1. Parties to Agreement for Child under Guardianship of the Commissioner of Human Services. A communication or contact agreement for children under the guardianship of the commissioner of human services under Minnesota Statutes § 260C.619 shall be in writing and may be entered into between the following persons:

- (a) an adopting parent and a birth parent;
- (b) an adopting parent and any relative, including a sibling, or foster parent with whom the child resided before being adopted; or
- (c) an adopting parent and any adult sibling of the child or the parent or legal custodian of a sibling of the child, if the child is a minor.

Subd. 2. Parties to Agreement for a Child Not under Guardianship of the Commissioner of Human Services. If the child is not under the guardianship of the commissioner, the adoptive parents and a birth relative or foster parents may enter into an agreement regarding communication with or contact between an adopted minor, adoptive parents, and a birth relative or foster parents pursuant to Minnesota Statutes § 259.58 and § 260C.619. An agreement may be entered between:

- (a) adoptive parents and a birth parent;
- (b) adoptive parents and any other birth relative or foster parents with whom the child resided before being adopted; or
- (c) adoptive parents and any other birth relative if the child is adopted by a birth relative upon the death of both birth parents.

Subd. 3. Approval. The court shall not issue a communication or contact order unless the agreement has been approved as follows:

- (a) The responsible social services agency, the prospective adoptive parents or adoptive parents, and any birth parent, birth relative, foster parent, adult sibling, or legal custodian of the child's siblings who desire to be a party to the agreement shall approve,

in writing, any agreement involving a child under the guardianship of the commissioner of human services.

(b) A child placing agency shall approve, in writing, any agreement involving a child under its legal custody or guardianship.

(c) A biological parent shall approve in writing an agreement between an adopting parent and any other birth relative or foster parent, unless an action has been filed against the biological parent by a county under Minnesota Statutes Chapter 260C.

An agreement under this subdivision need not disclose the identity of the parties to be legally enforceable, and when the identity of the parties to the agreement is not disclosed, data about the identities in the adoption file shall remain confidential.

2004 Advisory Committee Comment

For siblings who grow up in foster care under the guardianship of the Commissioner of Human Services, a communication or contact agreement may be one way to ensure the children are able to maintain their sibling relationship.

Rule 34.02. Filing of Agreement

The signed communication or contact agreement shall be filed with the court after the petition has been filed and prior to finalization of the adoption.

Rule 34.03. Written Order Required

A communication or contact agreement is not legally enforceable unless the terms of the agreement are contained in a written court order entered pursuant to these rules, which shall be separate from the findings of fact, conclusions of law, order for judgment, and adoption decree issued pursuant to Rule 45. The order shall be filed in the adoption file and shall be issued before or at the time of the granting of the decree of adoption. For children under guardianship of the commissioner of human services, when there is a

written communication or contact agreement between prospective adoptive parents and birth relatives other than birth parents it must be included in the final adoption decree unless all the parties to the communication or contact agreement agree to omit it. If the adoptive parents or birth relatives do not comply with the communication or contact agreement, the court shall determine the terms of the communication and contact agreement.

Rule 34.04. Timing

A communication or contact agreement order shall be issued by the court within thirty (30) days of being submitted to the court or by the date the adoption decree is issued, whichever is earlier.

Rule 34.05. Requirements for Entry of Order

A communication or contact agreement order under this rule need not disclose the identity of the parties. The court shall not enter an order unless the court finds that the communication or contact between the child, the adoptive parent, and a birth relative as agreed upon and contained in the proposed order is in the child's best interests.

Rule 34.06. Service of Order

The court administrator shall mail a certified copy of the communication or contact agreement order to the parties to the agreement or their legal representatives at the addresses provided by the petitioners. Service shall be completed in a manner that maintains confidentiality of confidential information.

Rule 34.07. Enforcement

Subd. 1. Filing Requirement. A communication or contact agreement order entered under this rule may be enforced by filing with the family court, or, for children under the guardianship of the commissioner of human services, with the juvenile court pursuant to subdivision 3:

- (a) a petition or motion;
- (b) a certified copy of the communication or contact agreement order; and
- (c) an affidavit that the parties have mediated or attempted to mediate any dispute under the agreement or that the parties agree to a proposed modification.

Subd. 2. Attorney's Fees. The prevailing party upon a motion to enforce a communication or contact agreement order may be awarded reasonable attorney's fees and costs.

Subd. 3. Child Under Guardianship of Commissioner of Human Services. An order regarding a communication or contact agreement entered pursuant to this rule and Minnesota Statutes § 260C.619 for a child under the guardianship of the commissioner of human services shall be enforced by filing a motion in the existing adoption file with the court that entered the contact agreement. Any party to the communication or contact order or the child who is the subject of the order has standing to file the motion to enforce the order.

Rule 34.08. Failure to Comply with Order

Failure to comply with the terms of a communication or contact agreement order is not grounds for:

- (a) setting aside an adoption decree; or
- (b) revocation of a written consent to an adoption after that consent has become irrevocable.

Rule 34.09. Modification

The court shall not modify a communication or contact agreement order unless it finds that the modification is necessary to serve the best interests of the child, and:

- (a) the modification is agreed to by the parties to the agreement; or

(b) exceptional circumstances have arisen since the agreed order was entered that justify modification of the order.

RULE 35. PETITION

Rule 35.01. Who May Petition; Residency of Petitioner

Subd. 1. Who May Petition.

(a) **Generally.** The adopting parent may petition for adoption of the child.

(b) **Child Under Guardianship of Commissioner of Human Services.** The responsible social services agency may petition for the adopting parent to adopt a child who is under the guardianship of the commissioner of human services. The petition shall contain or have attached a statement certified by the adopting parent that the adopting parent desires that the relationship of parent and child be established between the adopting parent and the child and that adoption is in the best interests of the child. An adopting parent must be at least 21 years of age at the time the adoption petition is filed unless the adopting parent is an individual related to the child as defined under Rule 2.01.

Subd. 2. Residency Requirement.

(a) **Child Not Under Guardianship of the Commissioner of Human Services.** Any person who has resided in the state for one (1) year or more may petition to adopt.

(b) **Child Under Guardianship of the Commissioner of Human Services.** An adopting parent for a child under state guardianship may reside within or outside the state of Minnesota.

Subd. 3. Exception to Residency Requirement. The one (1) year residency requirement may be reduced to thirty (30) days by the court in the best interests of the child. The court may waive any residency requirement of this rule if the petitioner is an individual related to the child, as defined in Rule 2.01(19), or as a member of a child's extended family or important friend with whom the child has resided or had significant

contact or, upon a showing of good cause, the court is satisfied that the proposed adoptive home and the child are suited to each other.

Rule 35.02. Residency of Child to be Adopted

Unless waived by the court, no petition shall be granted until the child has lived three (3) months in the proposed home, subject to a right of visitation by the Commissioner of Human Services or an agency or their authorized representatives. If the three-month residency requirement is waived by the court, at least ten (10) days notice of the hearing shall be provided by certified mail to the local social services agency.

Rule 35.03. Timing

Subd. 1. Child Not under Guardianship of Commissioner of Human Services.

An adoption petition shall be filed not later than twelve (12) months after a child is placed in a prospective adoptive home. If a petition is not filed by that time, the agency that placed the child or, in a direct placement adoption, the agency that is supervising the placement, shall file with the court in the county where the prospective adoptive parent resides, a motion for an order and a report recommending one of the following:

(a) that the time for filing a petition be extended because of the child's special needs as specified under Minnesota Statutes § 259.22, subd. 4;

(b) that, based on a written plan for completing filing of the petition, including a specific timeline, to which the prospective adoptive parents have agreed, the time for filing a petition be extended long enough to complete the plan because such an extension is in the best interests of the child and additional time is needed for the child to adjust to the adoptive home; or

(c) that the child be removed from the prospective adoptive home.

Subd. 2. Child Under Guardianship of Commissioner of Human Services.

(a) **Petition Filed Within Nine (9) Months of Adoption Placement Agreement.** An adoption petition shall be filed not later than nine (9) months after the date of the fully executed adoption placement agreement unless the court orders that:

(1) the time for filing a petition be extended because of the child's special needs as defined under title IV-E of the federal Social Security Act, 42 U.S.C. § 672; or

(2) based on a written plan for completing filing of the petition, including a specific timeline, to which the adopting parent has agreed, the time for filing a petition be extended long enough to complete the plan because an extension is in the best interests of the child and additional time is needed for the child to adjust to the adoptive home.

(b) **Petition Not Filed Within Nine (9) Months of Adoption Placement Agreement** If an adoption petition is not filed within nine (9) months of the execution of the adoption placement agreement, and after giving the adopting parent written notice of its request together with the date and time of the hearing set to consider its report, the responsible social services agency shall file a report requesting an order for one of the following:

(1) extending the time for filing a petition because of the child's special needs as defined under title IV-E of the federal Social Security Act, 42 U.S.C. § 673;

(2) based on a written plan for completing filing of the petition, including a specific timeline, to which the adopting parent has agreed, extending the time for filing a petition long enough to complete the plan because an extension is in the best interests of the child and additional time is needed for the child to adjust to the adoptive home; or

(3) removing the child from the adopting home.

At the conclusion of the review, the court shall issue findings and appropriate orders for the parties to take action or steps required to advance the case toward a finalized adoption, and shall set the date and time for the next review hearing.

Subd. 3. Exceptions – Stepparent and Relative Adoptions. The timing specified in subdivision 1 does not apply to stepparent adoptions or adoptions under Minnesota Statutes § 259.47 by an individual related to the child not involving a placement as defined in Rule 2.01(19).

Rule 35.04. Conditions for Filing Petition for Adoption of a Child; Exceptions

Subd. 1. Generally. No petition for adoption of a child may be filed unless the adoptive placement of the child was made by:

- (a) the responsible social services agency as agent of the commissioner of human services; or
- (b) a child placing agency as defined in Rule 2.01(10).

Subd. 2. Exceptions. The requirements of subdivision 1 shall not apply if:

- (a) the child is over fourteen (14) years of age;
- (b) the petitioner is an individual who is related to the child as defined in Rule 2.01(19);
- (c) the child has been lawfully placed under the laws of another state while the child and the petitioner resided in that state;
- (d) the court waives the requirement of subdivision 1 in the best interests of the child and the placement is not made by transfer of physical custody of the child from a biological parent or legal guardian to the prospective adoptive home; or
- (e) the child has been lawfully placed pursuant to an order for direct placement pursuant to Rule 29.

2014 Advisory Committee Comment

Agency placement cannot be waived for children under the guardianship of the commissioner of human services. Under Minnesota Statutes § 260C.613, the responsible social services agency has exclusive

authority to make an adoptive placement. An adoptive placement is made through a fully executed adoption placement agreement between the adopting parent, the responsible social services agency and the commissioner. The agency's adoptive placement can be challenged in a motion under Minnesota Statutes § 260C.607, subd. 6, and if the prevailing party is not the adopting parent party to the adoption placement agreement, the court may order the agency to make the adoptive placement in the home of the prevailing party.

Rule 35.05. Content

Subd. 1. Case Caption.

(a) **Generally.** In all adoption proceedings, except as otherwise stated in this subdivision, the case caption shall be "In Re the Petition of _____ and _____ (petitioners) to adopt _____ (child's birth name)." In proceedings commenced before the birth of the child being adopted, the case shall be "In Re the Petition of _____ and _____ (petitioners) to adopt _____ (unborn child of _____)."

(b) **Child Under Guardianship of Commissioner of Human Services.** The petition shall be captioned in the legal name of the child as that name is reflected on the child's birth record prior to adoption and shall be entitled "Petition to Adopt Child under the Guardianship of the commissioner of human services." The actual name of the child shall be supplied to the court by the responsible social services agency if unknown to the individual with whom the agency has made the adoptive placement.

Subd. 2. Allegations. An adoption petition may be filed regarding one or more children, shall be verified by the petitioner upon information and belief, and shall allege:

(a) the full name, age, and place of residence of the adopting parent, except as provided in Rule 7;

(b) if married, the date and place of marriage of the adopting parents, and the name of any parent who will retain legal rights;

(c) the date the petitioner acquired physical custody of the child and from what person or agency or, in the case of a stepparent adoption or adoption by an individual related to the child as defined in Rule 2.01(19), the date the petitioner began residing with the child;

(d) the date of birth of the child, if known, and the county, state, and country where born;

(e) the name of the child's parents, if known, and the legal custodian or legal guardian if there be one;

(f) the actual name of the child, if known, and any known aliases;

(g) the name to be given the child, if a change of name is desired;

(h) the description and value of any real or personal property owned by the child;

(i) the relationship of the adopting parent to the child, if any;

(j) whether the Indian Child Welfare Act does or does not apply;

(k) the name and address of the parties identified in Rule 20;

(l) whether the child has been placed with petitioner for adoption by an agency and, if so, the date of the adoptive placement; and

(m) that the petitioner desires that the relationship of parent and child be established between petitioner and the child, and that it is in the best interests of the child to be adopted by the petitioner.

Subd. 3. Exception to Content. In agency placements, the information required in subdivision 2(e) and (f) shall not be required to be alleged in the petition but shall be provided to the court by the agency responsible for the child's adoptive placement. In the case of an adoption by a stepparent, the parent who is the stepparent's spouse shall not be required to join the petition.

Subd. 4. Attachments. The following shall be filed with the petition:

- (a) the adoption study report required under Rule 37 and Minnesota Statutes § 259.41;
- (b) any biological parent social and medical history required under Minnesota Statutes § 259.43 and § 260C.609, except if the petitioner is the child's stepparent;
- (c) the request, if any, under Rule 38.04 to waive the post-placement assessment report and background check;
- (d) in the case of a child under the guardianship of the commissioner of human services, a document prepared by the petitioner that establishes who must be given notice of the proceeding under Minnesota Statutes § 260C.627, subd. 1, that includes the names and mailing addresses of those to be served by the court administrator;
- (ed) proof of service, except in the case of a petition for a child under guardianship of the commissioner of human services under Minnesota Statutes § 260C.623; and
- (f) in the case of a child under the guardianship of the commissioner of human services, the adoption placement agreement required under Minnesota Statutes § 260C.613, subd. 1.

Subd. 5. Other Documents to be Filed. The petitioner, or the responsible social services agency in the case of a child under the guardianship of the commissioner of human services, shall file the following documents prior to finalization of the adoption:

- (a) a certified copy of the child's birth record;
- (b) a certified copy of the findings and order for termination of parental rights, if any, or an order accepting the parent's consent to adoption and for guardianship to the commissioner of human services under Minnesota Statutes § 260C.515, subd. 3;
- (c) a copy of the communication or contact agreement, if any;
- (d) certification that the Minnesota Fathers' Adoption Registry has been searched as required under Rule 32;
- (e) the original of each consent to adoption required under Rule 33, if any, unless the original was filed in the permanency proceeding conducted under Minnesota Statutes §

260C.515, subd. 3, and the order filed under clause (b) has a copy of the consent attached; and

- (f) the post-placement assessment report required under Rule 38.

Subd. 6. Missing Information. If any information required by subdivision 2 or 3 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 sworn affidavit, or by amended petition. If presented orally on the record, the court shall annotate the petition to reflect the updated information.

Subd. 7. Acceptance Despite Missing Information. The court administrator shall accept a petition for filing even if, on its face, the petition appears to be incomplete or does not include all information specified in subdivision 2 and 3. The presiding judge shall determine whether the petition complies with the requirements of these rules.

Rule 35.06. Verification; Signatures

(a) **Generally.** The petition shall be signed and dated by the petitioner and verified upon information and belief.

(b) **Child Under Guardianship of Commissioner of Human Services.** The petition shall be verified as required under Minnesota Statutes § 260C.141, subd. 4, and, if filed by the responsible social services agency, shall be approved and signed by the county attorney. If a petition is for adoption by a married person, both spouses must sign the petition indicating willingness to adopt the child and the petition must ask for adoption by both spouses unless the court approves adoption by only one spouse when spouses do not reside together or for other good cause shown. If the petition is for adoption by a person residing outside the state, the adoptive placement must have been approved by the state where the person is a resident through the Interstate Compact on the Placement of Children, Minnesota Statutes § 260.851.

Rule 35.07. Amendment

Subd. 1. Uncontested Petitions. An adoption petition may be amended at any time prior to the conclusion of the final hearing pursuant to Rule 41.

Subd. 2. Contested Petitions.

(a) **Prior to Trial.** An adoption petition may be amended at any time prior to the commencement of a trial pursuant to Rule 44. The petitioner shall provide notice of the amendment to all parties at least seven (7) days prior to the commencement of the trial. When the petition is amended, the court shall grant all other parties sufficient time to respond to the amendment.

(b) **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.

Rule 35.08. Statement of Expenses

Upon the filing of an adoption petition, the agency shall file with the court a statement of expenses that have been paid or are to be paid by the prospective adoptive parent in connection with the adoption. In a direct placement adoption, the statement of expenses shall be filed by the prospective adoptive parent.

RULE 36. ACTIONS UPON FILING OF PETITION

Upon the filing of an adoption petition, the court administrator shall immediately provide a copy of the petition to:

- (a) the Commissioner of Human Services; and
- (b) if the petition relates to a child, the agency identified below:
 - (1) in an agency or a direct placement adoption, the court shall provide the petition to the agency supervising the placement; and
 - (2) in all other instances not described in clause (1), the court shall provide the petition to the local social services agency of the county in which the

prospective adoptive parent lives if the child is to be adopted by an individual who is related to the child as defined in Rule 2.01(19).

RULE 37. ADOPTION STUDY AND BACKGROUND STUDY

Rule 37.01. Adoption Study and Background Study Required; Exception

An approved adoption study, completed background study as required under Minnesota Statutes § 245C.33, and written adoption study report must be completed before the child is placed in a prospective adoptive home, except as allowed by Minnesota Statutes § 259.47, subd. 6. An approved adoption study, which includes the background study, shall be completed by a licensed child-placing agency and must be thorough and comprehensive. The study shall be paid for by the prospective adoptive parent, except as otherwise required under Minnesota Statutes § 259.67 or 259.73. A placement for adoption with an individual who is related to the child, as defined by Minnesota Statutes § 245A.02, subd. 13, is not subject to this rule except as required by Minnesota Statutes § 245C.33 and § 259.53, subd. 2(c). In the case of a licensed foster parent seeking to adopt a child who is in the foster parent's care, any portions of the foster care licensing process that duplicate requirements of the adoption study may be submitted in satisfaction of the relevant requirements of this rule.

Rule 37.02. Adoption Study Report

The adoption study is the basis for completion of a written report which must be in a format specified by the Commissioner of Human Services. An adoption study report must include at least one in-home visit with each prospective adoptive parent. At a minimum, the report must document the following information about each prospective adoptive parent:

(a) a background study pursuant to Minnesota Statutes § 259.41, subd. 3, and § 245C.33, including:

(i) an assessment of the data and information required in Minnesota Statutes § 245C.33, subd. 4, to determine if the prospective adoptive parent and any other

person over the age of 13 living in the home has a felony conviction consistent with subdivision 3 and section 471(a)(2) of the Social Security Act; and

(ii) an assessment of the effect of any conviction or finding of substantiated maltreatment on the capacity of the prospective adoptive parent to safely care for and parent a child;

(b) an assessment of medical and social history;

(c) an assessment of current health;

(d) an assessment of potential parenting skills;

(e) an assessment of ability to provide adequate financial support for a child;

(f) an assessment of the level of knowledge and awareness of adoption issues, including, where appropriate, matters relating to interracial, cross-cultural, and special needs adoptions; and

(g) recommendations regarding the suitability of the subject of the study to be an adoptive parent..

Rule 37.03. Direct Placement Adoption; Background Study Incomplete

Unless otherwise ordered by the court, in a direct placement adoption the child may be placed in the preadoptive home prior to completion of the background study if each prospective adopting parent has completed and filed with the court a sworn affidavit stating whether the affiant or any person residing in the household has been convicted of a crime. The affidavit shall also:

(a) state whether the adoptive parent or any other person residing in the household is the subject of an open investigation of, or has been the subject of a substantiated allegation of, child or vulnerable adult maltreatment within the past ten (10) years;

(b) include a complete description of the crime, open investigation, or substantiated allegation of child abuse or vulnerable adult maltreatment, and a complete description of any sentence, treatment, or disposition; and

(c) include the following statement: “Petitioner acknowledges that if, at any time before the adoption is final, a court receives evidence leading to a conclusion that a prospective adoptive parent knowingly gave false information in the affidavit, it shall be determined that the adoption of the child by the prospective adoptive parent is not in the best interests of the child.”

Rule 37.04. Background Study; Timing

Subd. 1. Timing of Background Study. The background study required in Rule 37.03 shall be completed before an adoption petition is filed.

Subd. 2. Direct Placement Adoption. In a direct placement adoption, if an adoption study report has been submitted to the court before the background study is complete, an updated adoption study report which includes the results of the background study shall be filed with the adoption petition.

Subd. 3. Agency Unable to Complete Background Study. In the event that an agency is unable to complete the background study, the agency shall submit with the adoption petition an affidavit documenting the agency’s efforts to complete the background study.

Rule 37.05. Updates to Adoption Study Report; Period of Validity

An adoption study report is valid if the report has been completed or updated within twelve (12) months of the adoptive placement.

Rule 37.06. Filing of Adoption Study Report

Subd. 1. Agency Placement. The adoption study report shall be filed with the court at the time the adoption petition is filed.

Subd. 2. Direct Placement Adoption. The adoption study report shall be filed with the court pursuant to Rule 29 in support of a motion for a non-emergency preadoptive custody order or, if the study and report are complete, in support of an emergency preadoptive custody order.

Rule 37.07. Foster Parent Assessment May be Used for Adoption Study

A licensed foster parent seeking to adopt a child in the foster parent's care may submit any portion of the foster care licensing assessment that duplicates requirements of the adoption study report in satisfaction of the adoption study report requirements.

RULE 38. POST-PLACEMENT ASSESSMENT REPORT

Rule 38.01. Timing

Subd. 1. Generally. Unless waived by the court pursuant to Rule 38.04 and Minnesota Statutes § 259.53, subd. 5, the supervising agency, or if there is no such agency the local social services agency, shall conduct a post-placement assessment and file a report with the court within ninety (90) days of receipt of a copy of the adoption petition. A post-placement assessment report is valid for twelve (12) months following its date of completion.

Subd. 2. Failure to Comply. If, through no fault of the petitioner, the agency fails to complete the assessment and file the report within ninety (90) days of the date it received a copy of the adoption petition, the court may hear the petition upon giving the agency five (5) days notice by mail of the time and place of the hearing.

Rule 38.02. Content

The post-placement assessment report shall provide an individualized determination of the needs of the child and how the adoptive placement will serve the needs of the child. The report shall include a recommendation to the court as to whether the adoption petition should or should not be granted. In making evaluations and

recommendations, the post-placement assessment report shall, at a minimum, address the following:

- (1) the level of adaptation by the prospective adoptive parents to parenting the child;
- (2) the health and well-being of the child in the prospective adoptive parent's home;
- (3) the level of incorporation by the child into the prospective adoptive parent's home, extended family, and community; and
- (4) the level of inclusion of the child's previous history into the prospective adoptive home, such as cultural or ethnic practices, or contact with former foster parents or biological relatives.

Rule 38.03. Background Study

If an adoption study is not required because the petitioner is an individual who is related to the child as defined in Rule 2.01(19), the agency, as part of its post-placement assessment report, shall conduct a background study meeting the requirements of Minnesota Statutes § 259.41, subd. 3(b). An adoption study and background study are always required for a child under guardianship of the commissioner of human services.

Subdivision 1. Post-Placement Assessment Waiver Permitted. The post-placement assessment report may be waived by the court pursuant to Minnesota Statutes § 259.53, subd. 5, or § 260C.607. A request to waive a post-placement assessment report shall be in writing and shall be filed and served with the petition pursuant to Rule 35.05. A request to waive a post-placement assessment report shall be decided by the court within fifteen (15) days of filing, unless a written objection to the waiver is filed, in which case a hearing must be conducted as soon as practicable.

Subd. 2. Background Study Waiver Prohibited. The court shall not waive the background study.

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

Subd. 1. Rule Does Not Apply to Children under Guardianship of the Commissioner. This rule does not apply to children under the guardianship of the commissioner of human services.

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

2014 Advisory Committee Comment

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

If the court finds there is a prima facie showing, it will conduct further hearing on the motion and may order the agency to make an adoptive placement with the individual bringing the motion. A petition for

adoption of a child under guardianship of the commissioner cannot be filed unless there is an adoptive placement by the responsible agency made by fully executed adoptive placement agreement. So, the process is not for contested adoption but, rather, for contested adoptive placement.

RULE 39. ANSWER WHEN CONTESTED ADOPTION MATTER

Rule 39.01. Answer When Contested

Within twenty (20) days after service of the adoption petition, or as soon thereafter as the party or agency becomes aware that the matter is contested, a notice of contested adoption and, if appropriate, a competing adoption petition, shall be filed by:

- (a) any party or agency opposing the adoption;
- (b) any party or agency with knowledge of two or more adoption petitions regarding the same child; or
- (c) the Commissioner of Human Services or responsible social services agency if consent to adopt is being withheld from the petitioner.

Rule 39.02. Notice of Contested Adoption

Subd. 1. Content. A notice of contested adoption shall:

- (a) set forth the allegations upon which the adoption is being contested, and
- (b) be signed by the party or by an agent of the agency opposing the adoption.

Subd. 2. Service. The notice of contested adoption shall be served upon all parties in the same fashion as other motions are served under these Rules.

Rule 39.03. Pretrial Conference

The court shall schedule a pretrial conference within fifteen (15) days of the filing of a notice of contested adoption and provide notice of hearing to the parties.

**RULE 40. VOLUNTARY WITHDRAWAL; INVOLUNTARY DISMISSAL;
SUMMARY JUDGMENT**

Rule 40.01. Voluntary Withdrawal of Petition

A petition may be withdrawn or dismissed by a petitioner without order of the court by filing:

- (a) at any time a notice of withdrawal along with proof of service upon all parties; or
- (b) a stipulation of dismissal signed by all parties who have appeared in the matter.

Rule 40.02. Involuntary Dismissal of Petition

Pursuant to the timing, notice, and format requirements of Rule 7 of the Minnesota Rules of Civil Procedure, the court, upon its own initiative or upon motion of a party, may dismiss a petition or grant judgment on the pleadings. Grounds for such dismissal or judgment on the pleadings shall include, but not be limited to:

- (a) failure to comply with these rules;
- (b) failure to move forward on the petition;
- (c) failure to state a claim upon which relief may be granted;
- (d) lack of jurisdiction over the subject matter;
- (e) lack of jurisdiction over the person;
- (f) insufficiency of service of process; and
- (g) failure to join a necessary party.

Furthermore, after a petitioner has completed the presentation of evidence, any other party to the proceeding, without waiving the right to offer evidence in the event the motion is not granted, may move for dismissal on the ground that based upon the facts and the law, the petitioner has shown no right to relief.

Rule 40.03. Summary Judgment

Pursuant to the timing, notice, and format requirements of Rule 7 of the Minnesota Rules of Civil Procedure, a party may move with or without supporting affidavits for summary judgment. Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that a moving party is entitled to judgment as a matter of law.

RULE 41. FINAL HEARING IN UNCONTESTED MATTERS

Rule 41.01. Generally

A final hearing is a hearing to determine whether an uncontested adoption petition should be granted.

Rule 41.02. Commencement

A final hearing relating to an uncontested adoption petition shall be held not sooner than ninety (90) days after the child is placed, unless there is a waiver of the residency requirement pursuant to Rule 35, but not later than ninety (90) days after the adoption petition is filed. If the petitioner has not requested a hearing date within sixty (60) days of the filing of the petition, the court administrator may schedule a hearing and serve notice of such hearing pursuant to Rule 31.04.

Rule 41.03. Hearing Procedure

At the beginning of the final hearing, the court shall on the record:

(a) verify the name, age, and current address of the child who is the subject of the proceeding, except as provided in Rule 20.03;

(b) determine whether the Indian child's tribe has been notified, if the child has been determined to be an Indian child;

(c) determine whether all parties are present and identify those present for the record;

(d) determine whether any necessary biological parent, guardian, or other person from whom consent to the adoption is required or whose parental rights will need to be terminated is present;

(e) determine whether notice requirements have been met, and, if not, whether the affected person waives notice; and

(f) determine whether the Interstate Compact on the Placement of Children, Minnesota Statutes § 260.851, applies.

Rule 41.04. Standard of Proof

The petitioner shall prove by a preponderance of evidence the facts alleged in the adoption petition and that the adoption is in the best interests of the child.

2004 Advisory Committee Comment

The Indian Child Welfare Act, 25 U.S.C. § 1901, et. seq., does not state a standard of proof for adoption matters as it does for foster care and termination of parental rights matters.

Rule 41.05. Timing of Decision

Within fifteen (15) days of the conclusion of the final hearing in an uncontested adoption, the court shall issue findings of fact, conclusions of law, order for judgment, and adoption decree pursuant to Rule 45. For good cause, the court may extend this period for an additional fifteen (15) days.

RULE 42. CONSOLIDATION; BIFURCATION

Rule 42.01. Consolidation Generally

When matters involving the adoption of the same child or children are pending before the court, the court may:

(a) order a joint hearing or trial of any or all the adoption matters;

(b) order consolidation of all such adoption matters;

- (c) order that the matters be heard sequentially; and
- (d) make any orders appropriate to avoid unnecessary delay or costs.

Rule 42.02. Consolidation with Other Proceedings; Competing Petitions

Subd. 1. Consolidation with Other Proceedings. Upon notice of motion and motion and for good cause shown, the court may order the consolidation of the adoption matter with any related proceeding, including a custody proceeding, paternity proceeding, termination of parental rights proceeding, or other proceeding regarding the same child.

Subd. 2. Competing Petition. When multiple adoption petitions have been filed with respect to the same child who is under the guardianship of the Commissioner of Human Services, the court shall consolidate the matters for trial. In all other cases, when two or more parties have petitioned for the adoption of the same child, the court may, after consideration of the factors specified in subdivision 4, order the petitions to be tried together.

Subd. 3. Cross-County Matters. Upon motion for a change of venue and for good cause shown, the court may order the consolidation of the adoption matter with any related proceeding in another county regarding the same child.

Subd. 4. Factors to Consider. In making the determinations required under subdivisions 1 to 3, the court shall consider the best interests of the child, any potential breaches of confidentiality of the adoption matter, the additional complexity or judicial economies of a joint proceeding, and any other relevant factors.

2004 Advisory Committee Comment

In determining whether to consolidate an adoption matter and termination of parental rights proceeding, the court shall consider the impact of the consolidation on the eligibility of the child for financial

adoption assistance or other financial benefits available under Minn. Stat. § 259.67.

Rule 42.03. Bifurcation

Subd. 1. Permissive Bifurcation. The court may order a trial pursuant to Rule 44 to be bifurcated as to one or more claims or issues.

Subd. 2. Mandatory Bifurcation. In cases where the child is under the guardianship of the Commissioner of Human Services, the court shall bifurcate the trial on the contested adoption petitions as follows:

(a) A trial shall first be held to determine whether the consent to the adoption by the Commissioner of Human Services was unreasonably withheld from the petitioner. The responsible social services agency shall proceed first with evidence about the reason for the withholding of consent. The petitioner who has not obtained consent shall then have the burden of showing by a preponderance of the evidence that the consent was unreasonably withheld.

(b) If the court determines that the consent of the Commissioner of Human Services was not unreasonably withheld, the court shall dismiss the adoption petition of the petitioner who did not obtain consent, and proceed to trial on the remaining adoption petitions, if any.

(c) If the court determines that the consent of the Commissioner of Human Services was unreasonably withheld from any petitioner, the court shall not dismiss that petition for lack of consent. The court shall proceed to trial on all the contested adoption petitions, and shall determine whether adoption is in the best interests of the child, and, if so, adoption by whom.

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

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

2014 Advisory Committee Comment

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

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

RULE 43. PRETRIAL CONFERENCE IN CONTESTED MATTERS

Rule 43.01. Timing

The court may convene a pretrial conference sua sponte or upon the motion of any party. Any pretrial conference shall take place at least ten (10) days prior to trial.

Rule 43.02. Purpose

The purposes of a pretrial conference 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) determine whether all parties who seek legal representation have obtained legal representation and determine that attorneys of record have filed certificates of representation with the court;
- (d) identify any unresolved discovery matters;
- (e) resolve any pending pretrial motions;
- (f) determine the order in which evidence will be presented pursuant to Rule 45;
- (g) identify and narrow issues of law and fact for trial, including identification of:
 - (1) the factual allegations admitted or denied;
 - (2) any stipulations to foundation and relevance of documents; and
 - (3) any other stipulations, admissions, or denials;
- (h) exchange witness lists and a brief summary of each witness' testimony;
- (i) set a deadline for the exchange of exhibits prior to trial and determine how exhibits shall be marked prior to the start of trial;
- (j) confirm the trial date and estimate the length of trial; and
- (k) determine any other relevant issues.

Rule 43.03. Pretrial Order

Within fifteen (15) days of the pretrial conference, the court shall issue a pretrial order which shall specify all determinations required by this rule. From the date of the pretrial conference to the commencement of the trial, the parties shall have a continuing obligation to update information provided during the pretrial conference.

RULE 44. TRIAL IN CONTESTED MATTERS

Rule 44.01. Generally

A trial is a hearing to determine whether an adoption petition should be granted.

Rule 44.02. Commencement

A trial on a contested adoption petition shall commence within ninety (90) days of the filing of the petition or notice of a contested hearing, whichever is later. The trial shall be completed within thirty (30) days of commencement. Either or both deadlines may be extended for up to an additional thirty (30) days upon a showing of good cause and a finding by the court that the extension is in the best interests of the child.

Rule 44.03. Trial Procedure

Subd. 1. Initial Procedure. At the beginning of the trial, the court shall on the record:

(a) verify the name, age, and current address of the child who is the subject of the proceeding, except as provided in Rule 20.03;

(b) determine whether the Indian child's tribe has been notified, if the child has been determined to be an Indian child;

(c) determine whether all parties are present and identify those present for the record;

(d) determine whether any necessary biological parent, guardian, or other person from whom consent to the adoption or whose parental rights will need to be terminated is present; and

(e) determine whether notice requirements have been met, and, if not, whether the affected person waives notice.

Subd. 2. Order of Evidence. That trial shall proceed as follows:

(a) The parties, in the order determined by the court at the pretrial conference, may make an opening statement or may make a statement immediately before offering evidence on their own petition and the statement shall be confined to the facts expected to be proved.

(b) The parties, in the order determined by the court at the pretrial conference, may offer evidence.

(c) The parties, in the order determined by the court at the pretrial conference, may offer evidence in rebuttal.

(d) When evidence is presented, the parties may, in the order determined by the court at the pretrial conference, cross-examine the witnesses.

(e) At the conclusion of the evidence, the parties may make closing statements in the reverse order in which they presented their evidence.

(f) If a 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 44.04. Standard of Proof

The petitioner shall prove by a preponderance of evidence the facts alleged in the adoption petition and that the adoption is in the best interests of the child.

2004 Advisory Committee Comment

The Indian Child Welfare Act, 25 U.S.C. § 1901, et. seq., does not state a standard of proof for adoption matters as it does for foster care and termination of parental rights matters.

Rule 44.05. Motion for Judgment at Conclusion of Trial

A motion for a judgment may be made at the close of the evidence offered by an opponent or at the close of all evidence. A party who moves for a judgment at the close of the evidence offered by an opponent shall, after denial of the motion, have the right to offer evidence as if the motion had not been made. A motion for a judgment shall state the specific grounds therefore.

Rule 44.06. Timing of Decision; Delay of Issuance of Order if Adoption Assistance Not Yet Acted Upon

Subd. 1. Generally. Within fifteen (15) days of the conclusion of the trial in a contested matter, the court shall issue findings of fact, conclusions of law, an order for judgment, and an adoption decree pursuant to Rule 45. If written argument is to be submitted, such argument must be submitted within fifteen (15) days of the conclusion of testimony. For good cause, the court may extend this period for an additional fifteen (15) days. The trial is not considered completed until written arguments, if any, are submitted or the time for submission of written arguments has expired.

Subd. 2. Delay of Issuance of Order if Adoption Assistance Not Yet Acted Upon. For adoption matters involving a child who is a ward of the Commissioner of Human Services, if there has been no opportunity for the adopting parent to apply for adoption assistance, the court shall delay issuing its findings of fact, conclusions of law, order for judgment, and adoption decree pursuant to Rule 45 until such time as the responsible social services agency documents for the court that either the Commissioner has acted upon an adoption assistance application made on behalf of the adopting parent and child or the adopting parent has declined in writing to apply for adoption assistance. “Acted upon” means the commissioner or commissioner’s delegate has signed an adoption assistance agreement or denied adoption assistance eligibility pursuant to a completed application submitted to the Department of Human Services. Nothing in this

rule grants jurisdiction over the commissioner in regard to procedures or substantive decisions regarding the award or denial of adoption assistance.

2008 Advisory Committee Comment

Rule 44.06, subd. 2, requires the court to delay issuing its order after a final hearing or trial on an adoption matter relating to a child who is a state ward if the adopting parent has not had the opportunity to apply for adoption assistance or if the responsible agency has not documented in writing signed by the adopting parent that the adopting parent was advised of the opportunity to apply for adoption assistance and has declined adoption assistance. The reason for requiring the delay is because there may not have been an adoption assistance application by, or agency discussion of the opportunity to apply for adoption assistance with, the adopting parent when two or more competing adoption petitions regarding the same child are heard and the Commissioner of Human Services has given consent to the adoption, as required under Minn. Stat. § 259.24, subd. 1(d), by a different prospective adoptive petitioner than the adopting parent whose petition the court is granting. There may be an adoption assistance agreement for the parent to whom the Commissioner gave consent, but no application may have been made in regard to the competing petitioner. The court is required to delay issuing the adoption decree to give the responsible social services agency time to discuss the opportunity to apply for adoption assistance on behalf of the child with family whose petition the court is granting and for the commissioner to act on any application that is made. This will mean more certain eligibility for adoption assistance and timely start of adoption assistance payments after the decree is issued, if the child and adoptive parent are determined eligible.

RULE 45. FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER FOR JUDGMENT, AND ADOPTION DECREE

Rule 45.01. Dismissal and Denial of Adoption Petition

If the court finds that the consent of the adult person to be adopted is not valid, the court shall deny the petition. The court may dismiss an adoption petition if appropriate legal grounds have not been proved. In the case of a child under the guardianship of the commissioner of human services, the court shall dismiss the petition if the petitioner is not a party to a fully executed adoption placement agreement. If the court is not satisfied that the proposed adoption is in the best interests of the child, the court shall deny the petition and:

- (a) order that the child be returned to the custody of the person or agency legally vested with permanent custody; or
- (b) in the case of a child under the guardianship of the commissioner of human services, order the responsible social services agency to take appropriate action for the protection and safety of the child and notify the court responsible for conducting review hearings under Minnesota Statute § 260C.607, which shall set a hearing within thirty (30) days of receiving notice of the denial of the petition; or
- (c) order the case transferred for appropriate action and disposition by the court having jurisdiction to determine the custody and guardianship of the child.

Rule 45.02. Granting Adoption Petition

If the court finds that it is in the best interests of the child that the petition be granted, the court shall issue findings of fact, conclusions of law, an order for judgment, and an adoption decree that the person shall be the child of the adopting parent. If the person being adopted is an adult, the court shall grant an adoption decree if the court finds that the person's consent is valid. Once the court issues an adoption decree, the court shall also direct the court administrator to complete the appropriate forms so that a new birth record may be issued and notify the prevailing petitioner and his or her attorney of the determination, and provide them with an opportunity to obtain a certified copy of the adoption decree and new birth record prior to the closing of the file.

Rule 45.03. Findings of Fact, Conclusions of Law, Order for Judgment, and Adoption Decree

Subd. 1. Separate Orders for Each Child. Although multiple children may be listed in an adoption petition, for each such child the court shall issue a separate findings of fact, conclusions of law, order for judgment, and adoption decree.

Subd. 2. Findings of Fact in a Contested Adoption Matter. In its decision in a contested adoption matter, the court shall make findings about:

- (a) the petitioner's full name and date of birth;
- (b) the petitioner's marital status;
- (c) whether petitioner has resided in Minnesota for at least one (1) year prior to filing the adoption petition or whether the residency requirement has been waived pursuant to Rule 35.01;
- (d) the date petitioner acquired physical custody of the child and from whom;
- (e) the type of placement, including whether it is an agency placement, a direct preadoptive placement, a relative placement, or some other type of placement;
- (f) whether three (3) months have passed since the date petitioner acquired physical custody of the child or whether the residency requirement has been waived pursuant to Rule 35.02;
- (g) the child's date of birth and the child's city, county, state, and country of birth;
- (h) whether a certified copy of the birth record of the child or of the adult to be adopted has been filed with the court;
- (i) whether the post-placement assessment report required under Rule 38 and the adoption study report required under Rule 37 have been filed with the court;
- (j) whether the child owns property and, if so, a list of such property;
- (k) whether all consents required under Rule 33 have been properly executed and filed with the court or whether orders for termination of parental rights have been entered;

(l) whether all notices required under Rule 31 have been properly served and proof of service has been filed with the court;

(m) whether, if applicable, a communication or contact agreement pursuant to Rule 34 has been properly executed and filed with the court and whether the court finds that the communication or contact agreement is in the best interests of the child;

(n) whether a statement of expenses paid by the petitioner has been filed with the court pursuant to Rule 35.08 and whether the expenses are approved;

(o) whether a search of the Minnesota Fathers' Adoption Registry has been conducted and the results have been filed with the court pursuant to Rule 32; and

(p) whether the social and medical history form has been completed by the biological mother and biological father and has been filed with the court.

Subd. 3. Findings of Fact in an Uncontested Adoption Matter. In its decision in an uncontested adoption matter, the court:

(a) shall include findings about the issues identified in subdivision 2(a), (b), (c), (d), (g), (j), and (m); and

(b) may include findings about the issues identified in subdivision 2(e), (f), (h), (i), (k), (l), (n), (o), and (p).

Subd. 4. Conclusions of Law. In its decision, the court shall make conclusions of law about whether all of the allegations contained in the adoption petition have been proved in accordance with the applicable standard of proof and whether the adoption is in the child's best interests.

Subd. 5. Order for Judgment. If the court decides to grant the adoption petition, in its decision the court shall include an order stating:

(a) the child's new name;

(b) that the child is the child of the petitioner; and

(c) that an adoption decree shall be issued.

Subd. 6. Adoption Decree. If the court decides to grant the adoption petition, in its decision the court shall order that the child is the child of the petitioner and of any parent retaining parental rights.

Rule 45.04. Filing and Service

The findings of fact, conclusions of law, order for judgment, and adoption decree shall be filed and served pursuant to Rule 10.03, subd. 2. If the adoptee is an Indian child, the court administrator shall provide the Secretary of the Interior with a copy of the adoption decree, along with such other information as may be necessary to show the following:

- (a) the child's name and tribal affiliation;
- (b) the names and addresses of the child's biological parents;
- (c) the names and addresses of the child's adoptive parents; and
- (d) the identity of any agency having files or information relating to such adoptive placement.

RULE 46. POST-TRIAL MOTIONS

Rule 46.01. Motion for Amended Findings

Upon motion of a party served and heard not later than the time allowed for a motion for a new trial pursuant to Rule 46.02, the court may amend its findings or make additional findings, and may amend the judgment accordingly if judgment has been entered. 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 the sufficiency of the evidence to support the findings may be raised on appeal regardless of whether the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

Rule 46.02. Motion for New Trial

Subd. 1. Grounds. A motion for a new trial may be granted to any or all of the parties on all or part of the issues for any of the following causes:

- (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 the prevailing party;
- (c) accident or surprise which could not have been prevented by ordinary prudence;
- (d) material evidence newly discovered, which with reasonable diligence could not have been found and produced at the trial;
- (e) errors of law occurring at the trial, and objected to at the time, or, if no objection need have been made pursuant to these rules, plainly assigned in the notice of motion;
- (f) the decision is not justified by the evidence or is contrary to law; but, unless it be so expressly stated in the order granting a new trial, it shall not be presumed on appeal to have been made on the ground that the decision was not justified by the evidence; or
- (g) in the interest of justice.

Upon a motion for a new trial, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions, and direct entry of a new judgment.

Subd. 2. Basis Of Motion. A motion for a new trial shall be made pursuant to Rule 15 and shall be made based upon 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. A full or partial transcript of the court reporter's notes may be used on the hearing of the motion.

Subd. 3. Time For Serving and Filing Motion. A notice of motion and motion for a new trial shall be served and filed within fifteen (15) days after service of notice by the court administrator of the filing of the decision or order pursuant to Rule 10. The motion shall be heard within thirty (30) days after such notice of filing.

Subd. 4. Time For Serving and Filing Affidavits. When a motion for a new trial is based upon affidavits, they shall be served and filed with the notice of motion. The opposing party shall have ten (10) days after such service in which to serve and file opposing affidavits, which period may be extended by the court for good cause. The court may permit reply affidavits.

Subd. 5. Order for New Trial On Court's Initiative. Not later than fifteen (15) days after a general verdict or the filing of the decision or order, the court upon its own initiative may order a new trial for any reason for which it might have granted a new trial on a motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. The court shall specify in the order the grounds therefore.

Rule 46.03. Timing of Decision

Within fifteen (15) days of the conclusion of the hearing on the motion the court shall issue its decision and order. For good cause shown, the court may extend this period for an additional fifteen (15) days.

RULE 47. RELIEF FROM ORDER

Rule 47.01. 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 47.02. 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 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 filing of the court's order.

Rule 47.03. Invalidation of District Court Action – Indian Child Cases

Subd. 1. Petition. Any Indian child who is the subject of an adoption proceeding under State law, parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may file with any court of competent jurisdiction a petition to invalidate such action upon a showing that such action violates any provisions of the Indian Child Welfare Act, 25 U.S.C. §§ 1911, 1912, or 1913.

Subd. 2. Evidentiary Hearing. Upon the filing of a petition to invalidate, the court shall schedule an evidentiary hearing. The form and content of the petition to invalidate shall be governed by Rule 15.

Subd. 3. Findings and Order. Within fifteen (15) days of the conclusion of the evidentiary hearing, the court shall issue a written order which shall include findings of fact and conclusions of law.

Rule 47.04. Vacation of Adoption Decree – Indian Child Cases

Subd. 1. Petition to Vacate. After the entry of an adoption decree of an Indian child in any State court, the parent may withdraw consent upon the grounds that the consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two (2) years may be invalidated under the provisions of this rule unless otherwise permitted under State law.

Subd. 2. Evidentiary Hearing. Upon the filing of a petition to vacate, the court shall schedule an evidentiary hearing. The form and content of the petition to vacate shall be governed by Rule 15.

Subd. 3. Findings and Order. At the conclusion of the evidentiary hearing the court shall issue a written order which shall include findings of fact and conclusions of law.

RULE 48. APPEAL

Rule 48.01. Applicability of Rules of Civil Appellate Procedure

Except as provided in this rule, appeals of adoption matters shall be in accordance with the Minnesota Rules of Civil Appellate Procedure.

Rule 48.02. Procedure

Subd. 1. Appealable Order. An appeal may be taken by an aggrieved person from a final order of the juvenile court affecting a substantial right of the aggrieved person.

Subd. 2. Timing. Any appeal shall be taken within thirty (30) 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 46, or for relief under Rule 47 if the motion is filed within the time specified in Rule 46.02, subd. 3, the provisions of Minnesota Rules of Civil Appellate Procedure Rule 104.01, subds. 2 and 3, apply, except that the time for appeal runs for all parties from the time of service of notice by the court administrator of the filing of the order disposing of the last post-trial motion.

Subd. 3. Service and Filing of Notice of Appeal. Within the time allowed for an appeal from an appealable order, the person appealing shall:

(a) serve a notice of appeal upon all parties or their counsel if represented, including notice of the correct case caption pursuant to Rule 8.08 of the Minnesota Rules of Juvenile Protection Procedure; 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 as required under Rule 8.08 of the Minnesota Rules of Juvenile Protection Procedure.

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. 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. 6. 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.

2004 Advisory Committee Comment – 2006 Amendment

Minnesota Statutes § 259.63 provides that adoption appeals are taken “as in other civil cases” under the Rules of Civil Appellate Procedure. The Committee recognizes that the timing provision of Rule 48.02, subd. 2, is a departure from the Minnesota Rules of Civil Appellate Procedure in that under these Rules the appeal period now starts to run for all parties from the service of the Notice of Filing of Order by the court administrator rather than from the service of notice of filing by a party. In addition, the time for appeal is decreased to 30 days, consistent with the child's need for timely permanency. 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 adoption 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).

Rule 48.03. Application for Stay of Trial Court Order

The service and filing of a notice of appeal does not stay the order of the trial court. The order of the juvenile court shall stand pending the determination of the appeal, but the reviewing court may in its discretion and upon application stay the order.

Rule 48.04. 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 48.05. Transcript of Proceedings

The requirements regarding preparation of a transcript shall be governed by Rule 110.02 of the Minnesota Rules of Civil Appellate Procedure, except that the estimated completion date contained in the certificate of transcript shall not exceed thirty (30) days.

Rule 48.06. Time for Rendering Decisions

All decisions regarding adoption matters shall be issued by the appellate court within sixty (60) days of the date the case is deemed submitted pursuant to the Minnesota Rules of Civil Appellate Procedure.

RULE 49. VENUE

Rule 49.01. Venue

Subd. 1. Generally. Except as provided in subdivision 2, venue for an adoption proceeding shall be the county of the petitioner's residence.

Subd. 2. Child Under Guardianship of Commissioner. Venue for the adoption of a child committed to the guardianship of the Commissioner of Human Services shall be the county with jurisdiction in the matter according to Minnesota Statutes § 260C.317, subd. 3.

Rule 49.02. Request to Transfer Venue

Upon the petitioner's motion served and filed pursuant to Rule 15, the court having jurisdiction over the matter under Minnesota Statutes § 260C.317, subd. 3, may transfer venue of an adoption proceeding involving a child under the guardianship of the

Commissioner of Human Services to the county of the petitioner's residence upon determining that:

- (a) the Commissioner of Human Services has given consent to the petitioner's adoption of the child or that consent is unreasonably withheld;
- (b) there is no other adoption petition for the child that has been filed or is reasonably anticipated by the Commissioner of Human Services or the Commissioner's delegate to be filed; and
- (c) transfer of venue is in the best interests of the child.

Rule 49.03. Transfer of Venue Procedures

If the court grants a motion to transfer venue, the court shall do so by ordering a continuance and by forwarding to the court administrator of the appropriate court a certified copy of all papers filed, together with an order of transfer. The transferring court also shall provide copies of the order of transfer to the Commissioner of Human Services and any agency participating in the proceedings. The judge of the receiving court shall accept the order of the transfer and any other documents transmitted and hear the case.

RULE 50. ADOPTIVE PLACEMENTS – INDIAN CHILD

Rule 50.01. Placement Preferences

Subd. 1. Generally. In any adoptive placement of an Indian child, a preference shall be given, in the absence of good cause to the contrary, to a placement with:

- (a) a member of the Indian child's extended family;
- (b) other members of the Indian child's tribe; or
- (c) other Indian families.

Subd. 2. Preadoptive Placements.

An Indian child accepted for preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which the child's special

needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with:

- (a) a member of the Indian child's extended family;
- (b) a foster home licensed, approved, or specified by the Indian child's tribe;
- (c) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (d) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

Rule 50.02. Tribal Resolution for Different Order of Preference; Personal Preference Considered; Anonymity in Application of Preferences

In the case of a placement under Rule 50.01, if the Indian child's tribe establishes a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in Rule 50.01, subd. 2. Where appropriate, the preference of the Indian child or parent shall be considered, provided that where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

Rule 50.03. Social and Cultural Standards Applicable

The standards to be applied in meeting the preference requirements of Rule 50 shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

Rule 50.04. Record of Placement

A record of each placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary of the Interior or the Indian child's tribe.