COUNTY OF ANOKA

Office of

ANOKA COUNTY ATTORNEY

ROBERT W. JOHNSON

Courthouse - Anoka, Minnesota 55303 *612-421-4760*

October 28, 1982

A-12

Justices of the Supreme Court
State of Minnesota
c/o Mr. John McCarthy
Clerk, Minnesota Supreme Court
230 State Capitol
St. Paul, MN 55155

Dear Mr. McCarthy:

Please be advised that I wish to be heard at the hearing scheduled for November 16, 1982, at 9:30 o'clock A.M., concerning the Proposed Rules of Procedure for Juvenile Court.

Please also be advised that I agree with and endorse the Petition, also known as "Minority Report Concerning the Proposed Juvenile Court Rules" filed with the Court by Robert H. Scott.

Very truly yours,

Robert W. Johnson
Anoka County Attorney

RWJ:rw

11-1-82 -- Left word with Johnson's secretary. Please appear

CITY OF SAINT PAUL
DEPARTMENT OF POLICE

WM. W. McCUTCHEON, CHIEF OF POLICE
101 East Tenth Street
Saint Paul, Minnesota 55101
612-291-1111

GEORGE LATIMER
MAYOR

November 1, 1982

A-12

Honorable Justices
Minnesota Supreme Court
State Capitol
St. Paul, MN 55155

Dear Justices:

As a member of the task force on Rules of the Supreme Court Juvenile Justice Study Commission, I would like to convey to you my strong personal objection to the proposed Rules 6 and 18. At no time during our lengthy deliberations over these two proposed Rules was any evidence presented that showed any abuse of the rights of juveniles by the police under the current Rule which utilizes the totality of circumstances test. In addition, no evidence was presented which would tend to show that the juvenile court judges of our state are not capable of applying the totality of circumstances to determine if a statement or confession made by a juvenile met the test. I also found it interesting to note that the majority of those in favor of the proposed Rules 6 and 18 did not work in the juvenile justice or judicial systems, while on the other hand, those of us who oppose these Rules were, for the most part, professional practitioners within that system.

In view of the fact that those of us who work within the system believe very strongly that the current system works and works well, and that those members of the task force in favor of the proposed Rules could show no abuses, I personally urge you to reject proposed Rules 6 and 18. Thank you for your consideration in this matter.

Respectfully yours,

John Sturner

John Sturner, Captain
Records & Identification Unit

JS:mj

11-1 -- copy to each justice.

KUDUK AND WALLING
ATTORNEYS AT LAW
935 SOO LINE BUILDING
MINNEAPOLIS, MINNESOTA 55402

WRIGHT S. WALLING
DAVID G. KUDUK

TELEPHONE
339-9242
MINNESOTA TOLL FREE
1-800-292-4137

October 29, 1982

Supreme Court
Filed
Nov 1 1982
John McCarthy
Clerk

A-12

Mr. John McCarthy
Clerk of Supreme Court
230 State Capitol Building
St. Paul, MN 55155

RE: Proposed Juvenile Court Rules Presentation November 16, 1982

Dear Mr. McCarthy:

I am by this letter requesting an opportunity to appear at the Supreme Court hearing on the new Proposed Rules for Juvenile Court. I understand the hearing is scheduled for the morning of November 16, 1982, and I would appreciate some time to make a presentation as to my position on the rules.

At this time, I am the co-chair of the Hennepin County Bar Association Juvenile Law Committee, and have been chair or co-chair of that committee for the last four years. I have also served as a director of the Juvenile Division of the Hennepin County Public Defenders Office, and am currently involved in extensive representation of the lay guardian ad litems in Hennepin County Juvenile Court.

Additionally, I have done some educational presentations and some articles on the Juvenile Court and would very much appreciate an opportunity to make a brief statement.

I am enclosing ten (10) copies of this letter along with the original, as I understand that is the request from the court. I thank you for your attention to this and the anticipated opportunity to speak.

Very truly yours,

Wright S. Walling

Wright S. Walling

WSW/km

11-2-82 -- notified Walling's secretary that he can appear

DEPARTMENT OF COURT SERVICES
ADMINISTRATION
A-506 Government Center
Minneapolis, MN 55487

November 1, 1982

A-12

Mr. John McCarthy
Clerk of the Minnesota Supreme Court
Capitol Building
St. Paul, Minnesota 55101

Dear Mr. McCarthy:

This letter is to advise you of my request to be heard regarding the proposed Rules of Procedure for Juvenile Court. Specifically, the rules on which I would like to provide testimony are Rule 6, Right to Remain Silent, and Rule 30, Subdivision 4, Filing and Inspection of Reports.

I regret that I have not had the opportunity to develop a brief or petition setting forth my position on these rules. However, I will be glad to supply a letter to that effect prior to the hearing to be held on November 16, 1982, if necessary.

Very truly yours,

Kenneth Young

Kenneth Young
Director

11-1 -- Copy distributed to each Justice

STUART A. BECK
DISTRICT ADMINISTRATOR
COURT HOUSE
DULUTH, MINNESOTA 55802

SIXTH JUDICIAL DISTRICT

PHONE 723-3708

A-12

SUPREME COURT
FILED
NOV 1 1982
JOHN McCARTHY
CLERK

October 29, 1982

The Supreme Court of Minnesota
c/o John McCarthy, Clerk
St. Paul, MN 55155

RE: Proposed Rules of Procedure,
Minnesota Juvenile Courts

Dear Honorable Justices:

The Juvenile Judges within the Sixth Judicial District have reviewed both the proposed Rules and the Minority Report submitted by Mr. Robert Scott. Following their meeting last week, they instructed me to file this letter and ten copies with you, indicating their unanimous support for the Minority Report, with the following exceptions or additions:

a. With one descenting vote, the Juvenile Judges agree that proposed Rule 17 should be stricken, although they do not necessarily endorse all of the supporting reasons cited by the Minority Report.

b. They propose that Rule 36.02, Subdivision 3, be amended as set forth below for the reasons that follow:

Rule 36.02, Subdivision 3 Counsel for Child

(A) In all traffic matters arising under Minnesota Statutes, Section 169.121, where the child is not represented by counsel, the Court shall, before accepting any admission or denial from the child, explain in open Court and on the record the following:

(I) That the child has the right to the assistance of counsel at every stage of the proceedings and that counsel will be appointed for the child at public expense, in whole or in part, depending on the ability of the child and the child's parents to pay pursuant to Minnesota Statutes, Section 260.251.

(2) That if the child is found to have violated Minnesota Statutes, Section 169.121, Subdivision 1, that adjudication can be used in the future to enhance a subsequent violation of that same Section pursuant to Section 169.121, Subdivision 3.

The Court shall then inquire and determine whether the child understands the nature of the violation alleged and the rights explained and whether the child specifically waives the right to counsel.

(B) In all other traffic matters, the Court may in its discretion and if requested, appoint counsel to represent the child. If the parents of the child can afford to

retain counsel, they shall be given a reasonable opportunity to do so. If counsel is appointed by the Court, the Court may order, after giving the parent(s) a reasonable opportunity to be heard, that service of counsel shall be at the parent(s)' expense in whole or in part depending on their ability to pay.

Reason for Amendment:
Chapter 423, Section 4, Laws of 1982, enhancing a second DWI violation within a five-year period of time to a gross misdemeanor, amends Section 169.121, Subdivision 3, by specifically deleting the prior language referring to "convicted of a violation" and substituting the term "a person . . . who violates this Section." Under the old language referring to conviction, it was questionable whether an adjudication as a juvenile traffic offender under that Section could be used to enhance a second violation in light of Minnesota Statutes, Section 260.211, Subdivision 1. The new languange of Chapter 423, Section 4, Laws 1982, clearly indicates the Legislature's intent that the enhancement provision of 169.121, Subdivision 3, can be based upon either a prior adult "conviction" or an adjudication in juvenile court. To avoid any constitutional challenge to the use of such a prior adjudication to enhance a second violation in light of Valdasar v. Illinois, 446 U.S. 222, 64 L.Ed.2nd 169, 100 S.Ct. 1585 (1980), it would be prudent to have an attorney represent the child in traffic matters involving a violation of Section 169.121 or to have a record clearly establishing a waiver of that right.

Very truly yours,

Stuart A. Beck

Stuart A. Beck
District Administrator
Sixth Judicial District

11-1 -- Copy to each Justice

Minnesota Association of County Probation Officers

A-12

October 29, 1982

To: Minnesota Supreme Court

From: Timothy L. Cleveland
President, Minnesota Association of County Probation Officers

In Re: Proposed Rules of Procedure for Juvenile Court

Enclosed you will find the recommendations of the Minnesota Association of County Probation Officers regarding the proposed Rules of Procedure for Juvenile Court. The Minnesota Association of County Probation Officers (M.A.C.P.O.) is an organization of criminal justice professionals providing probation and parole services to the courts in Minnesota. Membership is primarily from court services departments from non-metro counties.

We recognize that much effort has gone into the development of the proposed rules, the first major revision of these rules since 1959. We are in basic agreement with the rules as proposed. However, we submit that from the perspective of juvenile court practitioners, some modifications need to be made.

The following recommendations were developed by polling the membership at large and were drawn by the Executive Committee. They were subsequently passed by the membership of M.A.C.P.O. on October 27, 1982, at the Minnesota Corrections Association Annual Fall Conference.

Respectfully,

Timothy L. Cleveland

Timothy L. Cleveland
President, Minnesota Association of County Probation Officers

TLC/wm

11-1 -- copy to each Justice

Rule 18.09: Timing for Rule Eighteen (18)

Amend Rule 18.09 to conform to Rule 65 and the current law. This should be done by striking the rule and allowing Rule 65 to control.

Present law states that a juvenile may be detained without a court hearing for 24 hours or 36 hours if a petition has been filed, excluding Saturdays, Sundays, and holidays (Minnesota Statute 260.171). Further, the hours are computated beginning at the first midnight following detention (Minnesota Statute 645.15 and State vs. Bradley, 264 N.W. 2d 387 Minnesota 1978). Rule 65 follows the statute and the Minnesota Supreme Court's interpretation of the statute.

Rule 18.09 requires the computation of time for a juvenile detained for any reason other than for an act which would be a felony if committed by an adult, to begin the moment the child is taken into custody and to not exclude any day.

We believe that changing the statute by rule for certain types of cases is without good reason and will lead to serious problems.

A juvenile who is already on probation or parole for a serious felony offense, committing a petty matter such as running from a court ordered treatment center, would fall under this rule. If the probation agent alerts the court of the violation, the court issues a warrant, and the juvenile is picked up at 6:00 P.M. Friday evening and detained, the court hearing must be held by 6:00 A.M. on Sunday.

Here are a few of the problems that would exist under rule 18.09:

1. *Holding court for the purposes of a detention hearing on weekends or legal holidays would be difficult, if not impossible, for some counties.*
2. *Sufficient time may not be allowed for the matter to be screened and court possible avoided.*
3. *Adequate time may not be allowed for notice to be given to the juvenile's parents.*
4. *Sufficient time may not be allowed to obtain counsel and/or guardian ad litem for the juvenile.*
5. *Being able to notify all the people needed for any juvenile court hearing, on a weekend or legal holiday, may simply be impossible.*

We believe that striking Rule 18.09 and allowing Rule 65 to control would be a much more workable practice. This was also the opinion of the Task Force in a recommendation to the Commission on March 10, 1982.

Rule 30.03 Subd. 5 and Subd. 6

Strike Rule 30.03 Subd. 5 and Subd. 6

Subd. 5 requires the person preparing the pre-disposition report to discuss its contents with the child, parents, and guardian of the child, prior to court.

Under Subd. 4, the child, the parent(s), a guardian, or child's counsel are permitted to inspect the contents of such report.

Subd. 5 would submit the report writer to possible defamation and cross examination by the child, the parents, or the child's counsel. We believe that the court room is the proper forum for such discussion.

Rule 34.02 Subd. 3 Court Order Required

Amend the last paragraph under (B) Public, to allow military services access to juvenile court records for inspection by court order. This should be done by striking or the military services, in the last sentence.

We believe that the juvenile record of the child should be allowed inspection by the military, but only by a court order, if the court feels it would be in the best interest of the child.

INDEX

Rule 18

Detention

18.09 Timing for Rule Eighteen (18)

Rule 18.09 should be stricken

Rule 30

Disposition

30.03 Pre-Disposition Reports

Subd. 5 Discussion of Contents of Reports

Subd. 5 should be stricken

Subd. 6 Discussion of Content of Report - Limitation by Court

Subd. 6 should be stricken

Rule 34

Records

34.02 Availability of Juvenile Court Records

Subd. 3 Court Order Required

(B) Public A court order is required before any inspection, copying, disclosure, or release to the public of the record of a child. Before any court order is made, the court must find that inspection, copying, disclosure or release is:

(i) in the best interests of the child, or
(ii) in the interests of public safety, or
(iii) necessary for the functioning of the juvenile court system, or
(iv) in the interests of the protection of the rights of a victim of a delinquent act.

The record of the child shall not be inspected, copied, disclosed, or released to any present or propsective employer of the child ~~or the military services.~~

City of Medina

2052 County Road 24
Hamel, Minnesota 55340

A-12

October 25, 1982

The Justices of the Supreme Court
State of Minnesota
% Mr. John McCarthy
Clerk of the Supreme Court
230 State Capitol
St. Paul, Minnesota 55101

Dear Justices,

As a member chief of the Hennepin County Chiefs of Police Association and the Minnesota Chiefs of Police Association, I support their positions in opposing Rule Six and Rule Eighteen of the proposed new Rules of Procedure for Juvenile Court.

Rule Six appears to be contrary to numerous statutes, court rules and supreme court decisions at both the State and Federal levels. A more logical determining factor on the admissability of juvenile confessions is found in the present system of the "totality of circumstances" test. This test has been found widely acceptable across the nation. The rule should be stricken.

Rule Eighteen, requiring that a juvenile be released from detention within thirtysix hours if the court has not ordered continued detention, and within twentyfour hours if a request for detention hearing has been made and the court has not ordered continued detention should be stricken or substantially changed to allow for Sundays and holidays. Also, the time in detention should begin at midnight of the day of detention to more closely follow the adult rules as stipulated in the Minnesota Rules of Criminal Procedure.

Assistant Anoka County Attorney, Mr. Robert Scott, has prepared and submitted to the Court, a document entitled, "Minority Report to the Proposed Juvenile Court Rules". This report appears to have been prepared after a great deal of research and is based on sound logic in arguing against both of these proposed rules.

Respectfully submitted,

Michael Sankey

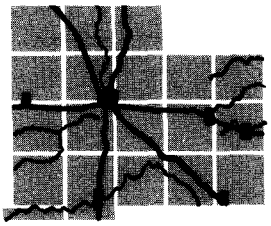
Michael Sankey
Chief of Police

cc: file

11-1 -- Copy to each Justice

CHARLES R. VON WALD
SHERIFF OF OLMSTED COUNTY

POST OFFICE BOX 1086
ROCHESTER, MINNESOTA 55903
TELEPHONE 507/285-8300



October 25, 1982

Justices of the Supreme Court
State of Minnesota
Attention: Mr. John McCarthy
Clerk of the Supreme Court
230 State Capital
St. Paul, Minnesota 55101

A-12

RE: Purposed Rules of Proceedure
for a Juvenile Court

Douglas K. Amdahl
Chief Justice
and Justices of the Supreme Court
of the State of Minnesota:

In my concern for the purposed juvenile rules I respectively submit to the Justices of the Supreme Court that in my opinion should these rules be adopted as proposed, the inconvenience and impractical function that would result would be detrimental to the best public interest. These adverse results would be consequences of a rule that operates to deminish the rights of a juvenile. I believe that Rule 6 of the proposed rules should not be adopted and I also take exception to Rule 18 being adopted as proposed.

I submit that the Minority Report as compared by Robert Scott should be given serious consideration in the promulgating of the rules.

Respectively,

Charles R. Von Wald

Charles R. Von Wald
Olmsted County Sheriff

CVW:jh

10-29 -- Copy to each Justice

Office of

Pat W. Smith, Jr.

Sheriff of Le Sueur County
Le Center, Minnesota 56057

CHIEF DEPUTY SHERIFF
Randy J. Tuma
FELONY INVESTIGATOR
David Gliszinski
DEPUTY SHERIFFS
Greg Deutsch
Tom Doherty
Max Venero
David Struckman
Keith Frederick
David Blum
Terry Wento
PHONE 612 357-4440 or
512 357-4441 Day or Night
Metro 445-7543, Ext. 311
Mankato 507 388-5302
St. Peter 507 931-5751

A-12

RE: Purposed rules of procedure for Juvenile Court

Honorable Douglas K. Amdahl
Chief Justice
Justice Supreme Court
State of Minnesota

Dear Judge Amdahl,

I have had the opportunity to review the purposed rules of procedure for Juvenile Court. I anticipate that if these rules were to be passed un-purposed, they would have detrimental impact on Law Enforcement statewide.

I am acquainted with the purposals in the "Minnesota Report", as drafted by Robert Scott. In all due respect to the Court, I respectfully recommend that serious consideration be given to striking or modifying rule 6 and 18 as purposed.

Respectfully,

Pat W. Smith Jr.
Sheriff
LeSueur County

10-29- Copy to each Justice

A-12

UNIVERSITY OF MINNESOTA
TWIN CITIES

Department of Police
2030 University Avenue S.E.
Minneapolis, Minnesota 55414
(612) 373-3550

October 26, 1982

The Justices of the Supreme Court
State of Minnesota
% Mr. John McCarthy
Clerk of the Supreme Court
230 State Capitol
St. Paul, Minnesota 55101

Dear Justices:

As a member chief of the Hennepin County Chiefs of Police Association and the Minnesota Chiefs of Police Association, I support their positions in opposing Rule Six and Rule Eighteen of the proposed new Rules of Procedure for Juvenile Court as written.

Rule Six appears to be contrary to numerous statutes, court rules and supreme court decisions at both the State and Federal levels. I would suggest continuing the present system, wherein the "totality of circumstances" test is applied.

Rule Eighteen, requiring that a juvenile be released from detention within thirty-six hours if the court has not ordered continued detention, and within twenty-four hours if a request for detention hearing has been made and the court has not ordered continued detention should be changed to allow for Sundays and holidays. Also, the time in detention should follow the adult rules as stipulated in the Minnesota Rules of Criminal Procedure.

Respectfully submitted,

E. W. Wilson

Eugene W. Wilson
Chief of Police
University of Minnesota Police Department

EWW/ac

11-1 -- copy to each Justice

A-12

JACK HACKING
DIRECTOR OF
PUBLIC SAFETY

7905 MITCHELL RD. / EDEN PRAIRIE, MINN. 55344

EMERGENCY
POLICE AND FIRE
(612) 544-9511

PUBLIC SAFETY OFFICE
(612) 937-2700

October 26, 1982

The Justices of the Supreme Court
State of Minnesota
c/o Mr. John McCarthy
Clerk of the Supreme Court
230 State Capitol
St. Paul, MN 55101

Dear Justices:

As a member chief of the Hennepin County Chiefs of Police Association and the Minnesota Chiefs of Police Association, I support their positions in opposing Rule Six and Rule Eighteen of the proposed new Rules of Procedure for Juvenile Court.

Rule Six appears to be contrary to numerous statutes, court rules and supreme court decisions at both the State and Federal levels. A more logical determining factor on the admissability of juvenile confessions is found in the present system of the "totality of circumstances" test. This test has been found widely acceptable across the nation. The rule should be stricken.

Rule Eighteen, requiring that a juvenile be released from detention within thirty-six hours if the court has not ordered continued detention, and within twenty-four hours if a request for detention hearing has been made and the court has not ordered continued detention should be stricken or substantially changed to allow for Sundays and holidays. Also, the time in detention should begin at midnight of the day of detention to more closely follow the adult rules as stipulated in the Minnesota Rules of Criminal Procedure.

Assistant Anoka County Attorney, Mr. Robert Scott, has prepared and submitted to the Court, a document entitled, "Minority Report to the Proposed Juvenile Court Rules". This report appears to have been prepared after a great deal of research and is based on sound logic in arguing against both of these proposed rules.

Respectfully submitted,
CITY OF EDEN PRAIRIE

Jack Hacking, Director
Fire and Police Divisions

JH:dh

11-1 -- copy to each Justice

A-12

CITY OF PLYMOUTH

October 26, 1982

The Justices of the Supreme Court
State of Minnesota
% Mr. John McCarthy
Clerk of the Supreme Court
230 State Capitol
St. Paul, MN 55101

Dear Justices,

As a member chief of the Hennepin County Juvenile Advisory Committee and the Minnesota Juvenile Officers Association, I support their positions in opposing Rule Six and Rule Eighteen of the proposed new Rules of Procedure for Juvenile Court.

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Assistant Anoka County Attorney, Mr. Robert Scott, has prepared and submitted to the Court, a document entitled, "Minority Report to the Proposed Juvenile Court Rules". This report appears to have been prepared after a great deal of research and is based on sound logic in arguing against both of these proposed rules.

Respectfully submitted,

Michael T. Ridgley

Michael T. Ridgley
Investigator
PLYMOUTH POLICE DEPARTMENT

11-1 -- copy to each justice

3400 PLYMOUTH BOULEVARD, PLYMOUTH, MINNESOTA 55447, TELEPHONE (612) 559-2800

MTR:lms

A-12

DAKOTA COUNTY POLICE CHIEFS' ASSOCIATION

October 26, 1982

The Justices of the Supreme Court
State of Minnesota
c/o Mr. John McCarthy
Clerk of the Supreme Court
230 State Capitol
St. Paul, Minnesota 55101

RE: PROPOSED RULE OF PROCEDURE FOR JUVENILE COURT

Dear Justices:

The Dakota County Chiefs of Police Association met on October 13, 1982, at Hampton, Minnesota. As part of the agenda, a discussion was held on the Proposed Rules of Procedure for Juvenile Court. Rule 6 and Rule 18 were discussed in detail, regarding the impact they would have on law enforcement.

The following points were discussed pertaining to Rule 6:

1. The rule is a rule of evidence and, therefore, should be promulgated pursuant to the rules of evidence, rather than pursuant to Juvenile Court rules.

2. The rule is inconsistent with the holdings of the U.S. Supreme Court and the Minnesota Supreme Court, approving the totality of the circumstances test, rather than the requirement of a parent's permission in determining the admissibility of a juvenile confession.

3. The rule is impractical because the factor of a parent's permission or notification would become the only factor of significance in determining the admissibility of a juvenile statement.

4. The rule would create the necessity of a parent's consent in certain circumstances before the waiver of the juvenile would be effective.

5. The rule enlarges the scope of Miranda to cover school staff personnel, when the Miranda Rule was specifically held to be applicable only to police.

6. The rule, as written, is ambiguous and lacks definition of such phrases as "physically restraining" and "school staff personnel" and does not clear up inconsistencies in the rule.

7. The rule would be costly to administer, further adversarial litigation in Juvenile Court and create administrative and educational problems for both the police and education personnel.

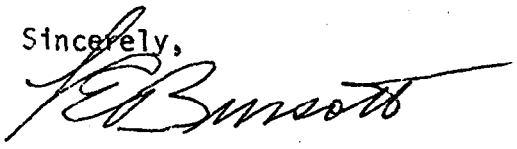
The following points were discussed pertaining to Rule 18:

1. The rule is inconsistent with the Minnesota Rules of Criminal Procedure in that a juvenile held in detention must be released with 24 hours if a request for detention hearing has been made and the court does not order continued detention. This rule also requires substantially different methods of time keeping that are used for adult detention.

2. The rule does not take into consideration that allowances must be made for Sundays and holidays, which would require an unacceptable increase in the cost of man power to implement.

Because of the considerations stated above, the Dakota County Chiefs of Police Association unanimously passed a resolution opposing the adoption of Rule 6 and Rule 18 of the Proposed Rules of Procedure for Juvenile Court.

Sincerely,



Chief Leonard Bursott
President
Dakota County Chiefs of Police Association

11.1 -- Copy to each Justice

Sheriff

CHARLES L. ZACHARIAS
COUNTY of RAMSEY

Thomas J. Falvey, Chief Deputy
14 W. KELLOGG BLVD. • ST. PAUL, MINN. 55102

A-12

October 28, 1982

Minnesota Supreme Court
Clerk of Court John McCarthy
State Capitol
St. Paul, Minnesota 55101

Dear Mr. McCarthy:

The Proposed Rules of Procedure for Juvenile Court of the Minnesota Supreme Court Juvenile Study Commission include provisions that, if adopted, would adversely affect law enforcement agencies. I am particularly concerned about the potential ramifications of proposed Rules 6, 18, and 51. I urge that the Supreme Court consider the practical consequences of these rules and adopt the recommendations of the Minority Report to the Proposed Juvenile Court Rules.

The following is a brief explanation of my concerns:

Rule 6

Current procedures adequately safeguard the right of a juvenile to remain silent. The juvenile has the option of refusing to waive his or her rights until a parent is present. The Rule 6, as proposed, would remove this option and mandate the presence of a parent. This is not a workable alternative. In the metropolitan area, it is not uncommon to encounter situations where parents cannot be located or are unwilling to participate in juvenile proceedings. To require parental presence would unnecessarily slow the process and result in less reliable statements. These would be consequences of a rule that operates to diminish, not supplement, the rights of the juvenile. Rule 6 of the proposed rules should not be adopted.

Rule 18

Weekends and holidays are considered in computing detention time limits for practical reasons. The proposed rule disregards these factors. Adoption of Rule 18 would result in more than a serious

inconvenience to the juvenile system. It would be a disservice to those detained and processed with inadequate information. The practical problems of this proposal are delineated in the Minority Report. The Minority Report offers a preferable alternative.

Rule 51

In cases requiring the immediate custody of a child through the juvenile protection provisions of the Rules, a court order could be effectively executed by individuals who are not peace officers. Social service workers frequently have better working relationships with the child and the family. Rule 51 limits to peace officers the authority for execution of orders for immediate custody. This Rule, if adopted, would unnecessarily require law enforcement services, sometimes at the expense of a better alternative. Rule 51 should be expanded.

Representatives of the Ramsey County Attorney's Office and the Ramsey County Juvenile Officers Association have requested the opportunity to address the Supreme Court about similar concerns. They have the support of this office. These individuals must work within the rules promulgated by the court. By virtue of their experience, they can address the workability of the proposed rules. Their opposition to Rules 6, 18, and 51 as well as their support of the Minority Report should be given careful attention.

Sincerely,

Charles Zacharias

CHARLES L. ZACHARIAS
Sheriff, Ramsey County

/d

11-1 -- Copy to each Justice

St. Paul American Indian Center

1001 PAYNE AVENUE
ST. PAUL, MINNESOTA 55101
612/776-8592

November 1, 1982

SUPREME COURT
FILED
NOV 1 1982
JOHN McCARTHY
CLERK

Supreme Court of Minnesota
230 State Capital
St. Paul, Minn. 55155

A-12

To Whom it May Concern:

We have reviewed the proposed rules for Juvinile Court and believe that the rules must contain provisions detailing the specific requirements of the Indian Child Welfare Act of 1978.

Although proposed rules 1.03 and 37.03 refer to The Act, it is our observation that the requirements of The Act are often overlooked by parties involved in the placement of Indian children.

The State has the ultimate responsibility for developing rules and procedures to meet the requirements of The Act. In these proposed rules the Minnesota Supreme Court has an opportunity to insure that the Minnesota Judiciary fulfills it's responsibilities to Indian Children. Suggested procedures are set out in 44 Fed. Reg. 67584, November 26, 1979. In addition, we believe that the rules should incorporate a provision requiring a party who knows or has reason to know that an Indian child is involved to provide notice to the nearest Indian Advocacy Program that will enable that entity to assist in meeting the requirements of The Act.

We would appreciate being notified of the specific time of the Hearing on November 16, 1982 as we want to attend this event.

Thank you for your attention in this matter.

Sincerely,

Diane Roach

Mrs. Diane Roach
Indian Child Welfare
Advocate

Johnny Whitecloud

Johnny Whitecloud
Indian Child Welfare
Coordinator

Administrative Services
Central Administration
Fiscal
Personnel
Planning
Public Relations
Resource Development

Employment and Training
Job Placement & Referral
On-the-job Training

Alcohol & Drug Abuse Program
Information & Referral
Counseling One-to-one, family
AA, Alanon
Court Advocacy
Referrals
Alternatives to incarceration

Chemical Dependency Program
Education & Prevention
Youth Diversion

Human Services Program
Welfare Advocacy
Health Education Referral
Indian Child Foster
Care Advocacy
Emergency Food Shelf
Food & Nutrition Information
House & Apartment Referral
Information on Home Ownership

Legal Services Department
Civil Cases

"Smoke Signals" Newsletter

notified them via cloud

A United Way Agency

11-1 -- Copy to each Justice

Ramsey County Chiefs of Police Association

Mr. John McCarthy
Clerk of the Supreme Court
230 State Capitol
St. Paul, Minnesota 55155

Dear Mr. McCarthy:

Enclosed is a Resolution opposing the new Juvenile Court Rules. Would you please supply each Supreme Court Judge with a copy.

Thank you for your assistance.

Sincerely,

Leo J. Foley

Leo Foley
President
Ramsey County Chief's of Police Association

LF/bz

A-12

Ramsey County Chiefs of Police Association

SUPREME COURT
FILED
NOV 1 1982
JOHN McCARTHY
CLERK

RESOLUTION

Whereas, members of the Ramsey County Chief's of Police Association have reviewed and discussed the proposed juvenile rules, specifically rule numbers 6, 17, 18, and 51 which we strongly oppose; and

Whereas, this organization stands as favoring Rob Scott's minority report;

Be it resolved, this organization does endorse spokesperson Kathleen Gearin to represent this view on November 16, 1982 to verbally oppose the proposed juvenile rules before the Supreme Court of Minnesota.

Leo T. Foley

Leo T. Foley

President

11-1 -- copy to each Justice

A-12

CITY of MOUND

5341 MAYWOOD ROAD
MOUND, MINNESOTA 55364
(612) 472-1155

October 29, 1982

The Justices of the Supreme Court
State of Minnesota
%Mr. John McCarthy
Clerk of the Supreme Court
230 State Capitol
St. Paul, MN 55101

Dear Justices:

As a member chief of the Hennepin County Chiefs of Police Association and the Minnesota Chiefs of Police Association, I support the position of these organizations in their opposition to Rule Six and Rule Eighteen of the proposed new Rules of Procedure for Juvenile Courts.

Rule Six appears to be contrary to numerous statutes, court rules and supreme court decisions at both the State and Federal levels. A more logical determining factor on the admissability of juvenile confessions is found in the present system of the "totality of circumstances" test. This test has been found widely acceptable across the nation. The rule sould be stricken.

Rule Eighteen, requiring that a juvenile be released from detention within thirty-six hours if the court has not ordered continued detention, and within twenty-four hours if a request for detention hearing has been made and the court has not ordered continued detention should be stricken or substantially changed to allow for Sundays and holidays. Also, the time in detention should begin at midnight of the day of detention to more closely follow the adult rules as stipulated in the Minnesota Rules of Criminal Procedure.

Assistant Anoka County Attorney, Mr. Robert Scott, has prepared and submitted to the court, a document entitled, "Minority Report to the Proposed Juvenile Court Rules". This report appears to have been prepared after a great deal of research and is based on sound logic in arguing against both of these proposed rules.

Very truly yours,

Bruce Wold

Chief Bruce Wold
Mound Police Department

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A-12

Wabasha County
Court Services
Criminal & Family Division

SUPREME COURT
FILED
NOV 1 1982
JOHN McCARTHY
CLERK

J.L. WEIGENANT
COURT SERVICES DIRECTOR
ROXANNE K. BARTSH
COURT SERVICES OFFICER
DONNA RANDALL
SECRETARY

October 29, 1982

Clerk of the Supreme Court
State Capitol
North Wabasha and Park Avenue
St. Paul, Minnesota 55101

Dear Sir:

On October 6, 1982, I received a copy of the proposed rules of procedure for juvenile court. As stated on the cover of proposed rules, I feel that I should forward some of my concerns. Underlying almost all of my concerns is that we do not have the resources in rural areas as found in 24 hour staff situations, possibly in metro areas. As a consequence, undue hardships or an impossible situation may become obvious with the application of the proposed rules. I will ennumerate some of these concerns.

There has been some concern about rule 6.01, but it is my backgrounding that this is simply restatement of the "Miranda" which has been in effect.

Rule 16.03, sub.1, raises the question about immediate custody. Some Court Services personnel have taken juveniles (on supervision) into custody. Does this rule take that into consideration, as I would presume there is a question about whether Court Services personnel are "peace officers"? Does 16.03, sub.1, prohibit Court Services/probation from taking into custody a juvenile probationer?

I supervise the Shelter Care facilities within Wabasha County, where runaways, etc., are detained. Rule 18.01 sub.2 (c)(1) indicates no "conditions of release may be placed on a child . . .". In managing the Shelter Care homes, I believe it is safe to say that we almost always place some suggested conditions on the release, usually steps for counseling, etc., to alleviate possible causes leading to a runaway. Most cases are diverted from Court.

Rule 18.09 raises several questions. One is that I do not find what the rule would be if the matter were a felony. If it is a non-felony charge, which most of the detentions are, are we going to go under the new rule of time limits which start "at the moment the child is taken into custody and shall not exclude any day". In the rural areas how do we handle this, when we do not have the court staff, including the plural of judges and county attorneys? We have had a weekend/holiday exclusion previously. I strongly feel it is unreasonable to expect responses and/or obtaining papers, hearings, etc., on non-courthouse hours. It would be difficult,

if not impossible, to release the juvenile within the 24-36 hour present limitations. Also, other agencies, such as Welfare staff, will not be available. This rule is the most troublesome rule of any in the proposed changes.

Rule 24.01, sub.1, (D) refers to copying material, such as tests, including mental examinations. This conflicts with privacy laws, particularly in regard to the mental health center examinations. 30.03, sub.4, again refers to copying of copying of reports and releasing them. This potentially could complicate the sealing of a record. Also, my office has had several instances this year where children have been shown their history without the writer being present, and it has raised very serious problems from misinterpretation. The possibility of retribution to informants, etc., is considerably more than that of adults, in my estimation. I feel that mandatory review with counsel (30.03, sub.5) is acceptable, but not to removing of copies from the court-house.

Rule 27.02, sub.1, commencement of a trial. It is my opinion that if a child is in detention for 30 days, this is too long a period of time to wait for a trial.

Rule 30.03, sub.1, relates that the court may order chemical dependency and psychological evaluations, but 30.03, sub.4, mandates copying this. I have no objection to a competent person examining them, but I do not believe that copies should go out of the control of the Court(house).

Rule 34.02, sub.2 (B), relates to juvenile court records and the copying again, including social histories. Again, I raise the issue of the competence of juveniles handling this information. I frankly feel that in practice in Court Services, a field that I have been in for 30 years, we will see less of a complete, balanced report submitted, unless some of the above concerns are addressed.

The above, I respectfully submit, addresses some concerns of a practitioner.

Yours truly,

J. L. Weigemant

J. L. Weigemant
Court Services Director

JLW/dr

11-1-- copy to each Justice

COUNTY OF ANOKA

Office of

ANOKA COUNTY ATTORNEY

ROBERT W. JOHNSON

Courthouse - Anoka, Minnesota 55303 *612-421-4760*

November 1, 1982

A-12

Justices of the Supreme Court
c/o Mr. John McCarthy
Clerk, Minnesota Supreme Court
230 State Capitol
St. Paul, MN 55155

Dear Mr. McCarthy:

Attached to this letter is a letter sent to me by Judge Wood. I called Judge Wood and he requested that I forward his letter on to you and to the Justices. Thank you.

Very truly yours,

Robert H Scott

Robert H. Scott
Assistant County Attorney

RHS:rw

Attachment

11-1 -- Copy to each justice

Sigwel Wood, Judge

Donna Jorschumb, Clerk

BECKER COUNTY COURT

Becker County Courthouse,
Detroit Lakes, Minnesota, 56501
1-218-555 1212

October 20, 1982

Mr. Robert H. Scott
Assistant County Attorney
Anoka County Courthouse
Anoka, Minn. 55303

Re: Juvenile Court Rules

Dear Mr. Scott;

I would be glad to support your working position paper concerning the proposed Juvenile Court rules by being a co-signer of the paper.

It appears to me that the basic proposition of the Rule 6 is to prevent the Court from determining the truth. Overall the rules are reinstituting the very faults of the Juvenile Court which were criticized in the Gault decision.

Yours very truly,

Sigwel Wood
Judge of County Court
Becker County, Minnesota

SW:kd

Minnesota Department of Corrections

November 1, 1982

SUPREME COURT
FILED
NOV 1 1982
JOHN McCARTHY
CLERK

A-12

The Honorable Douglas K. Amdahl
Chief Justice, State of Minnesota
Supreme Court
Capitol Building
Aurora Avenue
St. Paul, Minnesota 55155

Dear Chief Justice Amdahl:

Re: Proposed Rules of Procedure for Juvenile Court

This letter is to request an opportunity to be heard on November 16, 1982 regarding the Proposed Rules of Procedure for Juvenile Court. Specifically I desire to be heard on the brief submitted by Robert H. Scott, Assistant Anoka County Attorney, of which I am a cosigner in partial support. Secondly, I recommend that the following addition be made:

RULE 32. REFERENCE OF DELINQUENCY MATTERS

Rule 32.05 Necessary Finding
The court may order a reference only if the court finds probable cause, pursuant to Rule 32.05, Subd. 1 and a demonstration by clear and convincing evidence that the child is not suitable for treatment or the public safety is not served, pursuant to Rule 32.05, Subd. 2.

Subd. 1. Probable Cause. A showing of probable cause to believe the child committed the offense alleged by the delinquency petition shall be made pursuant to Rule 11 of the Minnesota Rules of Criminal Procedure.

Subd. 2. Clear and Convincing. The county attorney shall demonstrate by clear and convincing evidence, that the child is not suitable for treatment or that the public safety is not served under the provisions of the laws relating to juvenile courts.

If a prima facie demonstration pursuant to Minn. Stat. 260.125, Subd. 3 has not been established or has been rebutted by significant evidence, the court, in making its determination as to whether the county attorney has demonstrated by clear and convincing evidence that the child is not suitable for treatment or that the public safety is not served under the provisions of the laws relating to juvenile courts, shall consider the totality of the circumstances. This totality of the circumstances may include but is not limited to:

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(a) the seriousness of the offense in terms of community protection,

(b) the circumstances surrounding the offense,

(c) whether the offense was committed in an aggressive, violent, premeditated or willful manner,

(d) whether the offense was directed against persons or property, the greater weight being given to an offense against persons, especially if personal injury resulted,

(e) the reasonably foreseeable consequences of the act,

(f) the absence of adequate protective and security facilities available to the juvenile treatment system,

(g) the sophistication and maturity of the child as determined by consideration of the child's home, environmental situation, emotional attitude and pattern of living,

(h) the record and previous history of the child,

(i) whether the child acted with particular cruelty or disregard for the life or safety of another, and

(j) whether the offense involved a high degree of sophistication or planning by the child,

(k) whether there is sufficient time available before the child reaches age 19 to provide appropriate treatment and control.

Thank you for your interest.

Respectfully yours,

Jay G. Lindgren
Executive Officer
Juvenile Releases
Member, Supreme Court Juvenile
Justice Study Commission

JL:pm

cc: Orville B. Pung, Commissioner of Corrections
Howard J. Costello, Assistant Commissioner
Policy, Planning and Administration

THOMAS L. JOHNSON
COUNTY ATTORNEY

(612) 348-3091

OFFICE OF THE HENNEPIN COUNTY ATTORNEY
2000 GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487

November 1, 1982

A-12

Mr. John McCarthy
Clerk, Minnesota Supreme Court
230 State Capitol Building
Saint Paul, Minnesota 55155

Dear Mr. McCarthy,

Please be advised that the Criminal Law Section of the State Bar Association wishes to be heard at the November 16, 1982 hearings on the proposed Rules of Procedure for Juvenile Court.

As an organization representing many practitioners in the area, the Criminal Law Section has devoted considerable effort to the review of these proposed rules. A special subcommittee of the section, composed of both prosecutors and defense attorneys who have worked in juvenile law was established to consider the Commission's work product and develop alternative suggestions thereto when necessary.

Over the past several months, this subcommittee spent many hours discussing both the substantive and procedural aspects of the Commissions's proposal. The subcommittee's conclusion is that serious flaws exist in the Commission's proposal which must be remedied for the benefit of juveniles brought before the Court and for the administration of the juvenile justice system itself.

Over the past several months, Criminal Law Section developed very specific suggestions for change in both substantive and procedural aspects of the proposed rules. We are pleased to state that all major substantive and procedural concerns, as well as numerous minor concerns, have been satisfactorily addressed in the Minority Report drafted by Mr. Robert Scott of the Commission's Task Force.

11-1--copy to each Justice

Therefore, last October 23, 1982, the Criminal Law Section voted to endorse the Minority Report and to authorize two spokesmen, Mr. Cort C. Holten and myself, Gail S. Baez to address the Sections concerns before the Court and to speak in favor of the Minority Report.

Briefly outlined, some of the Criminal Law Sections concerns with the Commission's proposal are as follows:

1. Major portions of the Commission's proposal would exceed the authority provided by the enabling legislation passed in 1980.

Minn. Stat. 480.0595, Subdivision 1 provides that the rules in question here shall "regulate the pleadings, practice, procedure and forms thereof" in Juvenile Court. That same subdivision adds that this must be done in accordance with Minn. Stat. $480.059, the enabling legislation for the promulgation of the Rules of Criminal Procedure. Significantly, Subdivision 1 of this section states that "such rules shall not abridge, enlarge or modify the substantive rights of any person".

In our opinion, the Commission's report inappropriately delves into substantive law in a number of areas. Among those are:

a) Right to Remain Silent -- As regards Rule 6, waiver of the child's rights per Miranda, the Commission's proposal makes changes in existing caselaw concerning the rights of juveniles. Since our position is adequately expressed by the Minority Report, there is no need to elaborate here.

b) Waiver of the Child's Rights in General -- Rule 15 of the Commission's proposal substantially changes the law regarding the child's ability to waive his rights and makes this subject to approval in all cases by the child's parent, guardian or guardian ad litem. The Criminal Law Section's rationale for disapproval is adequately expressed in the Minority Report discussion.

c) Reference for Prosectuion -- Rule 32 sets out substantive criteria to be considered if a prima facie case for reference has not been made or has been rebutted by significant evidence. Since these criteria are substantive, they should not be enacted as part of the procedural rules.

Additionally other aspects of the Commission's proposal which may not be covered by the "substantive" objection, are viewed as troublesome. They include the issues of:

Intake -- Rule 17 requires the Court to adopt rules to determine which cases go to Court. This would involve the Court in a function traditionally the Executive Branch's domain, now performed by the prosecutor. Serious separation of powers and conflict of interest questions are raised by this rule.

Detention -- Rule 18.09 which, unlike the statute, does not exclude Saturdays, Sundays and legal holidays from the running of detention time, presents serious practical problems for the system. Hearings would have to be held on weekends at great inconvenience and added expense to the counties.

The above issues represent some of the Criminal Law Section's concerns regarding the Commission's proposal.
As practitioners concerned about the rights of juveniles within this state and the efficient functioning of the Juvenile Court System, we urge that the Supreme Court do the same.

Respectfully,

Cort C. Holten

Cort C. Holten
Chairman, Legislative Subcommittee
Criminal Law Section
State Bar Association

Gail S. Baez

Gail S. Baez
Chairman, Juvenile Law Subcommittee
Criminal Law Section
State Bar Association

348-8595

Left message to appear

CCH,GSB/co

Mr. John McCarthy, Clerk of The Supreme Court
Capital Building
230 State Capital
St. Paul, MN 55155

November 1, 1982

Dear Mr. McCarthy:

Re: File No. A-12

This letter is to advise you that as a proponent of Rule 6, in total, I herewith submit my Brief of an Amicus Curiae.

This is submitted in the highest regards and please discount any presumtuousness on my part.

Thank you.

Sincerely,

Thomas A. McGrath
1940 Grand Ave
St. Paul, MN 55105
(612) 699-6296

STATE OF MINNESOTA

IN THE SUPREME COURT

FILE NO. A-12

IN RE PROPOSED RULES OF

PROCEDURE FOR JUVENILE COURT

BRIEF OF AN AMICUS CURIAE

THOMAS A. McGRATH
AMICUS CURIAE
1940 Grand Ave
St. Paul, MN 55105
(612)699-6296

November 1, 1982

11-1 -- copy distributed to each Justice

INDEX

	Page
Jurisdictional Statement	1
Questions Presented	1
Statement of Facts	1-2
Summary of Argument	2-3
Argument	3-4-5
Conclusion	6

CITATIONS

Cases:	Page
Gallegos v. Colorado 370 U.S. 54(1962)	3
In re Gault 387 U.S. 1(1967)	1-2
Haley v. Ohio 332 U.S. 596(1948)	3-4
In re R.E.J. 511 S.W. 2d 347(Tex. Civ. App. 1974)	2
Statutes:	
Ala. Code § 12-5-67(1975)	2
Tex. Fam. Code Ann. § 51- 09(Supp. 1978)	2
Edition and Date:	
Fox, Juvenile Courts "in a nut shell" § 25.2(1977)	4-5
Articles:	
Ageton & Elliot, The Effects of Legal Processing on Delinquent Orientations, 22 Soc. Prob. 94-95(1974)	5
Driver, Confessions & The Social Psychology of Coercion 82 Harv. L. Rev. 60(1968)	5
Harris, 10 N.M.L. Rev. 379(1980)	3-4
Project, Interrogation in New Haven: The Impact of Miranda 76 Yale L.J. 1563 n. 116(1967)	3
Sayler, Interrogation of Juveniles: The Right of a Parent's Presence 77 Dickinson L. Rev. 560(1973)	4

JURISDICTIONAL STATEMENT

Upon order of the State of Minnesota in Supreme Court, dated August 24, 1982 and promulgated under Minn. Stat. § § 480.05 to 480.058, Proposed Rules for Juvenile Court are open for a hearing for proponents and opponents of said rules.

QUESTIONS PRESENTED

1. Whether Rule 6, in total, Right to Remain Silent, suffices to protect a child during an interrogation as stated therein.
2. Whether relevancy exists to end the vexing problem of who should be present at the outset of any interrogation.

STATEMENT OF FACTS

In re Gault, 387 U.S. 1(1967), decided the year after Miranda, it was established that the privilege against compelled self-incrimination applies to juveniles as well as adults. While the applicability of the privilege is clear from the Supreme Court's opinion in Gault, the scope of that applicability was left in doubt by the facts in Gault.

The Gault decision however, did not make clear whether a statement made prior to the actual proceeding could be excluded from use at the proceeding on the basis of a Miranda deficiency.

The implication of the Gault decision is that such statements may not be used in juvenile proceedings. The Court held that juvenile proceedings are "criminal" for the purposes of the privilege against self-incrimination. As such, they clearly fall within the purview of Miranda, and statements made contrary to the rules set forth in that decision

should be treated no differently from analogous statements presented as evidence in any other criminal case.

The Court continued: "We appreciate that special problems may arise with respect to waiver of the privilege by or on behalf of children, and that there may be some differences in technique - but not in principle - depending on the age of the child and the PRESENCE AND COMPETENCE OF PARENTS" (emphasis added).

Virtually all state courts that have ruled on the issue require that some form of warnings be given to a juvenile prior to interrogation, and a number of states also mandate the presence of a parent or sympathetic adult prior to waiver of Miranda rights. The latter group of states will suppress statements made by a juvenile subject to custodial interrogation when the juvenile's parent has not been notified. Other states require that an attorney be present for a waiver of Miranda rights by a juvenile to be effective, Ala. Code § 12-5-67(1975); Tex. Fam. Code Ann. § 51-09 (Supp.1978); In re R.E.J. 511 S.W. 2d 347(Tex. Civ. App. 1974).

SUMMARY OF ARGUMENT

Courts have considered several factors to be cogent in analyzing a minor's capacity to make an intelligent and knowing waiver in light of the circumstances. Among these are age, mental age, previous police or juvenile court experience, advisement of rights, psysical conditions (including intoxication), incommunicado interrogation, education, methods of interrogation (coercion), statute violations (whether a delay occurs before the juvenile court, etc.), presence of attorny or sympathetic adult, failure to notify parents, length of interrogation, predisposition (child's mental state at time of arrest confrontation), and language of

the warnings (to reflect ethnicity and socioeconomic status, etc.).

ARGUMENT

Those encountering the police and the court for the first time, e. g., many juveniles need the most protection, having never been through such an ordeal before.

> The (Miranda) Court suggests explicity that the ignorent and the indigent should be protected, and by implication indicates concern for the inexperienced, Project, Interrogations in New Haven: The Impact of Miranda 76 Yale L.J. 1563 n.116 (1967).

A juvenile is likely to be particularly susceptible to the intimidating surroundings of police custody. His reaction to "being caught," i.e., fright and bewilderment, can render him totally irrational, and he may "say anything" in the blind hope that he will thus be extricated from the situation in which he has found himself.

> --- In Haley v. Ohio 332 U.S. 596(1948), and Gallegos v. Colorado 370 U.S. 49(1962), the Court held children's confessions in criminal trials inadmissible under due process voluntariness test, in part because the facts of these cases suggested that the children did not have the capacity to resist police pressure Harris, 10 N.M.L.Rev. 397-412(1980).

Further, the Court stated

> id., (W)hen, as here, a mere child -- an easy victim of the law -- is before us, special care in scrutinizing the record must be used. --- That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens.--- (W)e cannot believe that a lad of tender years is a match for the police ---. He needs counsel and support if he is not to become the victim of fear, then panic. He needs someone on whom to lean lest the overpowering presence of the law,

as he knows it, crush him. Id. at 401-402.

Thus, Haley stands as a classic case where lack of advise from a friendly adult worked to break down a miner's will.

Gallegos v. Colorado followed Haley and employed analogous reasoning, id,

> (A) fourteen-year old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accesible only to the police. That is to say, we deal with a person who is unable to know how to protect his own interests or how to get the benefits of his constitutional rights. Id. at 402.

In regard to parental rights, id,

> Custodial interrogation of a child in his parents' absence infringes on their rights to control his upbringing in two ways: First, a child who confesses to a delinquent act is very likely to be charged in juvenile court, adjudged delinquent, and subjected to sanctions up to and including incarceration for a period of years. Even if the court imposes a lesser punishment, such as a term of probation, its assertion of authority over a child necessarily diminishes the child's parents' freedom to control his life. Second, the decision to waive Miranda rights and confess constitutes a relinquishment of the right to refuse to provide evidence for one's own conviction. A child's parents might well have strong principled views about how this decision should be made which they would want their child to consider. Id. at 400-401.(See also Sayler, Interrogation of Juveniles: The Right of a Parent's Presence 77 Dickinson L.Rev. 560(1973)).

In Sanford J. Fox, Juvenile Courts "in a nut shell" § 25.2(1977) on voluntariness of Miranda rights

> It may be doubtful, however, that a trend toward involvement of parents in the interrogation process will produce a substantially

> more knowledgable or frequent assertion of the child's rights. Adults, too, are intimidated by the inherently coercive atmosphere of the (presence of) police ---. Parents not only waive rights which are explained to them, but often put pressure on their children to tell all. Mandatory appointment of counsel, as in Texas, is a far more potent guarantee of dispassionate advice to the child.

As implied earlier, a juvenile is especially vulnerable to the effects of police contact. Given the generally negative influence of police encounters, it is important to understand which socioeconomic ethnic groups, etc. are the most adversely affected by such encounters. It is not surprising that "lower-class youth have more interaction with the police and, therefor, presumably, greater oppertunity for negative outcomes from such encounters" Ageton & Elliott, The Effects of Legal Processing on Delinquent Orientations 22 Soc. Prob. 94-95(1974).

In discussing the sociological aspects of custodial interrogation, a University of Massachusetts sociology professor refers to

> (t)he imbalance (between the state and the accused which) is created and maintained by the "inherently coercive" atmosphere of interrogation, whether it be in the police station or the defendant's home --- (T)he imbalance between the state and the defendant begins with arrest and detention, for these experiences the detained in ways analogous to interrogation: the negative implications of silence, the self-mortification or extreme humiliation of being arrested, the desire to "shield the self" from potentially humiliating questioning, and the emotional stress caused by the symbols of the law's authority even in persons of higher status Driver, Confessions & The Social Psychology of Coercion 82 Harv.L.Rev. 60(1968).

The coercive atmosphere would also prevail during an interrogation by school staff and in some cases possibly be more intensified. Thus it

is imparitive that counsel, parent, guardian, or responsible adult be present during said interrogation.

CONCLUSION

Many aspects of due process may be considered as ways of assuring that the conflict is an equal one, especially for the defendant.

With respect to the juvenile court, issues of procedural safeguards are more complex and are clouded by ambiguity surrounding youths' status and rights as people.

This Court has, in its wisdom, proposed in Rule 6, in total, an end to some of the ambiguities for the purpose of reprsentation and the very least this Court could do is to keep this rule fixed, and I plea that it also consider intensifying said rule by mandating that legal counsel be present at the outset of any interrogation because of an alleged delinquent or petty matter.

This would once and for all decrease, if not eliminate, the costly litigation in our courts on this matter and firm up what is constitutionally privileged and sanctioned for all citizens.

Respectfully submitted,

/s/ Thomas A. McGrath

Thomas A. McGrath
Amicus Curiae

OFFICE OF THE COUNTY ATTORNEY
RAMSEY COUNTY
200 LOWRY SQUARE
ST. PAUL, MINNESOTA 55102

TOM FOLEY
COUNTY ATTORNEY

TELEPHONE
(612) 298-4421

October 28, 1982

A-12

Mr. John McCarthy
Clerk of Supreme Court
230 Capitol Building
St. Paul, Minnesota 55155

Dear Mr. McCarthy:

I have been asked by the Ramsey County Chief of Police Association to speak in opposition to some of the proposed rules of procedure for Juvenile Court at the November 16, 1982 hearing. Mr. Foley, the Ramsey County Attorney, has also asked that I be prepared to make comments on behalf of our office. I am the assistant county attorney in charge of the Juvenile and Family Violence Division. This division handles all delinquency, neglect, termination of parental rights, contributing, certification, as well as family violence crimes in adult criminal court.

The Chief of Police Association and the Ramsey County Attorney's Office support the minority report on these proposed rules.

I recognize that many individuals and groups will be requesting to speak on November 16. If you believe that the perspective of an urban police department and metropolitan area county attorney's office has not fully been presented, I am willing to address these rules from that perspective.

Sincerely,

KATHLEEN R. GEARIN
Assistant Ramsey County Attorney

KG:jh

cc: Tom Foley

11-1 -- Copy to each Justice

Bonner Law Offices
Attorneys at Law

JOHN F. BONNER 1889-1963
JOHN F. BONNER, JR.
JOHN F. BONNER III
NAN A. MILLER
ROGER J. ARONSON
MICHELLE F. MORAN

745 PARK PLACE OFFICE CENTER
5775 WAYZATA BOULEVARD
MINNEAPOLIS, MINNESOTA 55416
TELEPHONE (612) 542-8822

November 1, 1982

A-12

The Honorable Minnesota
Supreme Court
State Capitol
St. Paul, MN 55101

Re: In Re Proposed Rules of Procedure for Juvenile Court

Dear Justices:

As legal counsel for the Minnesota Association of Secondary School Principals, the Proposed Rules of Procedure for Juvenile Court have been brought to my attention.

Rule 6 of the Proposed Rules of Procedure for Juvenile Court would substantially burden an already overworked school system. Rule 6 would thrust principals into an unwanted role, that of law enforcement.

It is our position that the constitutional protections currently recognized by this Court are adequate. I join in the recommendation of Assistant Anoka County Attorney Robert H. Scott that Rule 6 be stricken.

I am advised by the Office of the Clerk that numerous requests have been received for appearances at the hearing on the 16th of November. I hereby request that the Court hear in opposition to Rule 6, a member of the Minnesota Association of Secondary School Principals, Principal Thomas Wilson.

Thank you for your consideration.

Very truly yours,

Roger J. Aronson

Roger J. Aronson

RJA/cmh

Called Mr Aronson.
O.K. for Wilson to appear

SUPREME COURT
FILED
NOV 1 1982
JOHN McCARTHY
CLERK

MINNESOTA EDUCATION ASSOCIATION
Forty-One Sherburne Avenue
St. Paul, Minnesota 55103
612-227-9541

October 29, 1982

TO: The Chief Justice and Associate Justices of the Minnesota Supreme Court

Care of:

Mr. John C. McCarthy
Clerk of Supreme Court
State Capitol
St. Paul, Minnesota 55101

A-12

Pursuant to the order of the Court, dated August 24, 1982, I hereby request an opportunity to submit oral argument against proposed rule number six, In Re Proposed Rules of Procedure for Juvenile Court, on Tuesday November 16, 1982 at 9:30 o'clock a.m. in the Supreme Court Chambers.

I am General Counsel to the Minnesota Education Association, a labor organization representing the employment interests of 35,000 professional teachers in this state. As such, I am concerned that law enforcement officials may seize upon proposed rule 6.04 to impress teachers represented by the MEA into ad hoc service as a "responsible adult" responsible for waiving the constitutional rights of students under interrogation.

Such teachers serving as surrogate parents in this capacity may expose themselves, to their detriment and to the detriment of the student, to civil actions under 42 USC s. 1983. As agents of the state, teachers are in the classification of "peace officer, probation officer, parole officer, county attorney or court services personnel" and these are the very persons prohibited from acting as surrogate parents in rule 6.04.

Other laws in the area of professional ethics and insubordination bear directly upon teacher conduct pursuant to the proposed rules. I would be happy to discuss these with the Court on behalf of the profession.

Sincerely,

Gary J. Green

Gary J. Green
General Counsel
Minnesota Education Association
41 Sherburne Avenue
St. Paul, MN 55103
Telephone: 227-9541

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NOV 1 1982
JOHN McCARTHY
CLERK

cc: 10 copies for Supreme Court

GJG:wj

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Administrative:
Capt. James Sampson

Civil Division:
Capt. Frank Sarazin

Ralph W. Talbot
Anoka County Sheriff
COURT HOUSE
ANOKA, MINNESOTA 55303
(612) 421-4760

Criminal Division:
Capt. William Hoogestraat

Patrol/Jail Division:
Capt. Thomas Anderson

October 27, 1982

Justices of the Supreme Court
State of Minnesota
c/o Mr. John McCarthy
Clerk, Minnesota Supreme Court
230 State Capitol
St. Paul, Minnesota 55155

Dear Justice: A-12

I endorse the requested changes to Rule 6 and Rule 18.09 of the Proposed Rules of Juvenile Court, which requested changes are made in the Minority Report to the Proposed Juvenile Court Rules.

As a peace officer for in excess of 30 years and as Sheriff of Anoka County for the past 22 years, I have had a strong interest in juvenile justice. I believe the Proposed Juvenile Court Rules require the changes requested by the Minority Report to further the efficiency and betterment of police work, and more importantly to provide more fair and just treatment of juvniles.

Sincerely,

Ralph W. "Buster" Talbot
Sheriff, Anoka County

RWT:nc

10-29 - - copy to each Justice

DAKOTA COUNTY SHERIFF'S OFFICE

ROD BOYD, SHERIFF

P. O. BOX 366 • HASTINGS, MINNESOTA 55033 • (612) 437-4211

October 25, 1982

The Honorable Douglas K. Amdahl,
Chief Justice of the Supreme Court, and
Justices of the Supreme Court
230 State Capitol
St. Paul, Minnesota 55155

Attention: Mr. John McCarthy
Clerk of Supreme Court
230 State Capitol
St. Paul, Minnesota 55155

A-12

Re: Proposed Rules of Procedure for the Juvenile Court

Dear Mr. Chief Justice:

Please be advised that I have reviewed the proposed Juvenile Rules that are before the Supreme Court and proposed for adoption. I find that certain portions of these Rules, should they be adopted, would be adverse to the best public interest and to public safety. I am opposed to two (2) rules; specifically, Rule 6 and Rule 18.09. I am opposed to the two (2) rules for the reasons outlined in "Minority Report of the Task Force on Rules" as prepared by Attorney Robert Scott.

I would respectfully request that the Court modify these two (2) provisions of the proposed rules as outlined in the said Minority Report.

Respectfully submitted,

Rod Boyd, Sheriff
DAKOTA COUNTY SHERIFF'S OFFICE

RB/bz

SUPREME COURT
FILED
OCT 29 1982
JOHN McCARTHY
CLERK

11-1 -- Copy to each Justice

WASHINGTON COUNTY

OFFICE OF THE SHERIFF

COURTHOUSE • 14900 61ST STREET NORTH • STILLWATER, MINNESOTA 55082

James R. Trudeau
Sheriff

Duane C. Spoors
Assistant Sheriff

Kenneth G. Boyden
Undersheriff

Thomas Greene
Captain

Telephone:
Emergency Only
612/439-7300

Non-Emergency
612/439-9381

25 October 1982

Justices of Supreme Court
State of Minnesota
ATTN: Mr. John McCarthy
Clerk of Supreme Court
230 State Capitol
St. Paul, Mn 55101

A-12

RE: Proposed Rules of Procedure
for the Juvenile Court

DOUGLAS K. AMDAHL, CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT OF THE STATE OF MINNESOTA:

There are some provisions in the Proposed Rules of Procedure for the Juvenile Court which I feel will result in impractical and undesireable consequences. I make reference specifically to Rule #6 and to Rule #18.09, and I respectfully submit that these rules should not be adopted as proposed.

I support the recommendations of the Minority Report of the Task Force on Rules.

Respectfully submitted,

James R. Trudeau

JAMES R. TRUDEAU
Sheriff

JRT:jr

10-29-- Copy to each Justice

DOUGLAS L. TIETZ
SCOTT COUNTY SHERIFF
COURT HOUSE ANNEX
SHAKOPEE, MN 55379-1391 (612)-445-7750, Ext. 300
(612)-445-1411 EMERGENCY ONLY

October 25, 1982

The Justices of the Supreme Court
State of Minnesota

Attn: Mr. John McCarthy
Clerk of the Supreme Court
230 State Capitol
St. Paul, MN 55101

A-12

RE: Proposed Rules of Procedure for the Juvenile Court

Douglas K. Amdahl, Chief Justice and Justices of the Supreme Court of the State of Minnesota:

In concern for the proposed rules of the Juvenile Court I wish to advise the Court of my individual opinion.

It is my feeling at this time, that should the rules as proposed be adopted, that the Law Enforcement Officers of this state would have difficulty in dealing reasonably with the rules. Rule number six, particularly, would be indifferent to efficient operating procedure in dealing with a juvenile child. Rule eighteen, which deals with the detention of a child, would work adversely in most counties in that the time allowance excludes weekends and holidays. It appears, in my opinion, to be impractical and that the proposed rules disregard the time frame which is necessary to develop the juvenile procedure.

I am familiar with the minority report as prepared by Attorney Robert Scott and I support the proposals as promulgated and proposed in his report.

Respectfully submitted,

Douglas L. Tietz

Douglas L. Tietz, Sheriff

11-1 -- Copy to each Justice

STATE OF MINNESOTA
DISTRICT COURT OF MINNESOTA
FOURTH JUDICIAL DISTRICT

CHAMBERS OF
JUDGE ALLEN OLEISKY
328 COURT HOUSE
MINNEAPOLIS, MINN. 55415

November 1, 1982

Mr. John McCarthy
Clerk of Supreme Court
State Capitol Building
St. Paul, Minnesota

A-12

Re: Proposed Juvenile Court Rules

Dear Sir:

I am enclosing an original and ten copies of a Position Paper in opposition to proposed Rules 5 and 41.

I would also like to be allowed to speak on November 16th, 1982 before the Supreme Court in opposition to Rules 5 and 41 and generally in support of the minority position as outlined by Robert Scott, Assistant Anoka County Attorney.

Respectfully yours,

Allen Oleisky

Allen Oleisky
Judge of District Court
Juvenile Court Division

AO:jks

11-1 - - copy to each Justice

P E T I T I O N

POSITION PAPER IN OPPOSITION
to
PROPOSED RULES 5 AND 41

BY: Allen Oleisky
Judge of District Court
Juvenile Court Division
328 Court House
Minneapolis, MN 55415

The Hennepin County District Court-Juvenile Division concurs with the report authored by Robert Scott, that Rule 5 and Rule 41 should be amended to conform to Minnesota Statute 260.155 Subd. 4(a) and (b).

The Rules proposed by the Commission require at least a parent, guardian or Guardian ad Litem to accompany the juvenile at every stage of the proceedings.

In an experiment conducted in our court for a period covering ten working days from October 4, 1982 through October 18, 1982, fifty-seven juveniles appeared in delinquency proceedings without a parent, guardian or Guardian ad Litem. This number represents approximately twenty-eight juveniles per week, extended out to fifty-two weeks a year, we can expect over 1,450 juveniles a year to appear in the Juvenile Court of Hennepin County in one year without their parent or guardian.

The reasons for this are varied: as many of the juveniles who appear in our court come from single parent families, whose parents cannot make all court hearings due to the fact that they work and it would cost them loss of wages to attend court appearances; or, they have small children at home and they do not have anyone to leave their small children with; or, are without the means to have a babysitter.

A youth charged with a delinquency may have up to five separate court hearings, i.e., a detention hearing, an arraignment hearing, a pretrial conference hearing, a fact-finding hearing (trial), and a disposition hearing. It is therefore difficult for the reasons

stated above to attend all of these hearings.

If the Rule proposed by the Commission is adopted, numerous hearings will have to be continued, because a parent or guardian is not present. Juveniles will be forced to remain in detention for longer periods of time. Arraignment hearings, pretrial conferences and disposition hearings will all have to be continued which would be all at a waste of time of court personnel, probation officers, social workers and attorneys. Trials will have to be continued at a great deal of inconvenience to witnesses, alleged victims, police officers, etc.

As Mr. Scott points out in his report, allowing juveniles to waive their parents or guardians' presence pursuant to Minnesota Statute 260.155, Subd. 8, has not resulted in any claim of abuse of court discretion. No showing of denial of rights to juveniles has been demonstrated by allowing juveniles to appear in court without their parents or guardians.

The other alternative, as the Commission in its proposal contemplates, is the appointment of a Guardian ad Litem. Hennepin County Juvenile Court does have a number of volunteer Guardian ad Litems, but these are limited and we find we often lack Guardian ad Litems for children who are subject to neglect and dependency proceedings. The County would be forced to employ four or five full-time Guardian ad Litems on a full-time basis at a cost of approximately $20,000.00 per year per person, or $80,000.00 to $100,000.00 a year. This would be an additional cost to a county budget that is already financially strapped.

More importantly, it has been our experience in the cases where we have appointed Guardian ad Litems in delinquency cases that they have not been able in the short time they are with the juvenile at a detention hearing or arraignment hearing to establish a meaningful relationship with the juvenile, and they will usually defer to the advice of the juvenile's attorney.

Again, I concur with Robert Scott that Rule 5 and Rule 41 are inconsistent with the intent of Minnesota Statute 260.155 Subd. 8, and is beyond the authority granted to the Minnesota Supreme Court under Minnesota Statute 480.059 and Minnesota Statute 480.059, Subd. 1.

Therefore, I would urge the Supreme Court to reject the Commission's proposed Rule 5 and Rule 41 and amend Rule 5 and Rule 41 to conform with Minnesota Statute 260.155, Subd. 4 (a) and (b).

The Center for New Democratic Processes

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1414 Soo Line Building, Minneapolis, Minnesota 55402 (612) ~~336-2002~~ 333-5300

October 29, 1982

A-12

Mr. John McCarthy, Clerk
Minnesota Supreme Court
230 State Capitol
St. Paul, MN 55155

Dear Mr. McCarthy:

I am writing to inform you that I would appreciate the opportunity to speak to the Supreme Court on November 16, 1982, regarding the proposed rules of procedure for juvenile court. I served as a member of the Supreme Court Juvenile Justice Study Commission and also served on the Task Force appointed to make up the rules.

My purpose in speaking would be to explain to the Court why it is that I support the "Working Position Paper" drafted by Robert Scott with regard to Rules 5, 6, 15, 21, 22, and 41. I believe I am the only non-attorney who served on both the Commission and the Task Force who is taking this position.

Thank you for considering this request.

Sincerely,

Ned Crosby

Ned Crosby

NC:mje

SUPREME COURT
FILED
NOV 1 1982
JOHN McCARTHY
CLERK

11-1--copy to each Justice

October 29, 1982

The Supreme Court of Minnesota
c/o John McCarthy, Clerk
St. Paul, MN 55155

A-12

RE: New Proposed Rules for
Juvenile Court

Dear Justices:

The new proposed Rules are extensive and my Department supports most of them. However, we do have strong concerns about some of them. I will limit my comments to Rule 6 since that is the Rule which causes us the greatest concern.

Section 6.01 proposes to extend the scope of application of Miranda rights beyond law enforcement officers (and probation agents in limited situations). Such an extension will cure an evil that does not exist. Its language will certainly created much confusion and our Department does not feel that it will further the aims underlying the Miranda ruling.

Section 6.03 creates an absolute prohibition from the use of admissions made by a juvenile without their parent or guardian being present. This Rule is not only extremely impractical, it will actually lessen a child's "rights." On some occasions, our Department has had cases where juveniles wish to make a statement, admission or confession. But because of their own embarrassment and the sensitive nature of some of their acts, they specifically do not want "mom or dad" (or any family member) present when they talk to our investigators. In such cases I believe a child has a right to the privacy that he or she requests. I feel that we should respect the juvenile as an individual. The Juvenile Courts are in the best position to assess all of the facts surrounding the obtaining of a particular confession, admission or statement. If our Department or any law enforcement agency improperly extracts an admission from a juvenile, the Courts have been quick to protect the child's rights and to suppress the use of the statement. Adoption of this proposed section, with its absolute prohibition, would be a sad comment by your honorable body about not only modern law enforcement officials and Juvenile Court Judges, but more importantly about juveniles as individual persons.

Thank you very much for your attention and consideration of these comments.

Respectfully yours,

Terry Twomey

Terry Twomey
Sheriff of Carlton County

11-1-- copy to each Justice

MINNESOTA COUNTY ATTORNEYS ASSOCIATION

40 North Milton Street, Suite 100 • St. Paul, Minnesota 55104 • (612) 227-7493

November 1, 1982

The Honorable Douglas K. Amdahl
Chief Justice
Minnesota Supreme Court
223 Capitol Building
St. Paul, Minnesota
55155

A-12

RE: Minnesota County Attorneys Association Position Paper on the Proposed Rules of Procedure for Juvenile Court

Dear Chief Justice Amdahl:

On October 14, 1980, a Juvenile Law Task Force was formed by members of the Minnesota County Attorneys' Association to address potential changes in juvenile legislation and court rules. It was comprised of attorneys selected for their academic expertise and practical experience in juvenile matters. Since its inception, the Task Force has met periodically to discuss and promote legislative matters and to review drafts of the Rules of Procedure for Juvenile Court proposed by the Supreme Court Juvenile Justice Study Commission. Individual members of the Task Force have attended meetings of the Study Commission and have worked closely with public defenders and judges throughout the state in developing guidelines for juvenile court practitioners. All information gathered by the Task Force was presented to the County Attorneys' Association which has in turn approved its proposals.

On October 1, 1982, the Minnesota County Attorneys' Association formally approved the Minority Report to the Proposed Juvenile Court Rules drafted by Robert Scott and attached hereto as Exhibit A. The Association adopted that report to represent its position concerning the rules proposed by the Supreme Court Juvenile Justice Study Commission which were published in the Northwest Reporter advance sheets on September 21, 1982. While the Study Commission rules are laudable in their attempt to establish uniform juvenile court procedures throughout the state, they are in some areas a complete contradiction to existing statutory and case law. Moreover, they attempt to effect substantive changes contrary to the very legislation which authorizes the Study Commission to develop only procedural changes. Based on those concerns, the Juvenile Law Task Force recommended that the Association propose amendments to the present Study Commission rules to resolve such contradictions and deviations.

Mr. Scott has aptly described the serious flaws in the Study Commission rules. Proposed Rules 6 and 15, for example, create new rights for parents of juveniles in delinquency and petty offender matters. Procedures mandated by those rules are not only inconsistent with current statutory and case law, but

they also prevent a juvenile from exercising his rights as an individual party in the court process. Rule 17 likewise usurps the role of the county attorney in the charging process and creates a conflict of interest whereby the judicial branch of the court system would select the very cases coming before it. The remaining problems outlined by Mr. Scott in his Minority Report further demonstrate that the rules now proposed by the Study Commission would result in an inflexible, and possibly unjust, system for all parties involved.

At its meeting on October 5, 1982, the Juvenile Law Task Force discussed several additional inconsistencies in the Juvenile Protection rules, most of which have since been clarified in the Administrative Report which will be submitted to the Supreme Court by John Sonsteng, reporter for the Supreme Court Juvenile Justice Study Commission Task Force and Drafting Committee. Thus, it is only the delinquency and petty offender rules that remain problematic. The Minnesota County Attorneys' Association urges the Court to review the attached Exhibit and to stay adoption of the rules proposed by the Study Commission until the Minority Report amendments are incorporated therein.

The Minnesota County Attorneys' Association requests a brief opportunity to be heard on the proposed rules at the hearing scheduled on November 16, 1982. Alan L. Mitchell, St. Louis County Attorney, Joanne Vavrosky, Assistant St. Louis County Attorney, and Gregory E. Korstad, Isanti County Attorney will appear on behalf of our Association.

Sincerely,

Stephen Rathke

Stephen Rathke
President
Minnesota County Attorneys Association

SR/pg

11-1 -- copy to each Justice

LAW OFFICES
OF
DALE G. SWANSON

SUITE 113 PROFESSIONAL BUILDING
1068 SOUTH LAKE STREET
FOREST LAKE, MINNESOTA 55025

TELEPHONE 464-6555
AREA CODE 612

November 1, 1982

Mr. John McCarthy
Clerk of Supreme Court
Room 230
State Capitol
St. Paul, MN 55155

A-12

Re: Proposed Rules of Procedure for Juvenile Court

Dear Mr. McCarthy and Members of the Court:

As attorney for the Minnesota Elementary School Principals Association, I wish to share the following remarks and observations with regard to the proposed Rule 6.04 as it appears to affect school staff personnel. I do not engage in any significant juvenile court or criminal practice matters, so the following is not in the form of formal legal argument but rather practical concerns.

The changes which are evident from comparing Rule 2-2 of the current juvenile court rules with proposed Rule 6.04 evidence a clear and calculated intention to employ or intrude school staff personnel into the executive role of law enforcement which is undesired by my clients and myself. The notion of substituting a "responsible adult" for the prior requirement of at least one parent before a child may be interrogated implies that such a person should be presumed to present the same care, concern and interest that a parent would be presumed to have. I suggest that this is not the case for supervisory school staff personnel as a matter of fact as evidenced by the tension that exists and every poll which has been taken with regard to disciplinary practices in the public schools.

This rule acknowledges that a custodial restraint may be imposed by school staff personnel, but perhaps overlooks the fact that any custodial restraint upon school premises is initially imposed by school personnel even when law enforcement or county attorney personnel are present. From an adult's point of view but particularly also that of a child, it must appear inconsistent to provide that the same person or a person identified with the same institution could thenafter participate in a child's waiver of constitutional rights. Indeed, the role assumed by school staff personnel in initiating a custodial restraint seems far closer to those expressly disqualified from serving as responsible adults in proposed Rule 6.04.

We further perceive an inherent conflict in utilizing a school employee as a person interested in the child sufficiently to allow the child to waive his constitutional rights in the presence of that school employee given the limited prosecutorial/judicial role that a school employee may be required to play under the Pupil Fair Dismissal Act, Minn. Stat. §127.26-127.39. This act was adopted following the decision of the United States Supreme Court in Goss v. Lopez, 419 U.S. 565 (1975) and obligates a school employee to engage in an informal administrative conference and inquire into the facts of any alleged inappropriate conduct before excluding a pupil from a part of the education program. We again submit that the inquisitorial role under this act is inconsistent with not only the same person thenafter participating as a "responsible adult", but it is further unlikely that a child could be expected to comprehend the significance of a Rule 6.04 waiver after some other employee of the same school has solicited and obtained information in a prior informal administrative conference. It is accordingly my opinion that a prior Goss type conference would taint the participation of any school staff personnel in a subsequent custodial interrogation.

Proposed Rule 6.04 introduces for the first time a notion of the "timeliness" of securing a parent, guardian or similarly interested person to presumably counsel and otherwise protect the child's best interests in contemplating a waiver of constitutional rights. The burden of correct calculation obviously falls upon the school staff employee. While I again disclaim any intimacy with juvenile or criminal matters and particularly the more severe problems occurring in the larger metropolitan areas, it is hard for me to conceive of a "delinquency or petty matter" of such urgency to warrant a timeliness exception to the current rights and protections afforded minor children.

It is accordingly my view that any participation by an elementary principal in a child's waiver of constitutional rights creates substantial exposure to federal civil rights act liability which they are unprepared and untrained to understand. On the other hand, the proposed change formalizes a new opportunity to alienate parents, superiors and the community during a time of unparalled examination of the role of the public schools and school staff in present society. I must accordingly advise this Court in candor that it is my present opinion that if proposed Rule 6.04 is adopted, I shall advise my clients of the complexities and risks involved and suggest that blanket refusal to participate as a "responsible adult" is the better part of discretion.

Respectfully submitted,

Dale G Swanson

Dale G. Swanson
Attorney for Minnesota Elementary
School Principals Association

DGS:pso

11-2 -- Copy to each Justice

were not contacted by the District Attorney's investigators until July 15, 1975. There is no indication that any effort was made to contact or subpoena them prior to that date. The People have failed to make a showing of "credible, vigorous activity" as is required under circumstances such as exist in this case (*People v. Washington*, 43 N.Y.2d 772, 774, 401 N.Y.S.2d 1007, 372 N.E.2d 795). While the lack of effort may well have been caused by the work load and shortage of personnel, these reasons do not constitute "exceptional circumstances" (*People v. Sturgis*, 77 Misc.2d 776, 354 N.Y.S.2d 968, affd. 46 A.D.2d 741, 362 N.Y.S.2d 438; cf. *People v. Brothers*, 50 N.Y.2d 413, 429 N.Y.S.2d 558, 407 N.E.2d 405). A contrary holding would thwart the purpose of CPL 30.30, which "is to require the prosecution to be prepared within six months in all but the unusual case" (*People v. Berkowitz*, 50 N.Y.2d 333, 349, 428 N.Y.S.2d 927, 406 N.E.2d 783).

The District Attorney concedes that the period from August 15, 1975, to November 19, 1975, is properly chargeable to the People. The People are therefore chargeable with an almost nine-month period, running from February 25, 1975, to November 19, 1975. We need not consider allegations as to any other time frame. Defendant was denied his right to a speedy trial, and the motion to dismiss is, therefore, granted.

Since the indictment must be dismissed, it is unnecessary to consider defendant's remaining contention on appeal.

The PEOPLE, etc., Respondent,

v.

BENEDICT V. (Anonymous), Appellant.

Supreme Court, Appellate Division, Second Department.

Dec. 31, 1981.

Juvenile was adjudged a youthful offender following his conviction, upon a plea of guilty, before the County Court, Westchester County, White, J., of burglary in the third degree and criminal mischief in the second degree, and he appealed. The Supreme Court, Appellate Division, held that school principal's active role in questioning juvenile, a student, about a burglary of the school and damage to certain property of the school, together with conflict between principal's duty with respect to the school and its property and his ability to act in loco parentis, influenced defendant to extent that confession was involuntarily made.

Reversed and remitted.

Infants ⇐174

School principal's active participation in questioning of student by detective during school hours concerning burglary of school and damage to certain school property, together with conflict between principal's duty with respect to school and its property and his ability to act in loco parentis, influenced student to extent that his confession was involuntarily made. McKinney's CPL § 60.45.

Pirrotti & Imperato, Dobbs Ferry (Loretta Benedetto, Dobbs Ferry, of counsel), for appellant.

Carl A. Vergari, Dist. Atty., White Plains (Matthew J. Keating and Anthony J. Servino, Asst. Dist. Atty., of counsel), for respondent.

Before MOLLEN, P. J., and HOPKINS, TITONE, WEINSTEIN and BRACKEN, JJ.

MEMORANDUM BY THE COURT.

Appeal by defendant from a judgment of the County Court, Westchester County, rendered November 10, 1980, which, upon [illegible] convictions of burglary in the third degree and criminal mischief in the second degree

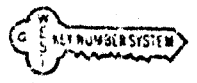
upon a plea of guilty, adjud youthful offender and imposed The appeal brings up for review after a hearing, of defendant's suppress statements.

Judgment reversed, on the la facts, motion granted, plea va case remitted to the County Cou ther proceedings consistent herew

Defendant, 16 years of age a school student, was summone school hours to the office of the p the school. There, he was questi detective concerning the crimes to ultimately entered a plea of gui principal of the school, who was p the office at the time, actively pa in the questioning, during which fendant made a confession.

The crimes about which defen questioned and to which he enter of guilty involved burglary of th and damage to certain property school.

We are constrained to conclude u der the circumstances, the nature principal's role as well as his condu questioning influenced defendant to tent that his confession was invol made (see *Culombe v. Connecticut*, 3 568, 602, 81 S.Ct. 1860, 1879, 6 L.Ed.2 CPL 60.45). It is obvious that the pal's duty with respect to the school property conflicted with his ability t *loco parentis* with respect to defend cause of the nature of the crimes c Notwithstanding available alternat tion, the principal not only permitte tioning of defendant by the detecti expressly assumed the role of parent tector and, in furtherance of that ro couraged defendant to make a conf



...the County Court, West-
...White, J., of burglary in
...and criminal mischief in
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...o, Dobbs Ferry (Loret-
...Ferry, of counsel), for

...st. Atty., White Plains
...and Anthony J. Servi-
...f counsel), for respon-

...P. J., and HOPKINS,
...IN and BRACKEN,

...Y THE COURT.

...t from a judgment of
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...980, which, upon his
...y in the third degree
...in the second degree,

upon a plea of guilty, adjudged him a youthful offender and imposed sentence. The appeal brings up for review the denial, after a hearing, of defendant's motion to suppress statements.

Judgment reversed, on the law and the facts, motion granted, plea vacated and case remitted to the County Court for further proceedings consistent herewith.

Defendant, 16 years of age and a high school student, was summoned during school hours to the office of the principal of the school. There, he was questioned by a detective concerning the crimes to which he ultimately entered a plea of guilty. The principal of the school, who was present in the office at the time, actively participated in the questioning, during which the defendant made a confession.

The crimes about which defendant was questioned and to which he entered a plea of guilty involved burglary of the school and damage to certain property of the school.

We are constrained to conclude that, under the circumstances, the nature of the principal's role as well as his conduct in the questioning influenced defendant to the extent that his confession was involuntarily made (see *Culombe v. Connecticut*, 367 U.S. 568, 602, 81 S.Ct. 1860, 1879, 6 L.Ed.2d 1037; CPL 60.45). It is obvious that the principal's duty with respect to the school and its property conflicted with his ability to act *in loco parentis* with respect to defendant because of the nature of the crimes charged. Notwithstanding available alternative action, the principal not only permitted questioning of defendant by the detective, but expressly assumed the role of parental protector and, in furtherance of that role, encouraged defendant to make a confession.

The PEOPLE, etc., Respondent,

v.

Joe Lee McKAY, Appellant. (Ind. No. 2219-79)

Supreme Court, Appellate Division, Second Department.

Dec. 31, 1981.

Defendant was convicted, on guilty plea, before the Suffolk County Court, Seidell and Levine, JJ., of attempted robbery in second degree, and he appealed. After report was rendered on remission of case, 81 A.D.2d 896, 439 N.Y.S.2d 46, the Supreme Court, Appellate Division, held that doubts raised as to voluntariness as well as to the factual basis of the plea required that it be vacated and that defendant be afforded opportunity to replead to indictment.

Judgment reversed, plea vacated, and case remitted for further proceedings.

Criminal Law ⇐274(3)

In proceeding in which defendant pled guilty to attempted robbery in second degree and in which trial court determined, on remission of case, that there was a "possibility" that defendant was confused when he entered his guilty plea and that there was "possibility" that he lacked requisite knowledge of robbery at time he drove "getaway" car, the doubts raised as to voluntariness as well as to factual basis of plea required that it be vacated and that defendant be afforded opportunity to replead to indictment.

Before HOPKINS, J. P., and TITONE, GIBBONS and COHALAN, JJ.

MEMORANDUM BY THE COURT.

Appeal by defendant from a judgment of the County Court, Suffolk County, rendered August 11, 1980, convicting him of attempted robbery in the second degree, upon his plea of guilty, and imposing sentence.

TENTH JUDICIAL DISTRICT

A-12

HONORABLE JAMES D. GIBBS

Anoka County Courthouse
325 East Main Street
Anoka, MN 55303
612/421-4760

November 1, 1982

Justices of the Supreme Court
c/o Mr. John McCarthy
Clerk, Minnesota Supreme Court
230 State Capitol
St. Paul, Minnesota 55155

Dear Justices:

I am writing this letter to advise each of you that I have carefully read the proposed Juvenile Court Rules and the Minority Report proposed by Anoka County Attorney Robert Scott.

I should perhaps advise you that I am writing more in my capacity as a former public defender than as a member of the judiciary. I was the Anoka County Public Defender for a period of almost 17 years, spending the last eight years in Juvenile Court every day. As I read through the Rules, I find that the provisions that address themselves to a guardian ad litem in all juvenile matters strikes terror in my heart. As public defender, the task was extremely difficult because of the fact I was dealing with so many people, not just the juvenile, but parents and oftentimes brothers, sisters, ministers, et cetera. The thought of having a guardian ad litem looking over my shoulder on a continuing basis would in fact I feel nulify the very good effect the public defender has on the juvenile court. This is especially true when I realize that there is no way of knowing who the proposed guardian ad litem will be and what their background will be.

I urge you at this time to consider very carefully Mr. Scott's proposed changes in his Minority Report. They are in fact advantageous to not only prosecutors but perhaps more so to public defenders. If any of the members of the Court would like to discuss the matter further, please feel free to contact me. I would be more than happy to make myself available for whatever expertise I might be able to bring to the Court concerning the day-to-day problems of a public defender and the effect the proposed Rules would have on, at least in Anoka County, a satisfactory operation.

Sincerely yours,

James D. Gibbs

JG:af

11-2 -- copy to each Justice

Cities of St. Bonifacius & Minnetrista

Chief of Police
TIMOTHY J. THOMPSON

POLICE DEPARTMENT

Area Code 612
Phone: 446-1131

7701 County Road 110 W • Minnetrista, Minnesota 55364

A-12

November 1, 1982

The Justices of the Supreme Court
State of Minnesota
%Mr. John McCarthy
Clerk of the Supreme Court
230 State Capitol
St. Paul, Minnesota 55101

Dear Justices,

As a member chief of the Hennepin County Chiefs of Police Association and the Minnesota Chiefs of Police Association, I support their positions in opposing Rule Six and Rule Eighteen of the proposed new Rules of Procedure for Juvenile Court.

Rule Six appears to be contrary to numerous statutes, court rules and supreme court decisions at both the State and Federal levels. A more logical determining factor on the admissability of juvenile confessions is found in the present system of the "totality of circumstances" test. This test has been found widely acceptable across the nation. The rule should be stricken.

Rule Eighteen, requiring that a juvenile be released from detention within thirty-six hours if the court has not ordered continued detention, and within twenty-four hours if a request for detention hearing has been made and the court has not ordered continued detention should be stricken or substantially changed to allow for Sundays and holidays. Also, the time in detention should begin at midnight of the day of detention to more closely follow the adult rules as stipulated in the Minnesota Rules of Criminal Procedure.

Assistant Anoka County Attorney, Mr. Robert Scott, has prepared and submitted to the Court, a document entitled, "Minority Report to the Proposed Juvenile Court Rules". This report appears to have been prepared after a great deal of research and is based on sound logic in arguing against both of these proposed rules.

Respectfully submitted,

T. J. Thompson

Timothy J. Thompson
Chief of Police

TJT:pf

11-3 -- copy to each Justice.

6-17-11.09-

55

WASHINGTON COUNTY

OFFICE OF THE COUNTY ATTORNEY

COURT HOUSE
14900 61ST STREET NORTH • STILLWATER, MINNESOTA 55082
612/439-3220, Ext. 445

Robert W. Kelly
County Attorney
CRIMINAL DIVISION
Wm. F. Klumpp, Jr. Chief
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M. Jo Madigan
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CIVIL DIVISION
Douglas G. Swenson, Chief
Margaret Westin Perry
Francis D. Collins

November 9, 1982

Mr. Douglas K. Amdahl
Chief Justice
Minnesota Supreme Court
State Capitol
St. Paul, MN 55101

A-12

RE: Proposed rules of procedure for juvenile court

Dear Justice Amdahl:

After considerable effort on the part of the committee proposed rules of procedure for the juvenile courts of Minnesota have been promulgated. There are two areas which concern the Washington County Attorney's Office should the proposed rules be adopted in their entirety. The first area of concern pertains to the ability of an otherwise competent juvenile to waive certain constitutional rights, particularly the right against self incrimination and the right to counsel. The second area of concern is that pertaining to intake procedures.

Proposed Rules 5, 6, 15, 21, 22, and 41 limit an otherwise competent juvenile's ability to waive certain rights. Primarily the rules require the presence of a parent or legal guardian. Proposed Rule 6.04 does deal with the situation where the child's parents or guardian cannot be located after reasonable efforts.

The Washington County Attorney's Office would recommend that these rules be amended so that the only test is that of the totality of the circumstances in determining the validity of a juvenile's waiver of rights. The totality of the circumstances test is one which is already part of the case law of the Minnesota and United States Supreme Courts. The courts are already experienced in dealing with this test and it is one that is both practical and administratively workable. This test would also better serve the interests of the juveniles coming before the court who frequently are in court due to problems with their parents.

Although proposed Rule 6.04 does deal with the situation where it may be difficult to locate the parents problems may still arise under this proposed rule. In many cases a transient juvenile may not know the whereabouts

of his parents. Proposed Rule 6.04 would still place a burden upon law enforcement officials to try to locate these parents even though they may have no information as to their whereabouts. In addition the rule would also literally require certain efforts be made to locate the parents even if the child is suspected of killing them. The courts may well be inundated with requests to determine whether or not police or probation officers have made reasonable efforts rather than determining whether or not the juvenile was truly competent to waive his constitutional rights. In this situation the totality of the circumstances test would provide a much simpler solution and one which would not encourage as much litigation over procedural matters.

Proposed Rule 6.04 is somewhat ambiguous with regard to a juvenile who is placed in a foster home pursuant to Minn. Stat. §257.071, Subd. 2. This statute allows a parent to voluntarily place a child in a foster home if they release their parental rights. In this situation it would appear that the appropriate person to contact would be someone from the social service agency responsible for placement or from the foster home rather than the natural parents. However, the proposed rule does not make it clear as to who should be contacted in this situation.

Proposed Rule 17 is one that ought to be stricken from any code of rules adopted by the Supreme Court. Proposed Rule 17 on its face places the burden of establishing intake procedures and guidelines for screening juvenile cases on the court. This seems to be a clear violation of the separation of powers and may well create a conflict of interest in those jurisdictions where there is only one judge routinely working on juvenile matters. Intake procedures and guidelines ought to be promulgated by the authorities responsible for the prosecution of juveniles. In Minnesota this is the office of the county attorney.

Proposed Rule 18.09 also seems to be in conflict with the policy of the legislature set forth in Minn. Stat. §484.07. This statute provides that no court shall be open on Sunday except for very limited purposes. This proposed rule is also contrary to the policy expressed in the Rules of Criminal Procedure which generally exclude Sunday from any time requirement. Proposed Rule 18.09 would require Saturday and Sunday court sessions which would be particularly costly and impractical for the smaller jurisdictions in the state. We would suggest that this rule be amended to exclude Saturdays and Sundays from the time period.

Proposed Rule 30.03, Subd. 5 should be amended so that the predisposition report need only be discussed with those parents who are actually interested in it. As proposed the rule would require the person preparing the predisposition report to discuss the report with the parents

or guardian, regardless of their availability or apathy.

On the whole, however, we are well satisfied with the effort of the committee. Perhaps the greatest benefit from the adoption of any set of rules would be that juveniles throughout the state will be treated in a similar matter and receive similar protections regardless of the county where a juvenile matter happens to come before the court. With the exceptions noted above we would request that the proposed rules be adopted by the Supreme Court.

Very truly yours,

ROBERT W. KELLY, COUNTY ATTORNEY
WASHINGTON COUNTY, MINNESOTA

Wm. F. Klumpp, Jr.
Assistant County Attorney

WFK/nmp

LAW OFFICES

of the

LEGAL AID SOCIETY OF MINNEAPOLIS, INC.

SOUTHSIDE OFFICE
2929 FOURTH AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55408
(612) 827-3774

November 8, 1982

John J. McCarthy
Clerk of Supreme Court
Minnesota Supreme Court
State Capitol
St. Paul, Minnesota 55155

RE: Juvenile Court Rules Hearing

A-12

Dear Mr. McCarthy:

Janet C. Werness, Esq. of the Southern Minnesota Legal Services has been selected to address the Court on our proposed additions to the Proposed Rules of Juvenile Court Procedures. I will not speak myself, but will be available to answer questions.

As you may recall, we submitted a Memorandum requesting additions to the Rules which will specify how the Indian Child Welfare Act should be applied in Minnesota.

Ms. Werness may be reached at 776-8592 or 222-5863.

Very truly yours,

JUVENILE PROJECT OF THE
LEGAL AID SOCIETY

James E. Wilkinson
Attorney at Law

JEW:feb
cc: Janet Werness

Mr. John McCarthy, Clerk of The Supreme Court
Capital Building
230 State Capital
St. Paul, MN 55155

November 9, 1982

Dear Mr. McCarthy:

Re: File No. A-12

Mr. Chief Justice Douglas K. Amdahl has graciously allowed me to present three young people to the Court as proponents of Rule 6.

I respectfully request that I be allowed to introduce these young people and succinctly state my support in the matter also.

In regards to placement for our statements on the agenda, we would appreciate being included at the very outset due to the young people's commitment to school classes.

The following young people will make statements:

Hank Byrd Age 18
215 So. McKnight #213
St. Paul, MN 55119
738-2671

Mike Triplett Age 17
916 Magnolia Ave E.
St. Paul, MN 55106
774-1960

Lynn Shomion Age 14
2227 Glenridge Ave
St. Paul, MN 55119
738-2788

Thank you.

Sincerely,

Thomas A. McGrath

Thomas A. McGrath
1940 Grand Ave
St. Paul, MN 55105
699-6296

11-12-82 } Telephoned
11-15-82 } but received
no reply
JMC

COUNTY OF NICOLLET

OFFICE OF
COUNTY ATTORNEY
ST. PETER, MINNESOTA 56082

COUNTY ATTORNEY
W. M. GUSTAFSON
ASSISTANT COUNTY ATTORNEYS
MALCOLM K. MacKENZIE
JEROLD M. LUCAS
MICHAEL K. RILEY

November 12, 1982

424 SO. MINNESOTA AVE.
BOX 360
TELEPHONE (507) 931-3563

The Honorable Douglas K. Amdahl
Chief Justice
Minnesota Supreme Court
State Capitol
St. Paul, Minnesota 55101

Re: Proposed Rules of Procedure
for Juvenile Court

A-12

Dear Judge Amdahl:

On November 16, 1982, the Court will consider the promulgation of proposed Rules of Procedure for Juvenile Court, including procedures with respect to delinquency, petty offenders, and juvenile protection rules. We have fully reviewed the proposed rules and have also reviewed the Minority Report To The Proposed Juvenile Report Rules submitted by Mr. Robert Scott, Assistant Anoka County Attorney. After studying these matters fully, we respectfully feel it appropriate to write you concerning our position with the adoption of the proposed rules. It is our sincere hope that you may consider our thoughts along with others in reaching a decision with respect to the establishment of Rules of Procedure for Juvenile Court within the State of Minnesota.

The general idea of establishing procedural rules for juvenile court is unquestionably one whose time has come. In the rural areas of the State of Minnesota there has admittedly been problems with respect to procedure in both child protection and delinquency cases. It is, therefore, apparent that rules of some type are needed.

The proposed rules in general are suitable for implementation as written. There are, however, some concerns which we respectfully feel need to be addressed by the Court with respect to specific provisions of the rules. We, therefore, feel it appropriate to address the following concerns to yourself and the Court for consideration.

Mr. Scott, in his Minority Report, has prepared a very detailed analysis concerning the most serious flaws of the proposed Rules of Procedure for Minnesota Juvenile Courts. We, therefore, do not feel it appropriate to repeat his concerns in detail other than to submit our basic agreement

with his concerns and analysis. Particularly, from the prospective of a rural Minnesota prosecutor, Rules 5, 6, 15, 21, 22, and 41 cause the greatest concern. With respect to Rule 6 on the right to remain silent, we are in agreement with the Minority Report that the rule should be stricken. It is inconsistent with the holdings of the United States Supreme Court and the Minnesota Supreme Court as they relate to the admissibility of a juvenile confession. The rule proposes to be a rule of evidence in that it establishes an absolute requirement of parental presence as a condition for the admissibility of an admission or confession. It does not consider the exceptions which have been drawn by the Court to the Miranda Rule and perhaps most importantly will, in fact, limit a constitutional right belonging to a juvenile. The extension of the rule to school staff personnel and probation officers will complicate law enforcement in the rural areas and will be a costly matter in the out-state area with respect to education of those individuals who fall under the rule. The rule will surely breed endless litigation on its meaning and application and will hinder the working of the philosophy of the juvenile court which is still set out in Minnesota Statutes 260. In summary, we suggest that Rule 6 be stricken in its entirety and that the Court adopt a rule which continues the determination of the admissibility of a juvenile's confession, admission, or other statement by the totality of the circumstances test.

The proposed Rules 5 and 41 which relate to the appointment of a guardian ad litem for the child also cause concern. We feel that the cost of appointment of guardian ad litem with a provision for separate counsel for the juvenile would be a prohibitive expense for the courts in the rural areas and would also serve to cause unnecessary delay in the workings of the juvenile court system. This again would be contrary to the intent and purposes behind the juvenile court systems as set forth in Minnesota Statutes Chapter 260. Again, the adoption of a totality of the circumstances test approach would be preferable. In numerous years of handling juvenile court proceedings in Nicollet County, we are unaware of any claim of abuse of Court discretion nor any claim that the rights of juveniles have been denied. Therefore, we feel that the proposed change supported by the rule is without compelling need.

Without going into detail, we further support the suggestion in the Minority Report with respect to the amendment of Rule 15 which concerns waiver of counsel and other constitutional rights. Again, we believe it preferable to not mandate an assignment of the juvenile's constitutional rights to the parent since the potentional consequences of the juvenile court in delinquency or petty matters lies solely with the juvenile. Here again a totality of the circumstances test resolves the concerns with Rule 15 as proposed and will serve to promote the purpose of the juvenile court system and most importantly the constitutional rights of the juvenile.

With respect to Rule 21 on admission and denial, we again would support the minority report which suggests an amendment to clarify the fact that the

decision to admit or deny belongs to the juvenile and no one else.

Since Rule 17 concerning intake would appear to transfer an executive function of judgment to the Court, we feel that the rule should be stricken in its entirety. The decision to initiate prosecution in both adult and juvenile court has historically and constitutionally been the province of the executive branch and should remain so, so as to prevent certain conflicts which will arise in the administration of intake by the Court and, furthermore, to retain public accountability with an elected official of the executive branch, namely, the County Attorney. For these reasons, we respectfully submit that Rule 17 be stricken and that no formal rule be made with respect to intake.

We also feel that there are especially in outstate areas, great concerns with respect to the proposed Rule 18.09. In the event the 36-hour rule commences at the time of detention, it will be necessary to have hearings on both Saturdays and Sundays. In rural areas where there is difficulty in obtaining judges due to their number and travel distance, this rule as proposed would be both unworkable and costly in the rural setting. In addition, another 36-hour rule which contains a different methodology for time computation will be confusing for those who must carry out the law. We believe it would be in everyone's best interest to adopt only proposed Rule 65 which is more in accord with present Minnesota law as set forth in M.S. 260.171.

Since the rural areas again have substantial distances involved in the system, we also would support the minority report with respect to service of the petition to provide for service 24 hours before the time of the hearing. Again, this is consistent with the present statute, M.S. 260.141, Subdivision 1, Paragraph 2.

The rules further contemplate formal discovery procedures which are similar to the Minnesota Rules of Criminal Procedure. We would have the following suggestions with the implementation of these rules: (1) Amend Rule 24 so as to allow the local courts to set a different time limit other than the five-day requirement for required disclosures; (2) Allow discovery in traffic and petty matters to be governed under a rule similar to Minnesota Rules of Criminal Procedure, Rule 7.01, rather than the extensive discovery formula set forth in Rule 24. This latter consideration is based upon our experience in misdemeanor matters that Rule 7.03 is a satisfactory discovery mechanism both to the prosecution and to the defense. In applying the more formal discovery which is similar to that involved with felony cases under Minnesota Rules of Criminal Procedures, Rule 9, would appear to not be needed in the usual petty or traffic case and would hinder the administration of these types of cases without due cause.

Finally, we would respectfully request the Court to consider the minority report with respect to the rules involving access to juvenile files by the prosecution; reference of delinquency matters for adult prosecution; and

disposition of juvenile matters. The minority report expresses concerns which we feel are well founded and if such amendments are considered and made, we believe the rules would be better able to serve the concerns of the juvenile justice system.

It is our hope that the Court in the decision-making process will consider the concerns and suggestions set forth herein and make changes where it deems necessary.

Respectfully submitted,

W. M. Gustafson
Nicollet County Attorney

Malcolm K. MacKenzie
Assistant County Attorney

Jerold M. Lucas
Special Assistant County Attorney

Michael K. Riley
Special Assistant County Attorney

WMG:hb

October 28, 1982

The Justices of the Supreme Court
State of Minnesota
% Mr. John McCarthy
Clerk of the Supreme Court
230 State Capitol
St. Paul, Minnesota 55101

A-12

Dear Justices:

As a member chief of the Hennepin County Chiefs of Police Association and the Minnesota Chiefs of Police Association, I support their positions in opposing Rule Six and Rule Eighteen of the proposed new Rules of Procedure for Juvenile Court.

Rule Six appears to be contrary to numerous statutes, court rules and supreme court decisions at both the State and Federal levels. A more logical determining factor on the admissability of juvenile confessions is found in the present system of the "totality of circumstances" test. This test has been found widely acceptable across the nation. The rule should be stricken.

Rule Eighteen requires that a juvenile be released from detention within thirty-six hours if the court has not ordered continued detention. It also requires that a juvenile be released within twenty-four hours if a request for detention hearing has been made and the court has not ordered continued detention. This rule should be stricken or substantially changed to allow for Saturdays, Sundays and holidays. Also, the time in detention should begin at midnight of the day of detention to more closely follow the adult rules as stipulated in the Minnesota Rules of Criminal Procedure; why not follow the same Minnesota Rules of Criminal Procedure for juveniles.

Assistant Anoka County Attorney, Mr. Robert Scott, has prepared and submitted to the Court a document entitled "Minority Report to the Proposed Juvenile Court Rules". This report appears to have been prepared after a great deal of research and is based on sound logic in arguing against both of these proposed rules; in my opinion this report should be given considerable consideration.

Respectfully submitted,
WEST HENNEPIN PUBLIC SAFETY DEPARTMENT

James D. Franklin
Director of Public Safety

JDF:skj

West Hennepin Public Safety Department / 1570 Halgren Road / Maple Plain, Minnesota 55359 / 479-3175

11-3 -- Copy to each Justice

Chisago County Attorney

JAMES R. CLIFFORD
CHISAGO COUNTY GOVERNMENT CENTER
CENTER CITY, MINN. 55012

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Assistant County Attorney

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Assistant County Attorney

Metro# 464-5365
464-5430
674-4433
(612) 257-1300
Ext.# 151, 152, 153

October 29, 1982

The Honorable Douglas Amdahl
Chief Justice
Minnesota Supreme Court
State Capitol
St. Paul, Minnesota

RE: Proposed Juvenile Rules

Dear Justice Amdahl and Members of the Court: A-12

I am submitting this letter to express my concern over the Proposed Juvenile Court Rules which will be considered on November 16, 1982 at a public hearing.

My concern arises out of the fact that as County Attorney of Chisago County my office does a considerable amount of juvenile prosecution involving both local juveniles and juveniles from the metropolitan area. With that in mind I have had an opportunity to examine the proposed rules, as well as the positions taken by Robert H. Scott, Assistant County Attorney of Anoka County, relative to the rules. From my point of view, the positions taken by Mr. Scott are well reasoned and workable, and I support them wholeheartedly.

Perhaps the most significant concern based on my experience is the proposal concerning Rule 6 which would change current views on the admissibility of statements taken from juveniles. My feeling is that the current "totality of the circumstances test" in relation to statements in the nature of admissions or confessions from juveniles is a recognition of the realistic abilities of juveniles to make decisions concerning whether or not to waive known rights, rather than artificially adopting a position that juveniles, simply by reason of age, are somehow legally incapable of making the decision to waive a right to counsel, or right to parental presence. From my point of view, perhaps the most unrealistic application of Rule 6 would find a juvenile who has committed or attempted a sophisticated criminal act benefiting from a presumption or conclusion that he or she is incapable of making a rather basic decision concerning whether he or she wishes to disclose to various investigators the truth of the matter after waiving a known right to counsel and parental presence.

(continued on page two)

An additional difficulty with an application of Rule 6 as proposed has been brought to my attention by a local school official who voiced the concern that the proper management of junior high schools and high schools involves an entirely different set of circumstances than does the management of an investigative agency such as a police force. The concern he expressed to me was that if school administrators and teachers are subject to highly technical and legal rules when confronted with a situation which demands that they make immediate decisions concerning one pupil for the benefit of the entire school system, the emphasis on providing a safe and healthy environment for all students will be subordinated to an artifical goal which would elevate the rights of a single student who may have committed some sort of infraction beyond the rights of the majority of students who must be provided with a safe and appropriate environment in which to learn. Moreover, if an infraction of school rules also became the subject of a delinquency petition, administrators are concerned that their initial attempts to discern the facts for the purpose of discharging their obligation to students might foreclose the possibility of effective adjudication in juvenile court should the matter progress to that point.

In summary, I join Robert Scott and the majority of other prosecutors with whom I have discussed the matter in urging that Mr. Scott's views concerning the proposed rules be carefully examined and hopefully adopted by the Court.

Thank you for allowing the privilege of addressing you on this matter.

Sincerely,

James R. Clifford
Chisago County Attorney

JRC/pjl

cc: Jerry Schrader

City of Golden Valley

November 1, 1982

The Justices of the Supreme Court
State of Minnesota
C/O Mr. John McCarthy
Clerk of the Supreme Court
230 State Capitol
St. Paul, Minnesota 55101

Dear Justices:

As a member chief of the Hennepin County Chiefs of Police Association and the Minnesota Chiefs of Police Association, I support their positions in opposing Rule Six and Rule Eighteen of the proposed new Rules of Procedure for Juvenile Court.

Rule Six appears to be contrary to numerous statutes, court rules and supreme court decisions at both the State and Federal levels. A more logical determining factor on the admissability of juvenile confessions is found in the present system of the "totality of circumstances" test. This test has been found widely acceptable across the nation. Rule Six should be stricken.

Rule Eighteen, requiring that a juvenile be released from detention within thirty-six hours if the court has not ordered continued detention, and within twenty-four hours if a request for detention hearing has been made and the court has not ordered continued detention should be stricken or substantially changed to allow for Sundays and holidays. Also, the time in detention should begin at midnight of the day of detention to more closely follow the adult rules as stipulated in the Minnesota Rules of Criminal Procedure.

Assistant Anoka County Attorney, Mr. Robert Scott, has prepared and submitted to the Court, a document entitled, "Minority Report to the Proposed Juvenile Court Rules." This report appears to have been prepared after a great deal of research and is based on sound logic in arguing against both of these proposed rules.

Respectfully submitted,

Glen A. Olson, Director
Department of Public Safety

GAO/js

Civic Center, 7800 Golden Valley Rd., Golden Valley Minnesota, 55427, (612) 545-3781

NANCY ZALUSKY BERG
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430 MIDLAND BANK BUILDING
MINNEAPOLIS, MINNESOTA 55401

DANIEL P. TABER
OF COUNSEL

AREA CODE 612
339-1660

November 4, 1982

Mr. John McCarthy
Clerk of the Supreme Court
State Capitol Building
St. Paul, MN

A-12

RE: Proposed Juvenile Court Rules

Dear Sir:

Enclosed you will find an original and ten copies of a position paper in opposition to proposed Rules 5 and 41. A member of our committee would also like to be permitted to speak on November 16, 1982 before the Supreme Court in opposition to these rules.

Respectfully yours,

↑ notified them to send ~~title~~ representative

Nancy Zalusky Berg
co-chair
Minnesota State Bar Association
Young Lawyer's Section
Child Abuse Committee

Enc.
cc: Allen Oleisky
Karen Ives

P E T I T I O N

POSITION PAPER IN OPPOSITION
to
PROPOSED RULES 5 AND 41

BY: Minnesota State Bar Association
Young Lawyers Section
Child Abuse Committee

The Minnesota Bar Association, Young Lawyer's Section - Child Abuse Committee will comment herein with respect to the proposed rules which address the appointment of guardians ad litems in juvenile court proceedings. The committee is concerned with the effect adoption of the proposed rules 5 and 41 will have on the effective functioning of the guardian ad litem in juvenile court. It is the position of the Child Abuse Committee that proposed rules 5 and 41 will result in such an expansion in the present duties and responsibilities of the guardian ad litem, that their ability to function will be impaired and diluted.

The procedural rules governing role of the guardian ad litem in the context of juvenile court proceedings should conform to Minnesota Statute §260.155 Subd. 4. The statute provides that in all neglect and dependancy proceedings a guardian ad litem shall be appointed. In all other juvenile court matters the statute provides that a guardian ad litem may be appointed to protect the interests of a minor in cases other than neglect and dependency when the minor is without a parent or guardian, or when his parent is a minor or incompetent, or when his parent or guardian is indifferent or hostile to the minor's interests.

The role of the guardian ad litem in dependency and neglect proceedings is that of an independent professional whose responsiblity is to insure that the child's best interests in all juvenile court proceedings are protected and not overlooked during the course of the adversarial process. This role constitutes a function separate from the County Attorney's role, and from the role of the parents legal representative.

For a guardian ad litem to be effective in carrying out responsibilities within the context of dependency and neglect proceedings, active participation and occasional initiation of Juvenile Court proceedings is required. To adequately respond and prepare for a dependency or neglect case, the guardian ad litem must commit and expend a considerable amount of time and effort.[1]

Recognizing the important nature of the guardian ad litem role in dependency and neglect proceedings, the Child Abuse Committee concurs with the minority report of Robert Scott and the Honorable Judge Allen Oleisky's Position Paper concerning proposed rules 5 and 41. The amendment suggested in the minority report, which urges the proposed rules 5 and 41 conform with Minnesota Statute §260.155 Subd. 4(a) and (b), should be adopted. Failure to adopt the minority report proposed rules 5 and 41 will result in striping the effectiveness and otherwise

---

1. Duties and responsibilities of the guardian ad litem generally include the following:

-Investigate
-Monitor system
-Mediate
-Facilitate
-Advocate
-Fact-find
-Coordinate actions involving child occurring in several courts
-Cross-examine
-Hand-hold
-Present evidence
-Prod system
-Assure regularity of proceedings
-Promote and protect the interest of children
-Assess need for additional court proceedings
-Present legla arguments
-Assess information
-Assist the court
-Serve as witness
-Develop case plan
-Appeal
-Reform system
-Develop resources
-Prevent unwarranted intervention
-Maintain personal contact with child
-Assure development of treatment plan for children and parents
-Assure child receives all financial, medical, and educational benefits due

detract from the unique and independent function of the guardian ad litem.

The appointment of a guardian ad litem in cases other than alleged dependency or neglect, and in circumstances where the child is represented by counsel and where the court is satisfied that the interests of the minor are protected, will result in pro forma appearances by the guardian ad litem. The professional resources of the existing guardian ad litem programs will be strained by routine appearances in cases involving delinquency matters, and will impair the guardian ad litem's ability to respond and prepare in cases involving dependency and neglect; cases where the guardian ad litem function truly impacts upon court proceedings.

The Child Abuse Committee believes adequate protection is provided in Minnesota Statute 260.155 Subd.4 for minors who need a guardian ad litem appointed in cases alleging other than dependency or neglect. To change the guardian ad litem's role through the proposed rules 5 and 41 would not be in the public's best interest, and is beyond the statutory authority vested to the Rules Commission and the Minnesota Supreme Court in Minnesota Statute 480.059.

A-12

STATE OF MINNESOTA

IN SUPREME COURT

In re Proposed
Rules of Procedure of
Juvenile Court
File #A-12

Petition

C. PAUL JONES
Minnesota State Public Defender

By: SUSAN K. MAKI
Assistant State Public Defender
95 Law Center
University of Minnesota
Minneapolis, Minnesota 55455
Phone: (612) 373-5725

TABLE OF CONTENTS

Introduction	
Proposed Rule 2 (Proposed Rule 38)	Referee
Proposed Rule 5 (Proposed Rule 41)	Guardian Ad Litem
Proposed Rule 6	Right to Remain Silent
Proposed Rule 15	Waiver of Counsel and Other Constitutional Rights
Proposed Rule 17	Intake
Proposed Rule 18	Detention
Proposed Rule 19	Petition
Proposed Rule 20 (Proposed Rule 54)	Arraignment
Proposed Rule 21	Admission or Denial
Proposed Rule 22	Settlement Discussions
Proposed Rule 24	Discovery
Proposed Rule 30	Disposition
Proposed Rule 32	Reference of Delinquency Matter
Proposed Rule 34	Records
Appendix	

The adoption of the Proposed Rules of Procedure for Juvenile Court will have a salutary effect upon the operation of the juvenile justice system in Minnesota. The Proposed Rules will provide for uniformity of procedure throughout the state and will ensure that the rights of children will be protected.

This petitioner addresses the amendments which have been proposed by the Minority Report in regard to Proposed Rules, 2, 5, 6, 15, 17, 18, 20, 21, 22, 24, 30, 34, 38, 41 and 54 and suggests amendments to Proposed Rules 19 and 32.

This appendix contains a restatement of the proposed rules to which revision is sought reflecting the suggested change in language except in regard to those proposed rules for which the Minority Report already contains a suggested amended form and with which this petition agrees.

This petition urges the Court to adopt the Proposed Rules of Procedure for Juvenile Court and petitioner hopes that suggestions offered herein will be helpful to the Court.

Proposed Rule 2 (Proposed Rule 38)

Proposed Rule 2.02 and Proposed Rule 38 should be amended, as suggested by the Minority Report, to conform to the wording of Minn. Stat. §484.70, Subd. 6.

Proposed Rule 5 (Proposed Rule 41)

Proposed Rule 5 and Proposed Rule 41 should be amended to provide that the court need not appoint a guardian ad litem for a child when the child is without a parent or guardian, or the parent is a minor or incompetent, or the parent is indifferent to or hostile to the child's interests, if the child is represented by counsel and if the court is satisfied that the interests of the child are protected. As stated in the Minority Report, the proposed change would make the Rule consistent with the language of Minn. Stat. §260.155, Subd. 4 and would adequately protect the rights of a child while obviating the problem of adding an unneeded party to the proceedings. However, the language of Proposed Rules 5.02 and 41.04 should be retained.

Proposed Rule 6

Proposed Rule 6 should be adopted. The requirement of parental notification is not inconsistent with Minnesota law. Minn. Stat. §260.171 requires that parents be notified "as soon as possible" when a child is in custody. The requirement that parents be notified before questioning occurs will ensure that prompt notification will occur.

Parental involvement from the outset is not necessarily detrimental to a child. In the rare case where a parent actually coerces a child into confessing to a delinquent act, the child may petition the court to suppress that statement on the basis that it was not voluntarily given. Further, the concept of requiring that a parent, guardian or other

responsible adult be present with a child is entirely consistent with the rationale that justifies the existence of the juvenile court. Not all children who are taken into custody are sophisticated enough to understand the import of the Miranda warnings, the nature of the rights being waived or the consequences of a waiver. In fact even those children who possess the degree of sophistication to understand what is at stake lapse occassionally into periods of immaturity where they become dependent on others to help them decide such matters. Without Proposed Rule 6, police will be making judgment calls as to whether a child at the time he is questioned is sophisticated enough to waive his rights. Adoption of Proposed Rule 6 will eliminate the necessity of police officers making such a decision and will eliminate the necessity of a court reviewing this issue if the child later challenges the admissibility of his statement.

Further, the requirements of Proposed Rule 6 are not so onerous that police will be hampered in their investigation. If a parent or guardian cannot be contacted, the police have 2 options - defer questioning or find another responsible adult. The Minority Report suggests that the first option will result in needless detention. However, this should not occur. If the police do not have probable cause to believe that a child committed a delinquent act without the child's statement, they have no right to hold the child. If the police do have probable cause to believe the child committed a delinquent act, they are not likely to release a child unless there is a parent or other responsible adult who will accept custody of the child.

In the rare case where questioning cannot be postponed and no responsible adult is available, the local public defender could always be contacted to act as the responsible adult.

The provision that allows a parent to exercise a "veto power" over a childs decision to waive his rights is consistent with the provisions of Proposed Rule 15 which governs the waiver of other rights. Further, a parent should have his veto power given the fact that he is civilly liable for the acts of his child.

Three changes, however, should be made to the Proposed Rule. As suggested in the Minority Report, the terms "physically restrained" and "school staff" personnel as used in Proposed Rule 6.01 are confusing terms. Arguably a child could be "physically restrained" when subjected to a Terry stop. The law is clear, however, that Miranda warnings need not be given in such a situation. Proposed Rule 6.01 would thus be more precise if the term "physically restrained" were deleted and the phrase "in custody or otherwise deprived of his freedom in any significant way" were substituted.This change would make the wording of the rule consistent with the wording of the Miranda decision and would obviate the problem of having to litigate the issue of what the term "physically restrained" means.

Similarily the term "school staff personnel" is too general and could conceivably be construed to include any individual employed by a school district. Substitution of more specific terms such as "principal" or "teacher" would resolve this problem.

Proposed Rule 6.03 should also be amended to clarify whether there is an absolute sanction on admissibility as to any use of a statement not taken in conformance with the provisions of Proposed Rule 6.01 or whether the traditional exceptions to the Miranda decision will be recognized. Rule 2-2(a) of the Minnesota Juvenile Court Rules clearly excluded such a statement and its evidentiary fruits for all uses. That rule, however, was adopted prior to the decision in New York v. Harris, 91 S. Ct. 693 (1971). By adding a provision to Proposed Rule 6.03 that statements could be used for impeachment the problem would be resolved.

Proposed Rule 15

Proposed Rule 15, with one modification, should be adopted as proposed by the Commission. A parent, guardian, or guardian ad litem should be involved in the child's decision as to whether he should wiave his right to counsel and other constitutional rights. The fact that Proposed Rule 15 gives a parent, guardian or guardian ad litem authority to preclude a waiver by a child does not make Proposed Rule 15 inconsistent with the provisions of Minn. Stat. §260.155, Subd. 8. That statutory provision merely clarifies that the affirmative decision to waive a right must be the child's if he is over 12 years of age. A parent waiving a right on behalf of a child and a parent refusing to allow a child to waive a right are two different concepts. As written Proposed Rule 15 recognizes that a child is entitled to the

Proposed Rule 17

Proposed Rule 17 should be amended to provide that the county attorney may participate in the intake-screening process, if the county attorney chooses.

Proposed Rule 18

Proposed Rule 18.09 should be deleted as proposed by the Minority Report and the method of computation of time outlined in Proposed Rule 65 should govern in all cases.

Proposed Rule 19

Proposed Rule 19.03 should be amended to require that every petition set forth facts establishing probable cause to believe that the child has committed a delinquent act. Although Proposed Rules 19.04 requires such a petition to be filed under limited circumstances and provides that in other cases a child is entitled to a probable cause hearing if the child states sufficient reasons, an express requirement that each petition include a statement of probable cause would reduce the court's workload by eliminating those insubstantial cases which now come before the Court only to be dismissed. More importantly, the probable cause requirement would guarantee that no child would be subjected to the jursidiction of the court where less than probable cause exists to believe he has committed a delinquent act.

Proposed Rule 20

Proposed Rule 20.02 and Proposed Rule 54.02 should be amended as suggested by Minority Report to conform to the wording of Minn. Stat. §260.141, Subd. 1(2).

Proposed Rule 21

Proposed Rule 21.02, Subd. 1 should be amended to distinguish between cases in which a child is represented by counsel and cases in which a child appears without any representation.

In cases in which a child is represented by counsel, counsel can be presumed to advise the child against an improvident admission. Therefore the critical issue is whether the child understands his rights and the significance of his admission, and it should be unnecessary for the court to determine whether the parent or guardian also understand all applicable rights.

In cases in which a child waives his right to counsel, however, the protections afforded by Proposed Rule 21.03, should be retained. However, that rule should be amended to provide that the guardian ad litem may act in lieu of the parent or guardian.

Proposed Rule 21.03, Subd 4 should also be amemded to provide that the court may accept as admission to a lesser offense or a different offense without the consent of the county attorney if the court finds that a manifest injustice would result if the admission were not accepted.

Proposed Rule 22

Proposed Rule 22.02 should be amended in the manner suggested by the Minority Report to allow a county attorney to discuss a settlement agreement with a child's parent, guardian or guardian ad litem if the child is not represented by counsel.

Proposed Rule 24

Proposed Rule 24 should be adopted as written. The suggestion in the Minority Report that the local court retain authority to set the time in which discovery without court order be completed is not consistent with the philosophy underlying the promulgation of the Proposed Rules in that procedure ought to be uniform throughout the state. In addition one of the most significant changes in juvenile court procedure which the Proposed Rules will establish is the definite time parameters in which cases must be processed. It must be assumed that when the Commission set the five day time limit for disclosure it did so having the other time limitations in mind.

Proposed Rule 30

Proposed Rule 30.02, Subd. 5 should be amended to distinguish between cases in which the child is represented by counsel and cases in which the child has waived his right to counsel. In cases in which the child is represented by counsel, the person preparing the predisposition report should be required to discuss the contents of the report with the child and his attorney. Th

parent or guardian should be notified of his right to attend this discussion as well but his presence should not be mandated.

In cases where the child is not represented by counsel, however, the person preparing the report should be required to discuss the report with the child and the parent, guardian or guardian ad litem. A parent or guardian may not realize the important role the predisposition report will play in assisting the court to reach its decision as to disposition until the report's contents are discussed with him. Therefore, notice of the right to have a discussion with the preparer is not enough.

Proposed Rule 32

Proposed Rule 32 should be expanded to provide for the right of a child to waive his right to be tried as a juvenile. Such a change would be consistent with this Court's holding in In re Welfare of I.Q.S.,309 Minn. 78, 244 N.W.2d 30 (1976) which noted that a child who wishes to waive juvenile court jurisdiction in favor of a jury trial may do so. Rule 8-1 of the Minnesota Juvenile Court Rules currently provides that a child may initiate a motion for reference.

Proposed Rule 34

Proposed Rule 34.02 should be adopted as written. The requirements that the county attorney make an ex-parte showing to the court after one year has elapsed since the last court action to obtain access to a child's records is not unreasonable.

APPENDIX

RULE 5

GUARDIAN AD LITEM

5.01 Appointment of Guardian Ad Litem

The court shall appoint a guardian ad litem, except as provided by Rule 5.02, to act in place of a parent or guardian to protect the interests of the child when it appears, at any state of the proceedings, that the child is without a parent or guardian, or that, considered in the context of the matter, the parent or guardian is unavailable, incompetent, indifferent to, hostile to, or has interests in conflict with the child's interests.

5.02 Determination Not to Appoint Guardian Ad Litem

The court may determine not to appoint a guardian ad litem when:

a) counsel has been appointed or is otherwise retained for the child, and

b) the court finds that the interests of the child are otherwise protected.

5.03 Standards

In determining whether to appoint a guardian ad litem the court should examine the totality of the circumstances.

These circumstances include but are not limited to: the presence and competence of the child's parent(s), or guardian, considered in the context of the matter, the parent or guardian's hositility to, indifference to or interests in conflict with the interests of the child, the child's age, maturity, intelligence, education, experience and ability to comprehend.

5.04 Findings

A determination of the court not to appoint a guardian ad litem after a request has been made to appoint a guardian ad litem must be based on a finding on the record or in writing which states the facts on which the decision was made.

5.05 Discretionary Appointment of Guardian Ad Litem

In any other matter the court may appoint a guardian ad litem on its own motion or on the motion of the child's counsel or the county attorney when the court determines that an appointment is in the interests of the child.

5.06 Guardian Ad Litem Not Counsel for Child.

When the court appoints a guardian ad litem, the guardian ad litem shall not be the child's counsel.

RULE 6

RIGHT TO REMAIN SILENT

6.01 Admissibility of Confession or Other Statement

A confession, admission or other statement whether exculpatory or inculpatory is not admissible in court when made during interrogation of a child who is in custody or otherwise deprived of his freedom in any significant way by a peace officer, probation officer, parole officer, school principals, school counselor, attendance officer, teacher, or other school personnel in comparable positions but not including support staff because of an alleged delinquent or petty matter unless the child has been advised in the presence of the child's parent(s) or guardian of the child's constitutional rights to the same extent that an adult in a criminal matter is entitled to be advised prior to custodial interrogation by a police officer. The advisory shall include but is not limited to the following:

(a) the child has the right to remain silent, and

(b) anything the child says can and will be used against the child in a court of law, and

(c) the child has the right to an attorney before and during any questioning, and

(d) if the child cannot afford an attorney one will be appointed for the child by the court.

6.02 Waiver

In order for a confession, admission, or other statement taken pursuant to Rule 6.01 to be admissible in court the child must voluntarily and intelligently waive the right to remain silent and the right to an attorney. In determining whether a child

has voluntarily and intelligently wavied the right to remain silent and the right to an attorney the court shall consider the provisions of Rule 6.03 and Rule 6.04 and the totality of the circumstances. The totality of the circumstances includes but is not limited to the child's age, muturity, intelligence, education, experience and ability to comprehend.

A waiver made in court shall be on the record. A waiver made out of court shall be in writing and shall be signed by the child and the child's parent(s) or guardian.

6.03 Interrogation in Presence of Parent or Guardian

A confession, admission, or other statement whether exculpatory or inculpatory obtained in the absence of a parent, guardian or other responsible adult as provided for a Rule 6.04 which is the product of an interrogation of a child who is in custody or otherwise deprived of his freedom in any significant way by a peace officer, probation officer, parole officer, school principals, school counselor, attendance officer, teacher or other school personnel in comparable position but not including support staff because of an alleged delinquent or petty matter and any evidentiary fruit of such a confession, admission, or other statement shall not be admissible in court except for impeachment of the child if the child testifies.

6.04 Presence of Parent or Guardian Not Required

When the child's parent(s) or guardian are required by Rule 6.01, 6.02 or 6.03 to be present, and if after reasonable efforts the child's parent(s) or guardian cannot be located or when located

do not appear within a reasonable time, the child may be advised pursuant to Rule 6.01, may waive the right to remain silent and the right to an attorney pursuant to Rule 6.02, and may be questioned pursuant to Rule 6.03 in the presence of an adult, near relative, or if not available, a responsible adult interested in the welfare of the child. This responsible adult may not be a peace officer, a probation officer, a parole officer, the county attorney or court services personnel.

RULE 15

WAIVER OF COUNSEL AND OTHER CONSTITUTIONAL RIGHTS

15.02 Waiver of Right to Counsel

Subd. 1. Standards. After being advised of the right to counsel, pursuant to Rule 4, a child, with the written concurrence on the record of the child's parent, guardian or guardian ad litem may waive the right to counsel only if the waiver is voluntary and intelligently made. In determining whether a child has voluntarily and intelligently waived the right to counsel the court shall look at the totality of the circumstances. These circumstances include but are not limited to: the presence and competence of the child's parent(s), guardian or guardian ad litem, and child's age, maturity, intelligence, education, experience and ability to comprehend.

Subd. 2. Recording. A waiver of counsel shall be on the record.

Subd. 3. Renewal. After a child waives the right to counsel the child shall be advised of the right to counsel, pursuant to Rule 4 at the beginning of each hearing at which the child is not represented by counsel.

Subd. 4. Waiver of Right to Counsel in Reference Proceedings.

In cases in which a motion for reference has been filed pursuant to Minn. Stat. §260.125 and the child has waived the

right to counsel pursuant to Subd. 1, the court shall appoint counsel to be present throughout the reference proceedings so as to be available to the child for assistance and consultation in the event the child requests such assistance and consultation.

RULE 17

INTAKE

Each court shall adopt rules of court establishing intake procedures and guidelines for the purpose of screening cases to be presented to the court. The county attorney may, if the county attorney so chooses, participate in the screening process.

RULE 19

PETITION

19.03 Contents of Delinquency Petition.

Every delinquency petition filed with the court in a delinquency matter shall contain:

(a) facts establishing probable cause to believe that the child has committed a specific delinquent offense

(b) the name, date of birth, residence and post office address of the child, and

(c) the names, residences and post office addresses of the child's parent(s) when known, and

(d) the name, residence and post office address of the child's guardian if there is one, of the person having custody or control of the child, or of the nearest known relative if no parent or guardian can be found, and

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

(f) a citation to the subdivision of Minn. Stat. §260.015 on which the petition is based, together with a recitation of the relevant portion of the subdivision, and

(g) if the allegation of delinquency is based on a violation of law pursuant to Minn. Stat. §260.015, Subd. 5(a) or (b), a citation of the law violated and a statement of the offense and degree of the offense committed.

The facts setting forth probable cause to believe the child has committed a delinquent act may be set forth in writing in or with the petition, or in supporting affidavits.

Two or more allegations of delinquent acts whether arising out of separate behavioral incidents or not may appear in the same petition in separate counts.

19.04 Petition with Probable Cause in Petty Matters

Subd. 1. When Required. In addition to the content requirements of Rules 19.01 and 19.02, a petition with probable cause shall be filed with the court:

(a) before the court may issue a warrant pursuant to Rule 16.01, Subd. 1, or

(b) before a detention hearing is held for a child taken into custody without a warrant, or

(c) within ten (10) days of the county attorney receiving an order of the court requiring a showing of probable cause with the petition. The court may order a showing of probable cause:

(i) on its own motion, or

(ii) on the motion of the child which states sufficient reasons that a probable cause showing is necessary in addition to the discovery provided by Rule 24.

Subd. 2. In or With Petition. The facts establishing probable cause to believe the child has committed an act governed by Minn. Stat. §260.015, Subd. 19, 20, 21 22 or 23 may be set forth in writing in or with the petition, or in supporting affidavits and may be supplemented by sworn testimony of witnesses taken before the court. If such testimony is taken, a note so stating shall be made of this fact on the petition by the court. The testimony shall be recorded by a reporter or recording instrument and shall be transcribed and filed.

Subd. 3. Dismissal for Failure to Show Probable Cause. When a showing of probable cause is required and has not been made, the court shall dismiss the petition.

Subd. 4. Dismissal No Prohibition to Subsequent Petition. A dismissal of a petition for failure to show probable cause shall not prohibit a subsequent filing of a petition and further proceedings on the petition.

RULE 21

ADMISSION OR DENIAL

21.03 Admission

Subd. 1. Questioning a Child and Child's Parent(s), Guardian or Guardian Ad Litem.

Before accepting an admission by the child the court shall determine whether the child and, in cases where the child is not represented by counsel, the child's parent(s), guardian, or guardian ad litem understand all applicable rights. The Court shall on the record, or by written document signed by the child and the child's counsel, or if the child is not represented by counsel by the child and the child's parent(s), guardian or guardian ad litem filed with the court, determine the following:

(a) whether the child and the child's parent(s) or guardian, if present, understand:

(i) the nature of the offense alleged, and

(ii) the right to a trial, and

(iii) the presumption of innocence until the state proves the allegations beyond a reasonable doubt, and

(iv) the right to remain silent

(v) the right to testify on the child's own behalf

(vi) the right to confront witnesses against oneself, and

(vii) the right to subpoena witnesses, and

(b) whether the child understands that the child's behavior constitutes the act which is admitted, and

(c) whether the child makes any claim of innocence, and

(d) whether the plea is made freely, under no threats or promises, and

(e) in a delinquency matter, whether the child understands

(i) the possible effect a finding that the allegations of delinquency are proved or an adjudication of delinquency may have on a decision to refer the child for prosecution as an adult, and

(ii) where applicable, the possible effect an adjudication of delinquency has on sentencing in adult court.

Subd. 2. Factual Basis for Admission. The court shall refuse to accept an admission unless there is a factual basis for the admission.

Subd. 3. Withdrawal of Admission. After filing a motion with the court:

(a) a child may at any time withdraw an admission after showing that withdrawal is necessary to correct a manifest injustice, or

(b) the court may allow a child to withdraw an admission before a finding on a petition for any fair and just reason.

Subd. 4. Admission to a Lesser Offense or a Different Offense. With the consent of the county attorney and the approval of the court, the child shall be permitted to enter:

(a) an admission to a lesser included offense or to an offense of lesser degree, or

(b) an admission to a different offense than alleged in the original petition.

The court may also permit a child to enter an admission to a lesser offense or different offense without the consent of the county attorney where the court finds that failure to accept such an admission would result in a manifest injustice.

An admission to a lesser included offense or to an offense of lesser degree may be entered without an amendment of the petition. If an admission to an offense different than that alleged in the petition is accepted, the petition must be amended on the record or a new petition must be filed with the court.

Subd. 5. Acceptance or Non-acceptance of Admission. The court shall make the finding within fifteen (15) days of an admission:

(a) that the admission has been accepted and allegations of the petition have been proved, or

(b) that the admission has not been accepted.

Subd. 6. Future Proceedings. If the court accepts an admission and makes a finding that the allegations of the petition are proved the court shall schedule further proceedings pursuant to Rule 30.

RULE 30

DISPOSITION

30.03 Pre-Disposition Reports

Subd. 1. Investigations and Evaluations. The court may order an investigation of the personal and family history and environment of the child, and medical, psychological or chemical dependency evaluations of the child:

(a) at any time after the allegations of a petition have been admitted or proved, or

(b) at any time before the allegations of a petty petition have been proved, or

(c) before the allegations or a delinquency petition have been proved with the consent of the child, child's counsel and the parent(s) or guardian of the child.

Subd. 2. Placement. With the consent of the child at any time or without consent of the child after the allegations of a petition alleging the child to be delinquent pursuant to Minn. Stat. §260.015, Subd. 5(a) or (b) have been proved, the court may place the child with the consent of the Commissioner of Corrections in an institution maintained by the Commissioner of Corrections for the detention, diagnosis, custody and treatment of persons adjudicated to be delinquent in order that the investigation and evaluations may be conducted pursuant to Rule 30.03, Subd. 1.

Subd. 3. Advisory. The court shall advise the child, the child's counsel, the county attorney and the child's parent(s) and guardian and their counsel present in court that a pre-disposition investigation is being ordered, the nature of the evaluations to be included and the date when the reports resulting

from the investigation are to be filed with the Court.

Subd. 4. Filing and Inspection of Reports. The person making the report shall file the report twenty-four (24) hours prior to the time scheduled for the disposition hearing and the reports shall be available for inspection and copying by the child's counsel, the county attorney and counsel for the parent(s) and guardian of the child. When the child or the child's parent(s) and guardian are not represented by counsel, the court may limit the inspection of reports by the child or the child's parent(s) and guardian if the court determines it is in the best interest of the child.

Subd. 5. Discussion of Contents of Reports. Subject to the limitations set forth in Subd. 6 the person preparing the pre-disposition report shall discuss the contents of the report with the child and also with the parent(s) and guardian of the child unless

(a) the child is represented by counsel, and

(b) counsel attends the discussion of the report with the child, and,

(c) the parent(s) or guardian fail to request the person making the report to discuss the contents of the report with them after the parent(s) and guardian have been notified of the right to make this request.

Subd. 6. Discussion of Content of Report - Limitation by Court. The court may limit the extent of the discussion of the contents of the report with the child, the parent(s) and guardian of the child by the person preparing the pre-disposition report, if the court finds the limitation to be in

the best interests of the child. The limitation may be made on the court's own motion or upon the objection of the child's counsel or the counsel for the parent(s) and guardian of the child or on the written request of the person making the pre-disposition report.

RULE 32

REFERENCE TO ADULT COURT UPON MOTION OF THE COUNTY ATTORNEY AND THE WAIVER OF THE RIGHT TO BE TREATED AS A JUVENILE

32.09 Waiver of the Right to be Treated as a Juvenile

At any time prior to entering an admission or denial pursuant to Rule 21, a child over the age of 14 may waive the right to be treated as a juvenile and have the case transferred to adult court. The court shall not accept the waiver unless the child has been first advised orally by counsel, who shall not be the county attorney, or orally by the court of the possible effects of the waiver.

In determining whether to accept the child's waiver the court shall consider whether the waiver is voluntary and intelligent pursuant to the standards set forth in Rule 15.03, Subd. 1 and whether the best interests of the child and the public welfare would be better served by the court retaining its jursidiction.

RULE 41

GUARDIAN AD LITEM

41.01 Appointment of Guardian Ad Litem

The court shall appoint a guardian ad litem, except as provided by Rule 41.02, to protect the interest of the child when it appears, at any state of the proceedings, that the child is without parent or guardian, or that considered in the context of the matter, the parent or guardian is unavailable, incompetent, indifferent to, hostile to, or has interests in conflict with the child's interests.

41.02 Determination Not to Appoint Guardian Ad Litem for the Child

The court may determine not to appoint a guardian ad litem for the child when:

a) counsel has been appointed or is otherwise retained for the child, and

b) the court finds on facts submitted on the record that the interests of the child are otherwise protected.

41.03 Standards

In determining whether or not to appoint a guardian ad litem for the child the court should examine the totality of the circumstances. These circumstances considered in the context of the matter include but are not limited to: the presence and competence of the child's parent(s) or guardian considered in the context of the matter, the parent or guardian's hostility to, indifference to or interests in conflict with

the interests of the child, the child's age, maturity, intelligence, education, experience and ability to comprehend.

41.04 Guardian For More Than One Child

A person may be a guardian ad litem for more than one child in a hearing.

41.05 Guardian Ad Litem Not Counsel for Child

When the court appoints a guardian ad litem, the guardian ad litem shall not be the child's counsel.

41.06 Guardian Ad Litem for Parent

The Court shall appoint a guardian ad litem for the parent of a child who is the subject of a juvenile protection matter when:

a) the parent is eighteen (18) years of age or older and is incompetent so as to be unable to assist counsel in the matter or understand the nature of the proceedings, or

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

41.07 Findings

A determination of the court not to appoint a guardian ad litem after a request has been made to appoint a guardian ad litem must be based on a finding on the record or in writing which states the facts on which the decision was made.

41.08 Guardian Ad Litem Not Counsel for Child

When the court appoints a guardian ad litem, the guardian ad litem shall not be the child's counsel.

WILLIAM MITCHELL LAW CLINIC

William Mitchell College of Law • 875 Summit Avenue, St. Paul, Minnesota 55105 • 612/227-7591

October 28, 1982

John McCarthy
Clerk of the Supreme Court
206 Minnesota State Capitol
St. Paul, MN 55155

A-12

C1-82-1216

Dear Mr. McCarthy

I recommend that the Proposed Rules of Procedure for Juvenile Court be revised as indicated in the attached materials. The suggested revisions are for the purpose of clarification and consistancy and do not change the substance of any of the proposed rules.

Sincerely,

John O. Sonsteng

JOS:cae

Enc.

REVISIONS

RULE 1 SCOPE, APPLICATION, GENERAL PURPOSE AND CONSTRUCTION

Rule 1.02 Purpose and Construction

. . . that the constitutional rights of the ~~juvenile~~ child are protected and to promote the rehabilitation of the ~~juvenile~~ child and the protection of the public. These rules shall be construed to achieve these purposes.

REVISIONS

RULE 2 REFEREE

2.04 Review

Subd. 4 The Court

The judge may grant a review at any time before ~~adopting~~ confirming the findings and recommendations of the referee.

(For consistency)

REVISIONS

RULE 4 RIGHT TO COUNSEL

4.01 Right of Child to Counsel

Subd. 3 Appointment of Counsel for Child

(B) When Parent Can Afford to Retain Counsel

If the parent(s) of a child can afford to retain counsel in whole on in part and have not retained counsel for the child, and the child cannot afford to retain counsel, the child is entitled to representation by counsel appointed by the court at public expense. However, the court may order, after giving the parent(s) a reasonable opportunity to be heard, that service of counsel shall be at the parent(s)' expense in whole or in part depending on their ability to pay. (Clarification)

4.02 Right of Parent(s) and Guardian to Counsel

Subd. 3 Appointment of Counsel

If the parent(s) and guardian of a child participate separately pursuant to Rule 3.03, Subd. 3 and that person cannot afford to retain counsel, that person is entitled to representation by an attorney who shall act as their counsel appointed by the court at public expense. However, the court may order, after giving the parent(s) a reasonable opportunity to be heard, that service of counsel be at the parent(s)' expense in whole or in part depending on their ability to pay.

(For consistency with 4.01 Subd. 3 (B))

REVISIONS

4.03 Right of Guardian Ad Litem to Counsel (NEW)

The guardian ad litem of the child shall be represented by the child's counsel. However, in the event of a conflict between the child and the guardian ad litem, considered in the context of the matter, counsel for the child shall continue to represent the child.

(For consistency with Rule 40.02)

REVISIONS

RULE 8 PRIVACY

8.01 Attendance at Hearings

. . .

b) the parent and guardian of the child and their counsel and guardian ad litem and the legal custodian of the child, and . . .

(For clarification)

REVISIONS

RULE 9 NOTICE

9.02 Procedure

Subd. 2 Service

(2) Child's Counsel, County Attorney, Parent(s), Guardian, Custodian and Spouse and Their Counsel

The court:

a) shall orally on the record give notice of subsequent hearings to the child's counsel, county attorney and to the parent(s), guardian, custodian and spouse of the child and their counsel who have not been served pursuant to Rule 9.02, Subd. 2 (A)(1) who are present in court, or

b) shall issue and cause notice to be served by mail to the child's counsel, the county attorney and counsel for the child's parent(s), guardian, custodian and spouse who have not been served pursuant to Rule 9.02, Subd. 2 (A)(2)(a), or . . .

(Clarification)

REVISIONS

RULE 10 COPIES OF ORDERS

Second Paragraph

Copies of court orders shall be sent by the court to the child, child's counsel, the county attorney and the parent(s) and guardian of the child and their counsel who request such a copy in writing or on the record and to such other persons as the court may direct.

(Clarification)

REVISIONS

RULE 15 WAIVER OF COUNSEL AND OTHER CONSTITUTIONAL RIGHTS

15.02 Waiver of Right to Counsel

Subd. 1 Standards

After being advised of the right to counsel, pursuant to Rule 4, a child, with the ~~written~~ concurrence ~~on-the-record~~ of the child's parent(s), guardian or guardian ad litem in writing filed with the court or on the record, may waive the right to counsel only if the waiver is voluntary . . . (Clarification)

15.03 Waiver of Constitutional Rights Other than Right to Counsel

Subd. 1 Standards

After conferring with counsel, or after waiving the right to counsel, the child with the ~~written~~ concurrence ~~on-the-record~~ of the child's parent(s), guardian or guardian ad litem in writing filed with the court or on the record, may voluntarily and intelligently waive any other constitutional . . . (Clarification)

REVISIONS

RULE 16 IMMEDIATE CUSTODY

16.01 Warrant for Immediate Custody

Subd. 1 Warrant with Probable Cause

A warrant for immediate custody of a child may issue if the ~~court~~ judge finds from the facts set forth separately in writing in or with the petition filed with the court . . . (Correction)

REVISIONS

RULE 18 DETENTION

18.01 Generally (NEW)

A child is detained when:

a) taken into custody, pursuant to Minn. Stat. 260.135, 260.145 or 260.165,

b) the court orders detention of the child, pursuant to Minn. Stat. 260.172 or 260.185, before a disposition, pursuant to Rule 30, and

c) the court orders conditions of release, pursuant to Rule 18.01, Subd. 2 (C)(2), before a disposition, pursuant to Rule 30.

(For Clarification)

This will require changing rule numbers after the insert of Rule 18.01 and correction of any references to Rule 18.

REVISIONS

RULE 18 DETENTION

18.03 Identification Procedures

Subd. 3 Fingerprinting

(A) Generally

All ~~juveniles~~ children in custody alleged to have committed an act which would be a felony if it had been committed by an adult may be fingerprinted without a court order. Other ~~juveniles~~ children may only be fingerprinted pursuant to Rule 24. (Correction)

18.05 Detention Hearing

Subd. 3 Advice of Rights

At the beginning of the detention hearing the court shall advise all persons present of:

a) the reasons why the child was taken into custody, and

b) the allegations of the delinquent act(s) or an offense pursuant to Minn. Stat. 260.015, Subd. 19, 20, 21, 22 or 23 set forth in the petition, and . . .

Subd. 5 Finding Necessary for Continued Detention

A child may be detained beyond thirty-six (36) hours from the time of being taken into custody if:

a) prior to or during the detention hearing the court finds that the petition pursuant to Rule 19.03, Subd. 2 contains probable cause that the child has committed a delinquent act, or an offense pursuant to Minn. Stat. 260.015, Subd. 19, 20, 21, 22 or 23 or violated terms of probation, parole, field supervision or other court order, and . . . (Clarification)

REVISIONS

RULE 19 PETITION

19.01 Procedure for Petty Petition by Citation

Subd. 1 Drafting

A petition alleging a petty matter may be a citation pursuant to Minn. Stat. 260.132 or Minn. Stat. 260.~~194~~ 195. A petition alleging a petty matter as a dleinquency matter pursuant to Minn. Stat. 260.~~194~~ 195 shall be by a delinquency petition.

(Correction)

Subd. 2 Filing

A petty petition may be filed directly with the court by a peace officer or attendance officer pursuant to Minn. Stat. 260.132 or Minn. Stat. 260.195.

19.06 Determination to Proceed on Petition

. . .

b) promptly fix a time for arraignment, pursuant to Rule 20, and issue notice of the hearing pursuant to Rule 9, or

c) refer a petty petition to the county attorney pursuant to Rule 19.01, Subd. 3.

(Correction)

REVISIONS

RULE 20 ARRAIGNMENT

20.03 Hearing Procedure

Subd. 1 Initial Procedure

. . .

~~c)~~ d) if the child appears without counsel, explain to the child and the child's parent(s) and guardian, if present, the child's right to counsel, right to remain silent and other basic rights, and

~~d)~~ e) determine whether notice requirements have been met and if not, whether the affected persons waive notice, and . . .

(Reversed the order of these two items)

REVISIONS

RULE 21 ADMISSION OR DENIAL

21.03 Admission

Subd. 1 Questioning of Child and Child's Parent(s) or Guardian

Before accepting an admission by the child the court shall determine whether the child and the child's parent(s) or guardian understand all applicable rights. The court shall on the record, or by written document signed by the child and child's counsel, if any, and the child's parent(s), guardian or guardian ad litem filed with the court, determine the following: . . .

(Insert - correction)

Subd. 6 Future Proceedings

If the court accepts an admission and makes a finding that the allegations of the petition are proved the court shall schedule further proceedings pursuant to Rule 30.

If the court does not accept the admission the court shall schedule further proceedings pursuant to Rule 21.01, 21.02 and 25 or 27.

(NEW - for clarification)

REVISIONS

RULE 22 SETTLEMENT DISCUSSIONS

22.02 Procedure

(Third paragraph)

The court shall require disclosure of any settlement agreement in advance of an admission of the allegations of the petition. When the child enters an admission, the court shall reject or accept the admission on the terms of the settlement agreement. The court may postpone its acceptance or rejection until it has received a pre-disposition report. If the court rejects the settlement agreement, it shall advise the child, child's counsel, child's parent(s) or guardian, if present, and the county attorney of this decision on the record and shall call upon the child to either affirm or withdraw the admission.

(For consistency)

REVISIONS

RULE 27 TRIALS

27.05 Standard of Proof

To be proved at trial, allegations in the delinquency or petty petition must be proved beyond a reasonable doubt. (Clarification)

REVISIONS

RULE 28 ~~POST-TRIAL-MOTIONS~~ MOTION FOR NEW TRIAL

(Clarification, only change the title)

REVISIONS

RULE 29 ADJUDICATION

29.01 Adjudication

If the court finds that the allegations of the petition are proved, the court shall adjudicate or withhold adjudication of the child as delinquent or an offender pursuant to Minn. Stat. 260.015, Subd. 19, 20, 21, 22 or 23 on each or the allegations proved.

(For consistency)

REVISIONS

RULE 29 ADJUDICATION

29.02 Withholding of Adjudication

Fifth paragraph

During any withholding of adjudication of a petty matter, the court may enter an order pursuant to Minn. Stat. 260.192 4, Subd. 1 (a), (b), ~~(d)~~, (e), ~~(f)~~, or (g) ~~or (h)~~ or Minn. Stat. 260.194 5, Subd. 3.

(Correction)

REVISIONS

RULE 30 DISPOSITION

30.01 Generally

After a child has been adjudicated ~~delinquent~~ pursuant to Rule 29, the court may conduct a disposition hearing immediately or continue the matter for a disposition hearing at a later time.

(Clarification)

30.04 Hearing

Subd. 2 Evidence

The court may receive any information, except privileged communication, that is relevant to the disposition of the cause including reliable hearsay and opinions.

(For consistency)

REVISIONS

RULE 33 PROCEEDINGS WHEN CHILD IS BELIEVED TO BE MENTALLY ILL OR MENTALLY DEFICIENT

33.01 Competency to Proceed

No child shall be subject to a trial or reference hearing for any delinquent act or petty matter while mentally ill or mentally deficient so as to be incapable of understanding the proceedings or participating in the child's defense.
(Insert - for consistency)

REVISIONS

RULE 36 JUVENILE TRAFFIC OFFENDER

36.02 Procedure

Subd. 5 Detention

~~Governed by Rule 18 except that the child may only be detained in a shelter care facility.~~

Governed by Rule 36.02, Subd. 4 (A)(i) and Rule 18 except Rule 18.05, Subd. 1 (c), Subd. 5 (a) and Rule 18.09.

Subd. 16 Admission or Denial

(C) Admission

Before accepting an admission by the child the court shall determine whether the child understands all applicable rights. The court shall make the determinations governed by Rule ~~20.03~~ 21.03, Subd. 1 (a) and (d), Subd. 3, 4 and 5 on the record, or by written document signed by the child and counsel, if any, and filed with the court.
(Correction)

(B) Denial

Governed by Rule 21.02 Subd. 1~~, 3, 4, and 5~~. When a denial is entered the court shall schedule further proceedings pursuant to Rule 36, Subd. 18 and 19.
(Correction)

REVISIONS

RULE 38 REFEREE

38.04 Review

Subd. 4 The Court

The judge may grant a review at any time before ~~adopting~~ confirming the findings and recommendations of the referee.

(For consistency)

REVISIONS

RULE 39 RIGHT TO PARTICIPATE

39.04 Guardian Ad Litem

The guardian ad litem of a child or parent of a child who is the subject of a petition has the right to participate as such guardian in all hearings.

(Insert - correction)

REVISIONS

RULE 43 PRIVACY

43.01 Attendance at Hearings

. . .

b) the parent(s) and guradian of the child and their counsel, guardian ad litem and legal custodian of the child, and

. . .

(For clarification)

REVISIONS

RULE 44 NOTICE

44.02 Procedure

Subd. 3 Minimum Required Initial Service

(B) Child's Counsel, County Attorney, Parent(s), Guardian, Custodian and Spouse and Their Counsel

The court, unless it finds that notice would be ineffectual and it would be in the interest of the child to proceed without notice, shall issue and cause notice to be served to the persons with the right to participate, their counsel and guardian ad litem, and the child's custodian not served pursuant to Rule 44.01, Subd. 3 (A), ~~their counsel and guardian ad litem,~~ the child's spouse and the county attorney.

(Clarification)

44.03 Content of Summons or Notice

. . .

d) a statement ~~of rights~~ explaining the right to counsel, and

. . .

(Clarification)

REVISIONS

RULE 44 NOTICE

44.04 Waiver

Second paragraph

However, a waiver of notice in a termination of parental rights matter pursuant to Minn. Stat. 260.~~221 clause (a)~~ .231, Subd. 3 by a parent requires the written concurrence by the parent's guardian ad litem if the parent is a minor or incompetent.

(Correction)

REVISIONS

RULE 45 COPIES OF ORDERS

(Second paragraph)

Copies of court orders shall be sent by the court to the persons who have the right to participate, their counsel and guradian ad litem and the county attorney who request such a copy in writing or on the record and to such other persons as the court may direct.

(Clarification)

REVISIONS

RULE 51 IMMEDIATE CUSTODY

51.01 Order for Immediate Custody

Subd. 1 Order Upon Probable Cause

An order for immediate custody of a child may issue if a ~~court~~ judge finds from the facts set forth separately . . . (Correction)

REVISIONS

RULE 52 PREHEARING PLACEMENT (DETENTION)

52.01 Generally (NEW)

A child is placed (detained) when:

a) taken into custody, pursuant to Minn. Stat. 260.135, 260.145 or 260.165,

b) the court orders placement of the child, pursuant to Minn. Stat. 260.172 or 260.185 before a disposition, pursuant to Rule 62 and

c) the fourt orders conditions of release, pursuant to Rule 52.01, Subd. 3, before a disposition, pursuant to Rule 62.

(For Clarification)

This will require changing rule numbers after the insert of Rule 52.01 and correction of any reference to Rule 52.

REVISIONS

RULE 52 PREHEARING PLACEMENT (DETENTION)

52.03 Placement Hearing (Detention Hearing)

Subd. 5 Evidence

The court may admit any evidence, except privileged communications, including reliable hearsay and . . .

(Clarification)

52.06 Placement Review

Subd. 2 Formal ~~Detention~~ Placement Review

(C) Evidence

~~Subject to constitutional limitations and privileged communications,~~ The court may admit any evidence, except privileged communication, including reliable hearsay and opinion evidence that is relevant to the decision whether to continue the ~~detention~~ placement of the child.

(D) Finding Necessary for Continued ~~Detention~~ Placement

At the conclusion of the formal review hearing the court may continue the child in ~~detention~~ placement if the court finds probable cause that: . . .

(Clarification and consistency)

REVISIONS

RULE 54 FIRST APPEARANCE

54.03 Hearing Procedure

Subd. 1 Initial Procedure

. . .

f) if the child or the child's parent(s) or guardian appear without counsel, explain the purpose of the hearing and the possible transfer of custody of the child from the parent(s) guardian or custodian to another, when such transfer is permitted by law.

(Clarification)

REVISIONS

RULE 55 ADMISSION OR DENIAL

55.03 Admission

Subd. 2 Questioning of Person Admitting the Allegations of Petition

. . .

c) whether the person acknowledges an understanding that a possible effect of a finding that the allegations are proved may be the transfer of legal custody of the child to another, when such transfer is permitted by law.

(Clarification)

REVISIONS

RULE 55 ADMISSION OR DENIAL

55.03 Admission

Subd. 4 Acceptance or Non-acceptance of Admission

the court shall make a finding within fifteen (15 days of an admission: . . .

(Insert for clarification)

Subd. 5 Future Proceedings

(Second paragraph)

If the court makes a finding that the admission has not been accepted, the court shall schedule further proceedings pursuant to Rule 51.01, Rule 51.02 and Rule 58 or Rule 59.

(Insert - correction)

REVISIONS

RULE 57 DISCOVERY

57.03 Scope of Discovery

Subd. 3 Witnesses

(A) Generally

Counsel for a participant and the county attorney shall:

i) provide to other counsel and the county attorney the names and addresses of persons intended to be called as witnesses at trial,

ii) permit other counsel and the county attorney to inspect and copy any written or recorded statements of the persons intended to be called as witnesses at trial and which are within the possession or control of counsel or the county attorney, and

iii) permit other counsel and the county attorney to inspect and copy any written summaries within the knowledge of counsel or the county attorney or the substance of any oral statements made by such witnesses to counsel or the county attorney or obtained at direction of counsel or the county attorney.

INSERT FOR CONSISTENCY

(B) Experts

(1) Generally

Counsel for any participant and the county attorne may obtain discovery of the identity of each person expected to be called as an expert witness at trial and the substance of the facts and opinions to which an expert witness is expected to testify and a summary of the grounds for each opinion.

REVISIONS

RULE 57 DISCOVERY

(2) Limitations

Facts and opinions held by an expert not expected to be called as a witness at trial are discoverable only as otherwise provided in Rule 57.09.

(Correction)

REVISIONS

RULE 60 ~~POST-TRIAL-MOTIONS~~ MOTION FOR NEW TRIAL

60.01 New Trial

Subd. 1 Generally

In granting a new trial the court may either:

a) conduct a completely new trial, or

b) open the previous trial and take additional testimony or evidence.

Subd. 2 Stay of Previous Finding

If the court grants a new trial, the court shall stay the finding that the allegations of the petition have been proved.

Subd. 3 Finding

Upon conclusion of the trial, the court shall make a finding pursuant to Rule 59.06.

60.02 Grounds

The court on written motion of counsel for a participant or the county attorney may grant a new trial on any of the following grounds:

a) irregularity in the proceedings of the court, any court order or court abuse of discretion whereby a person was deprived of a fair trial, or

b) misconduct of counsel, or

c) fraud, misrepresentation or other conduct of any person with the right to participate, their counsel, guardian ad litem or the county attorney, or

d) accident or surprize which could not have been prevented by ordinary prudence, or

e) material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the trial, or

f) errors of law occurring at the trial and objected to at the time or if not objection is required, assigned in the motion, or

g) the finding that the allegations of the petition are proved is not justified by the evidence or is contrary to law, or

h) if required in the interests of justice.

60.03 Procedure

Subd. 1 Basis of Motion

A motion for a new trial shall be made and heard on the files, exhibits and minutes of the court. Pertinent facts that would not be a part of the minutes may be shown by affidavit except as otherwise provided by these rules. A full or partial transcript of the court reporter's notes of the testimony taken at the trial or other verbatim recording thereof may be used on the hearing of the motion.

Subd. 2 Time for Motion

Notice of a motion for a new trial shall be served pursuant to Rule 44 within fifteen (15) days after the finding that the allegations of the petition are proved. The motion shall be heard within thirty (30) days after the finding that the allegations of the petition are proved, unless the time for the hearing is extended by the court for cause shown within the thirty (30) day period.

REVISIONS

Subd. 3 Time for Serving Affidavits

When a motion for new trial is based on affidavits, they shall be served with the notice of motion. The county attorney shall have ten (10) days after such service in which to serve opposing affidavits pursuant to Rule 45. The period may be extended by the court upon an order extending the time for hearing under this rule. The court may permit reply affidavits.

Subd. 4 Joinder of Motions

Any motion to vacate the findings that the allegations are proved shall be joined with a motion for a new trial.

60.04 New Trial on Court's Own Motion

The court on its own motion within firteen (15) days after the findings that the allegations are proved, with the consent of counsel for the persons with the right to participate and the county attorney may order a new trial upon any of the grounds specified in Rule 60.02.

(Clarification - Delete old Rule 60 and insert this Rule 60. No substantive changes have been made.)

REVISIONS

RULE 62 DISPOSITION

62.03 Pre-Disposition Reports

Subd. 1 Investigations and Evaluations

. . .

b) medical pschological or chemical dependency evaluations of the child and any participant.

Correction

REVISIONS

RULE 62 DISPOSITION

62.03 Pre-Disposition Reports

Subd. 4 Discussion of Contents of Reports

The person making the pre-disposition report shall discuss the contents of the report with the persons who have exercised the right to participate unless: . . .

(Clarification)

62.04 Hearing

Subd. 2 Evidence

The court may receive any information, except privileged communications, to the disposition of the cause including reliable hearsay and opinions.

(For consistency)

62.06 Informal Review

Subd. 2 Modification of Disposition

. . .

b) it appears that a disposition is inappropriate.

Within twn (10) days of a modification of a deposition, the court shall inform in writing those persons entitled to notice pursuant to Rule ~~55~~ 44 of the modification of ~~deposition~~ the disposition and the right to a formal review hearing pursuant to Rule 62.07, Subd. 1.

(Correction)

LAW OFFICES

of the

LEGAL AID SOCIETY OF MINNEAPOLIS, INC.

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November 1, 1982

John McCarthy, Clerk
Supreme Court
State of Minnesota
State Capitol Building
St. Paul, Minnesota 55155

A-12

RE: Proposed Rules of Procedure for Juvenile Courts

Dear Mr. McCarthy:

Enclosed please find ten copies of a petition, brief and appendix relating to changes we advocate in the Proposed Rules. These changes are suggested for the purpose of assuring compliance with the Indian Child Welfare Act.

We would like to appear at the November 16, 1982 hearing.

Sincerely,

LEGAL AID SOCIETY

James E. Wilkinson
Attorney at Law

JEW:ajg
encl.

11-1 -- Copy to each Justice

STATE OF MINNESOTA
SUPREME COURT

IN RE PROPOSED RULES OF
PROCEDURE FOR JUVENILE COURT

PETITION AND BRIEF
FOR AMENDMENT OF PROPOSED RULES

Petitioners list in Appendix A a number of amendments to the Proposed Rules of Procedure for Juvenile Court. The purpose of the amendments is to make specific the standards and procedures mandated by the Indian Child Welfare Act, 25 U.S.C.A. sections 1901-1963, P.L. 95-605, 1978. Proposed Rules 1.03 and 37.03 each require application of the Act in appropriate cases. However, the importance of the Federal Statute, the complications presented to practioners by the required melding of the State and Federal law, and the continued problems faced by Minnesota Indian families and children lead Petitioners to request that explicit direction be provided in the Rules of Procedure for Juvenile Court.

LEGAL HISTORY

The Indian Child Welfare Act was passed by Congress in 1978 after several years of study. Congressional legislation in the area of substantive child welfare matters is not common. However, clause 3, section 8, Article I of the United States Constitution gives Congress the power "to regulate commerce...with Indian tribes." This and the legal history of the past two centuries has given Congress plenary power over relations between Indian nations and all levels of government in the United States.

Together with this plenary power, Congress has also assumed responsibility for the protection and preservation of Indian tribes and their resources. 25 U.S.C.A. section 1901. Pursuant to findings gleaned from extensive hearings by Congress, it was determined that Congress's responsibility demanded strong action to protect Indian families from unwarranted breakups by state actions. Among the specific Congressional findings were:

> That there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children, and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe.
>
> That an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by non-tribal public and private agencies, and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and
>
> That the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.
>
> 25 U.S.C.A. section 1901.

An overarching Federal policy was enacted by this piece of legislation:

> The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values

of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

25 U.S.C.A. section 1902.

The Indian Child Welfare Act establishes several mechanisms and several new legal standards intended to achieve compliance with the policy enunciated above.

The long term goals of self-determination by Indian tribes in matters of child welfare and reducing placements out of Indian homes and communities are furthered by the following key features of the Act:

1. requiring notice to tribes and authorizing their participation in state court foster care placement matters; 25 U.S.C.A. sections 1911-1912.

2. providing full faith and credit to determinations and orders of tribal courts; 25 U.S.C.A. section 1911.

3. establishing stringent standards for state court removals of Indian children from their families; 25 U.S.C.A. section 1912.

4. setting out "preferences" which favor placement of Indian children with extended family members, tribally approved foster homes, state licensed Indian foster homes, and Indian approved or operated institutions before placement with any non-Indian home or institution; 25 U.S.C.A. section 1915.

5. allowing parents, children, custodians, and tribes to return to Court at any time to invalidate foster care placements or terminations of parental rights when such placements and terminations were done in violation of the Act; 25 U.S.C.A. section 1914.

6. providing a mechanism for Indian tribe reassumption of

(d) a citation to the subdivision of Minn. Stat. 260.015, Subd. 19, 20, 21, 22, or 23 on which the petty petition is based together with a recitation of the relevant portion of the subdivision.

In petty matters involving an Indian child the petition shall include the following additional information:

(a) a detailed statement of the specific efforts that have been made to provide remedial services and rehabilitative programs designed to prevent the break up of the Indian family, and the Indian family, and

(b) a detailed statement of the nature of the serious emotional or physical damage that is likely to result to the child if the child is left in the custody of the parent(s), guardian or Indian custodian.

RULE 20. ARRAIGNMENT

Rule 20.03. Hearing Procedure.

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

(a) verify the name, age and residence of the child who is the subject of the matter, and

(b) determine whether all necessary persons are present and identify those present for the record, and

(c) determine whether the child is either represented by counsel or waives counsel pursuant to Rule 15, and

(d) in petty matters inquire whether the child is an Indian child and, if so, whether the child resides or is domiciled on a reservation that has exclusive jurisdiction over child custody matters and whether the child is a ward of a tribal court, and

(e) determine whether notice requirements have been met and if not, whether the affected persons waive notice, and

(f) if the child appears without counsel, explain to the child, the child's parent(s) and guardian and Indian custodian, if present, the child's right to counsel, right to remain silent and other basic rights, and

(g) if the child appears without counsel, explain to the child, the child's parent(s) and guardian and Indian custodian, if present, the purpose of the hearing and the possible consequences of the hearing.

Chippewa Tribe, Inc. (covering the other Reservations) and the Minnesota Sioux Tribe have signed compacts with the State of Minnesota authorizing Minnesota state court jurisdiction over their children until tribal courts are established. Tribes in neighboring states, such as the Lac Courte Oreilles and Menominee in Wisconsin and Oglala and Sisseton-Wahpeton in South Dakota, have active children's courts which have intervened in or taken jurisdiction over cases of tribal members living in Minnesota.

The "child welfare" experience of Indian families in Minnesota unfortunately has not differed from that of Indian people around the United States. The Association of American Indian Affairs survey in July, 1976, showed that Minnesota Indian children were placed in adoptive homes at a rate 390% higher than non-Indian children, and in foster homes at a rate 1,650% higher than non-Indian children. More than one of every six Indian children were legally placed outside of their own homes. (This did not include informal and institutional placements.) Record of Hearings of U.S. Senate Select Committee on Indian Affairs, 95th Congress on S.1214, August 4, 1977, pp. 570-571.

A University of Minnesota study has shown that removal of children has substantially negative effects on the Indian family's stability and their capability to resolve the problems which presumably lead to the removal in the first place. Dr. Joseph Westermayer, "The Ravage of Indian Families in Crisis"

in The Destruction of American Indian Families, Steve Unger, ed., pp. 47-56 New York, Assoc. of American Indian Affairs, 1977.

The years since passage of the Indian Child Welfare Act have not seen much improvement in these numbers.

The Minnesota Department of Public Welfare's Adoption Annual Report for the year ending June 30, 1981, shows that the number of Indian children has declined substantially in the past decade. However, the Report shows that of the 42 Indian children adopted in this year, 31 or 74% were adopted into white homes and 3 were adopted into homes where only one parent was Indian. "Adoption Annual Report Year Ending June 30, 1981," Minnesota Department of Public Welfare, St. Paul, Table 19, p. 18, Tables 24, 25, p. 21. The reduction in numbers of adoptions of Indian children from 139 in 1971 to 42 in 1981 is encouraging, but the trend of placing Indian children in non-Indian homes continues in direct opposition to the aims of the Indian Child Welfare Act.

A survey of children in out-of-home placements in Hennepin County in 1980 showed that one in five children in foster homes were Indian, far outweighing their proportion in the population. More recently, an August, 1981, Hennepin County study shows that of 714 children in out-of-home placements, 152 or 21% are Indian children.

The same survey shows that Indians are just over 1% of the Hennepin County population. "Comparison of Children in Placement by Racial Group," Research and Evaluation Unit, Management and Planning Division, Hennepin County Community Services Department, November 13, 1981.

The Hennepin County study reveals other differences in how Indian children are treated. Twice as many Indian children (proportionately) are in placement because of Juvenile Court dependency or neglect proceedings as are white children. Ibid, p. 4. Forty-eight percent (48%) of Indian children's current case plans had not been completed; while only 19% of white children faced this deficit. Ibid, p. 6. Indian children in foster care and institutions are visited by their social workers significantly less often than are white or black children. Ibid, pp. 8, 9, and 10.

Several points should be made concerning Hennepin County's statistics. The children include those placed by Court order and those placed voluntarily by their parents. The disproportionate experience of Indian children does not come from explicit policies which say "discriminate against Indian families." The Department's administration claims to have taken steps to reduce both out-of-home placements and disproportionality.

Statistics from 6 counties near the Northern Minnesota Chippewa Tribe Reservations show the same tendency. Indian children are statistically over-represented in each county's foster care system, with only Beltrami County showing foster care and child protection statistics for Indian children roughly comparable to those of their over-all population. Mary Duroche, "Services for Indian Children"

in CURA Reporter, Vol. 12, No. 3, September 1982, pp. 4, 5, University of Minnesota Center for Urban & Regional Affairs.

IMPLICATIONS FOR PRACTICE

The Indian Child Welfare Act imposes procedural and substantive burdens on the professions of law and social work in order to achieve justice and equity as Minnesota Courts decide the fate of Indian children in status offense and petty matters, neglect and dependency, and termination of parental rights cases and in adoptions. These requirements aim at goals consistant with Minnesota's own laws and policies which also seek to protect children and preserve families with due regard to racial, cultural, and religious background, M.S.A. sections 260.011, subd. 2, 259.19, subd. 2, 259.40, subd. 8, and 260.181, subd. 3.

Despite the congruence of goals, because the Federal law has nation-wide application, its terminology and procedural assumptions don't always fit the Minnesota model. Substantively, the Indian Child Welfare Act goes beyond Minnesota law in several respects. These differences require a sophisticated melding of State and Federal law by social workers, attorneys, and judges. Failure to achieve this blend will not only defeat the purposes of the Act, but may also result in unwanted legal consequences. For example, parties in foster care placement and termination of parental rights actions may petition a court to invalidate placements or terminations which do not comply with key parts of the Act. 25 U.S.C.A. section 1914. This provision has no time limits, and placements achieved without due regard to the Act can never be permanent for the child or foster family. Ibid.

Further, Indian people denied their rights created by the Act and other Federal laws, may bring Federal civil rights actions to redress such wrongs. 42 U.S.C.A. section 1983.

The following examples indicate some of the procedural and substantive pitfalls which can easily result in a legal morass unless practitioners are carefully guided.

The Indian Child Welfare Act essentially equates petty offenders, truants, and runaways with neglected or dependant children when it comes to the question of out-of-home placement. 25 U.S.C.A. section 1903. Thus, a county may establish a finding of truancy under M.S.A. section 260.015, subd. 19, and then proceed with the dispositional alternatives spelled out in M.S.A. section 260.194, subd. 1(a), (b), (d), (e), (f), (h), or (i). However, should the County ask for a court order of an out-of-home placement, pursuant to paragraphs (c) or (g) of the above statute, additional issues must be tried and proven. 25 U.S.C.A. section 1912(e). Not only must the Indian Child Welfare Act's notice requirements be met, but petitioner must also prove, among other things, that "continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child." Ibid. Such proof must be by clear and convincing evidence, including qualified expert testimony. Ibid.

In a similar vein, Minnesota Statutes allow termination of parental rights on the grounds that, among other reasons, the child is neglected and in foster care. M.S.A. section 260.221 (b)(7). However, parental rights to an Indian child may not be terminated on these grounds alone. 25 U.S.C.A. section 1912(f). Instead, proof

beyond a reasonable doubt of the likelihood of serious emotional or physical damage, including qualified expert testimony, must base a judicial determination that termination of parental rights is appropriate. Ibid.

At the very first stages of a child protection matter, social service and legal personnel should now be inquiring into the possible Indian status of the child. A county child protection agency is authorized to effect an emergency removal of an Indian child to prevent "imminent physical damage or harm to the child." 25 U.S.C.A. section 1922. However, if the child is the ward of a Tribal Court or resides on a tribal reservation which has not authorized State Court jurisdiction, the matter must be expeditiously turned over to the Tribal Court. 25 U.S.C.A. sections 1911, 1922. Failure to make appropriate inquiries or to give notice may later result in invalidation of Minnesota Juvenile Court decisions and placements. 25 U.S.C.A. section 1914.

A rule mandating early and specific inquiry into a child's Indian status will aid in compliance with the placement preference section of the Act, which mandates exhaustion of family, tribal, and other Indian placements prior to placement in non-Indian homes and institutions. 25 U.S.C.A. section 1915(b).

CONCLUSION

In 1980, 708 children identified as Indians were in out-of-home placements in Minnesota. A significant number of these children's cases are subject to the Indian Child Welfare Act. The Indian Child Welfare Act requires Minnesota social service agencies and courts to skillfully mix and apply procedural and substantive requirements of

Federal and State laws. Incongruities between the Minnesota system and the superior Federal requirements make unguided practice in the field legally dangerous. It is legally dangerous not only because discovery of errors in application of the Act may require time-consuming and expensive remediation, but more importantly because such errors may result in invalidation of Minnesota court determinations and considerable disruption of children's placements.

Petitioners urge adoption of a revised set of Rules of Procedure for Juvenile Court which will give specific guidance to attorneys and judges as they litigate and adjudicate the status of Indian children in Minnesota.

Respectfully submitted,

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RULE 3. RIGHT TO PARTICIPATE

Rule 3.05. Right of Indian Child's Tribe and Indian Custodian. When the child who is the subject of a petition involving petty matters is Indian, as defined in the Indian Child Welfare Act, 25 USCA, Chapter 21, Section 1902, the Indian Child's tribe and the Indian custodian have the right to participate in all hearings.

RULE 4. RIGHT TO COUNSEL

Rule 4.03. Right of an Indian Custodian to Counsel. In petty matters when the Indian custodian cannot afford to retain counsel the Indian custodian is entitled to representation by counsel appointed by the court at public expense. The court may notify the Secretary of the Interior who shall pay reasonable fees and expenses pursuant to the Indian Child Welfare Act, 25 USCA, Section 1912(b).

RULE 8. PRIVACY

RULE 8.01 Attendance at Hearings.

Only the following may attend hearings:

(a) the child, guardian ad litem and counsel for the child, and

(b) the parent(s) or guardian of the child and their counsel and guardian ad litem and custodian of the child, and

(c) the spouse of the child, and

(d) the county attorney, and

(e) persons requested by the child, the county attorney, or the parent(s), and guardian of the child, and

(f) persons authorized by the court under such conditions as the court may approve, and

(g) persons authorized by statute under such conditions as the court may approve, and

(h) in petty matters, the Indian custodian, and

(i) in petty matters, a representative of the Indian child's tribe.

RULE 9. NOTICE.

Rule 9.05. Notice in Petty Matters Involving an Indian Child.

Subd. 1. Indian Custodian and Tribe. In petty matters involving an Indian child, the child's Indian custodian shall be served with notice in the manner allowed by Rule 9.02, Subd. 2 (A)(2). The county attorney shall notify the Indian child's tribe by registered mail, return receipt requested, of the pending proceedings, and of the right to intervene. Copies of the notice to the tribe shall be served on all other parties and their counsel.

Subd. 2. Timing. No petty matters involving an Indian child shall be heard until at least ten days after receipt of notice by the parent or Indian custodian and the tribe, provided that the parent or Indian custodian, or the tribe, shall, upon request, be granted up to twenty additional days to prepare for the proceeding.

Subd. 3. Contents of Notice. In the case of a petty matter involving an Indian child the notice required by Rule 9.03 shall include the following additional information:

(a) the name of the Indian child, and

(b) the Indian child's tribal affiliation, and

(c) the name and address of the county attorney, and

(d) a statement of the right of the biological parents or Indian custodians and the Indian child's tribe to intervene in the proceedigs and to have, on request, twenty additional days to prepare for the proceedings, and

(e) the location, mailing address and telephone number of the court, and

(f) a statement of the right of the parents or Indian custodians or the Indian child's tribe to petition the court to transfer the proceedings to the Indian child's tribal court, and

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

RULE 10. COPIES OF ORDERS

Court orders shall be stated on the record at the hearng or a copy of the written order shall be mailed to the child, the child's counsel, the county attorney and the parent(s), and guardian of the child and their counsel present at the hearing.

Copies of court orders shall be sent to the child, child's counsel, the county attorney and the parent(s) and guardian of the child and their counsel who request such a copy in writing or on the record and to such other persons as the court may direct.

In petty matters involving an Indian child the Indian custodian and the child's tribe shall also be provided with copies of court orders.

RULE 16. IMMEDIATE CUSTODY

Rule 16.04. Indian Children. An Indian child subject to juvenile court jurisdiction solely because of a petty matter may not be taken into immediate custody except pursuant to Rule 51.04.

RULE 19. PETITION

RULE 19.01. Procedure for Petty Petition by Citation.

Subd. 1. Drafting. A petition alleging a petty matter may be a citation pursuant to Minn. Stat. 260.132 or Minn. Stat. 260.194. A petition alleging a petty matter as a delinquency matter pursuant to Minn. Stat. 260.194 shall be by a delinquency petition.

Subd. 2. Filing. A petty petition may be filed directly with the court by a peace officer or attendance officer pursuant to Minn. Stat. 260.132.

Subd. 3. Endorsement. When a petty petition is filed by a peace officer or attendance officer directly with the court, the court may by rule or by order in a particular matter, require a copy of the petty petition to be sent to the county attorney and the endorsement of the county attorney on or with the petty petition prior to the issuance of notice pursuant to Rule 9. When an endorsement required by court rule is not made within a reasonable period of time, the petty petition may be dismissed.

Subd. 4. Contents of Petty Petition. Every petty petition filed with the court shall contain:

(a) the name, date of birth, residence and post office address of the child, and

(b) the names, residences and post office addresses of the child's parent(s) when known, and

(c) the name, residence and post office address of the child's guardian if there is one, of the person having custody or control of the child, or of the nearest known relative if no parent or guardian can be found, and

(d) a citation to the subdivision of Minn. Stat. 260.015, Subd. 19, 20, 21, 22, or 23 on which the petty petition is based together with a recitation of the relevant portion of the subdivision.

In petty matters involving an Indian child the petition shall include the following additional information:

(a) a detailed statement of the specific efforts that have been made to provide remedial services and rehabilitative programs designed to prevent the break up of the Indian family, and the Indian family, and

(b) a detailed statement of the nature of the serious emotional or physical damage that is likely to result to the child if the child is left in the custody of the parent(s), guardian or Indian custodian.

RULE 20. ARRAIGNMENT

Rule 20.03. Hearing Procedure.

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

(a) verify the name, age and residence of the child who is the subject of the matter, and

(b) determine whether all necessary persons are present and identify those present for the record, and

(c) determine whether the child is either represented by counsel or waives counsel pursuant to Rule 15, and

(d) in petty matters inquire whether the child is an Indian child and, if so, whether the child resides or is domiciled on a reservation that has exclusive jurisdiction over child custody matters and whether the child is a ward of a tribal court, and

(e) determine whether notice requirements have been met and if not, whether the affected persons waive notice, and

(f) if the child appears without counsel, explain to the child, the child's parent(s) and guardian and Indian custodian, if present, the child's right to counsel, right to remain silent and other basic rights, and

(g) if the child appears without counsel, explain to the child, the child's parent(s) and guardian and Indian custodian, if present, the purpose of the hearing and the possible consequences of the hearing.

Chippewa Tribe, Inc. (covering the other Reservations) and the Minnesota Sioux Tribe have signed compacts with the State of Minnesota authorizing Minnesota state court jurisdiction over their children until tribal courts are established. Tribes in neighboring states, such as the Lac Courte Oreilles and Menominee in Wisconsin and Oglala and Sisseton-Wahpeton in South Dakota, have active children's courts which have intervened in or taken jurisdiction over cases of tribal members living in Minnesota.

The "child welfare" experience of Indian families in Minnesota unfortunately has not differed from that of Indian people around the United States. The Association of American Indian Affairs survey in July, 1976, showed that Minnesota Indian children were placed in adoptive homes at a rate 390% higher than non-Indian children, and in foster homes at a rate 1,650% higher than non-Indian children. More than one of every six Indian children were legally placed outside of their own homes. (This did not include informal and institutional placements.) Record of Hearings of U.S. Senate Select Committee on Indian Affairs, 95th Congress on S.1214, August 4, 1977, pp. 570-571.

A University of Minnesota study has shown that removal of children has substantially negative effects on the Indian family's stability and their capability to resolve the problems which presumably lead to the removal in the first place. Dr. Joseph Westermayer, "The Ravage of Indian Families in Crisis"

Rule 20A.02. Determination of Jurisdiction. If the Indian child has previously resided or been domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody proceedings the court shall contact the tribal court to detemine whether the child is a ward of the tribal court. If the child is a ward of the tribal court the state court proceedings shall be dismissed.

If the Indian child currently resides or is domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody proceedings, the state court proceedings shall be dismissed.

Rule 20A.03. Transfer to Tribal Court.

Subd. 1. Requests for Transfer. Either parent, the Indian custodian or the Indian child's tribe may, orally or in writing, request the court to transfer the Indian child custody proceeding to the tribal court of the child's tribe. If the request is made orally it shall be reduced to writing by the court and made a part of the record. A request for transfer shall be made promptly after receiving notice of the proceeding.

Subd. 2. Transfer. Upon receipt of a request to transfer by a parent, Indian custodian or the Indian child's tribe, the court must transfer unless either parent objects to such transfer, the tribal court declines jurisdiction, or the court determines that good cause to the contrary exists for denying the transfer.

Subd. 3. Good Cause Not to Transfer. If the court believes or any party asserts that good cause to the contrary exists, the reasons for such belief or assertion shall be stated in writing and made available to the parties who are petitioning for transfer. Good cause not to transfer may exist if any of the following circumstances exist:

(a) The proceeding was at an advanced stage when the petition to transfer was received and the petitioner did not file the petition promptly after receiving notice of the hearing, or

(b) The Indian child is over twelve years of age and objects to the transfer, or

(c) The evidence necessary to decide the case could not be adequately presented in the tribal court without undue hardship to the parties or the witnesses, or

(d) The parents of a child over five years of age are not available and the child has had little or no contact with the child's tribe or members of the child's tribe.

Socio-economic conditions and the perceived inadequacy of tribal or Bureau of Indian Affairs social services or judicial systems may not be considered in a determination that good cause exists.

The burden of establishing good cause to the contrary shall be on the party opposing the transfer.

Subd. 4. Tribal-State Agreements. Where Minnesota has entered into an agreement with the Indian child's tribe regarding child custody jurisdiction the court shall follow the provisions of that agreement in determining jurisdiction and effectuating any transfer of jurisdiction.

RULE 21. ADMISSION OR DENIAL

Rule 21.93. Admission.

Subd. 1. Questioning of Child, Child's Parent(s) or Guardian, and Indian Custodian.

Before accepting an admission by the child the court shall determine whether the child and the child's parent(s) or guardian understand all applicable rights. The court shall on the record, or by written document signed by the child and child's counsel, if any, and the child's parent(s) or guardian filed with the court, determine the following:

(a) whether the child and the child's parent(s) or guardian, if present, understand:

(i) the nature of the offense alleged, and

(ii) the right to a trial, and

(iii) the presumption of innocence until the state proves the allegations beyond a reasonable doubt, and

(iv) the right to remain silent, and

(v) the right to testify on the child's own behalf, and

(vi) the right to confront witnesses against oneself, and

(vii) the right to subpoena witnesses, and

(b) whether the child understands that the child's behavior constitutes the act which is admitted, and

(c) whether the child makes any claim of innocence, and

(d) whether the plea is made freely, under no threats or promises, and

(e) in a delinquency matter, whether the child understands:

(i) the possible effect a finding that the allegations of delinquency are proved or an adjudication of delinquency may have on a decision to refer the child for prosecution as an adult, and

(ii) where applicable, the possible effect an adjudication of delinquency has on sentencing in adult court, and

(iii) where applicable, that dispositions after an adjudication of delinquency are not governed by the Indian Child Welfare Act.

In petty matters where the child is Indian the court shall also determine that the child's Indian custodian understands the above rights.

Subd. 2. Factual Basis for Admission. The court shall refuse to accept an admission unless there is a factual basis for the admission.

Subd. 3. Withdrawal of Admission. After filing a motion with the court:

(a) a child may at any time withdraw an admission after showing that withdrawal is necessary to correct a manifest injustice, or

(b) the court may allow a child to withdraw an admission before a finding on a petition for any fair and just reason.

Subd. 4. Admission to a Lesser Offense or a Different Offense. With the consent of the county attorney and the approval of the court, the child shall be permitted to enter:

(a) an admission to a lesser included offense or to an offense of lesser degree, or

(b) an admission to a different offense than alleged in the original petition.

An admission to a lesser included offense or to an offense of lesser degree may be entered without an amendment of the petition. If an admission to an offense different than that

alleged in the petition is accepted, the petition must be amended on the record or a new petition must be filed with the court.

Subd. 5. Acceptance or Non-acceptance of Admission. The court shall make a finding within fifteen (15) days of an admission:

(a) that the admission has been accepted and allegations of the petition have been proved, or

(b) that the admission has not been accepted.

Subd. 6. Future Proceedings. If the court accepts an admission and makes a finding that the allegations of the petition are proved the court shall schedule further proceedings pursuant to Rule 30.

RULE 28. POST-TRIAL MOTIONS

Rule 28.04. Violation of Indian Child Welfare Act.

Any Indian child who is the subject of a petition involving a petty matter, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition the court to invalidate such action upon a showing that such action violated any provison of 25 U.S.C.A. §§1911, 1912 or 1913.

RULE 30. DISPOSITION

Rule 30.015. Placement of Indian Children.

Subd. 1. Placement Preference. In any disposition of a petty matter involving placement of an Indian child the child must be placed in the least restrictive setting which most approximates a family, in which the child's special needs may be met, and which is in reasonable proximity to the child's home. Preference must be given in the following order, absent good cause to the contrary, to 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, whether on or off the reservation;

(c) an Indian foster home licensed or approved by an authorized non-Indian licensing authority;

(d) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

The Indian child's tribe may establish a different order of preference by resolution and that order of preference shall be followed so long as the criteria enumerated in Subd 1. are met.

Subd. 2. Good Cause to Modify Preferences.

For purposes of foster care or other placement, in petty matters, a determination of good cause not to follow the order of preference set out above shall be based on one or more of the following considerations:

(a) The request of the biological parents or the child when the child is of sufficient age, or

(b) The extraordinary physical or emotional needs of the child as established by testimony of a qualified expert witness.

(c) The unavailability of suitable families for placement after a diligent search has been completed for families meeting the preference criteria.

The burden of establishing the existence of good cause not to follow the order of preferences established in Subdivision 1 shall be on the party urging that the preferences not be followed.

Rule 30.03

Subd. 1. Investigations and Evaluations. The court may order an investigation of the personal and family history and environment of the child and medical, psychological or chemical dependency evaluations of the child:

(a) at any time after the allegations of a petition have been admitted or proved, or

(b) at any time before the allegation of a petty petition have been proved, or

(c) before the allegations of a delinquency petition have been proved with the consent of the child, child's counsel and the parent(s) or guardian of the child.

The court may also order, in a petty matter involving an Indian child, an investigation of the placement preferences as set forth in Rule 30.015.

Subd. 2. Placement. With the consent of the child at any time or without consent of the child after the allegations of a petition alleging the child to be delinquent pursuant to Minn. Stat. 260.015, Subd. 5(a) or (b) have been proved, the court may place the child with the consent of the Commissioner of Corrections in an institution maintained by the Commissioner of Corrections for the detention, diagnosis, custody and treatment of persons adjudicated to be delinquent in order that the investigation and evaluations may be conducted pursuant to Rule 30.03, Subd. 1.

Subd. 3. Advisory. The court shall advise the child, the child's counsel, the county attorney and the child's parent(s) and guardian and Indian custodian and their counsel present in court that a pre-disposition investigation is being ordered, the nature of the evaluations to be included and the date when the resports resulting from the investigation are to be filed with the court.

Subd. 4. Filing and Inspection of Reports. The person making the report shall file the report twenty-four (24) hours prior to the time scheduled for the disposition hearing and the reports shall be available for inspection and copying by the child's counsel, the county attorney and counsel for the parent(s) and guardian and Indian custodian of the child. When the child or the child's parent(s) and guardian are not represented by counsel, the court may limit the inspection of reports by the child or the child's parent(s) and guardian if the court determines it is in the best interest of the child.

Subd. 5. Discussion of Contents of Reports. The person preparing the pre-disposition report shall discuss the contents of the report with the child and the parent(s) and guardian and Indian custodian of the child unless the child's counsel or counsel for the parent(s) and guardian of the child objects on the record or in a written statement filed with the court to a complete discussion of the report with their client.

Subd. 6. Discussion of Content of Report-Limitation by Court. The court may limit the extent of the discussion of the contents of the report with the child, the parent(s) and guardian and Indian custodian of the child by the person preparing the pre-disposition report, if the court finds the limitation to be in the best interests of the child. The limitation may be made on the court's own motion, upon the objection of the child's counsel or the counsel for the parent(s) and guardian or Indian custodian of the child or on the written request of the person making the pre-disposition report.

Rule 30.05

The disposition order made by the court shall contain written findings of fact to support the disposition ordered and shall also set forth in writing the following information.

(a) why the best interests of the child are served by the disposition ordered, and

(b) what alternative dispositions were recommended to he court and why such recommenations were not ordered. and

(c) in a disposition for an Indian child in a petty matter shall state specifically whether the placement preferences of Rule 30.015 were followed, and, if not, what

the court found to be good cause for failure to follow the placement preference.

Rule 34.02

Subd. 1. By Statute or Rule. Juvenile court records shall be available for inspection, copying and release as required by statute or these rules.

Subd. 2. No Order Required

(a) **Court and Court Personnel.** Juvenile court records shall be available to the court and court personnal.

(b) **Child's Counsel, Guardian Ad Litem, and Indian Child's Tribe.** Juvenile court records of the child shall be available for inspection, release to and copying by the child's counsel, guardian ad litem, and Indian child's tribe.

(c) **County Attorney.** Juvenile court records shall be available for inspection, release to and copying by the county attorney. However, if the matter has not had court action taken on it for over one (1) year, the court may require an ex parte showing by the county attorney that inspection, release or copying of the court records is necessary and in the best interest of the child, the public safety, or the functioning of the juvenile court system.

(d) **Counsel and Guardian Ad Litem for Child's Parents(s) and Guardian.** Juvenile court records shall be available for inspection, release to or copying by counsel and guardian ad litem for the child's parent(s) or guradian or Indian custodian.

RULE 39. RIGHT TO PARTICIPATE

Rule 39.07. Right of Indian Child's Tribe and Indian Custodian. When the child who is the subject of a petition is Indian, as defined in the Indian Child Welfare act, 25 USCA, Chapter 21, Section 1903, the Indian Child's tribe and the Indian custodian have the right to participate in all hearings.

RULE 40. RIGHT TO COUNSEL

Rule 40.01. Right of Child and Parents(s) to Separate Counsel

Subd. 1. Generally. The child has the right to be represented by an attorney who shall act as the child's counsel and who shall not be counsel for the parent(s) or guardian.

The parent(s) and guardian of the child have the right to be represented by an attorney who shall act as their counsel.

Subd. 2. Advisory of Right to Counsel. Any child, parent or guardian who is not represented by counsel, if present in court, shall be advised of the right to court appointed counsel by the court on the record, or in writing, at or before any hearing.

Subd. 3. Appointment of Counsel.

(a) Child. When the child cannot afford to retain counsel, the child is entitled to representation by counsel appointed by the court at public expense. However, the court may order, after giving the parent(s) a reasonable opportunity to be heard, that service of counsel shall be at the parent(s) expense in whole or in part depending on their ability to pay.

(b) Parent(s) and Guardian. When the parent(s) or guardian cannot afford to retain counsel the parent(s) and guardian are entitled to representation by counsel appointed by the court at public expense. However, the court may order, after giving the parent(s) a reasonable opportunity to be heard, that service of the parent(s)' counsel shall be at the parent(s)' expense in whole or in part depending on their ability to pay.

(c) Indian Custodian. When the Indian custodian cannot afford to retain counsel the Indian custodian is entitled to representation by counsel appointed by the court at public expense. The court may notify the Secretary of the Interior who shall pay reasonable fees and expenses pursuant to the Indian Child Welfare Act, 25 USCA, Section 1912(b).

RULE 43. PRIVACY

Rule 43.01. Attendance at Hearings

Only the following may attend hearings:

(a) the child, guardian ad litem and counsel for the child, and

(b) the parent(s), and guardian of the child and their counsel, guardian ad litem and custodian of the child, and

(c) the spouse of the child, and

(d) the county welfare board and county attorney, and

(e) the petitioner and petitioner's counsel when the petitioner has the right to participate pursuant to Rule 39.05, and

(f) persons requested by a person with the right to participate or by the county attorney who are approved by the court, and

(g) persons authorized by the court under such conditions as the court may approve, and

(h) persons authorized by statute under such conditions as the court may approve, and

(i) the Indian custodian, and

(j) a representative of the Indian Child's tribe.

RULE 44. NOTICE

Rule 44.02. PROCEDURE.

Subd. 1. Generally. Summons or notice may be served by mail or by personal service.

Subd. 2. Discretioary Service. At any time the court may require the service of summons or notice to be by personal service.

At any hearing the court may provide notice to those present of a future hearing by a court order pursuant to Rule 44.02, Subd. 3.

Except for a child who has reached twelve (12) years of age, a person properly served under these rules who does not attend the hearing for which notice was given or who was not served pursuant to Rule 44.02, Subd. 3 need not be served notice of future hearings in the matter unless that person requests notice in writing or on the record. However, that person may be served at the court's discretion.

Subd. 3. Minimum Required Initial Service.

(a) Child and Person(s) with Custody or Control. The court shall issue and cause a summons to be served by personal service to the person(s) with custody or control of the child and to the child who has reached twelve (12) years of age.

(b) Child's Counsel, County Attorney, Parent(s), Guardian, Indian Custodian, Custodian and Spouse, and Their Counsel. The court, unless it finds that notice would be ineffectual and it would be in the interest of the child to proceed without notice, shall issue and cause notice to be served to the persons with the right to participate and the child's custodian not served pursuant to Rule 44.01, Subd. 3(A), their counsel and guardian ad litem, the child's spouse, the child's Indian custodian and the county attorney.

(c) Indian Child's Tribe. The petitioner shall notify the Indian Child's tribe by registered mail, return receipt requested, of the pending proceedings, and of the right to intervene. Copies of the notice to the tribe shall be served on all other parties and their counsel.

Subd. 4. Execution of Personal Service. The summons or notice by personal service shall be served by any person authorized to serve process pursuant to Minn. Stat. 260.141, Subd.2 and Rule 4.02 of the Minnesota Rules of Civil Procedure.

Subd. 5. Place of Service. The summons or notice may be served at any place within the state except where prohibited by law. If personal service cannot be made within the state a copy of the summons or notice may be personally served on a person to whom it is directed outside the state.

Subd. 6. Manner of Service.

(A) Personal Service. The summons or notice shall be served on the person to whom it is directed by delivering a copy to that person personally or by leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion residing therein.

(B) Service by Mail. Initial service by mail to

satisfy Rule 44.02, Subd. 3(B) shall be by certified mail to the last known address. All other service by mail shall be ordinary mail to the last known address unless certified mail to the last known address is ordered by the court.

Subd. 7. Timing.

(a) Juvenile Protection Matters Except Termination of Parental Rights Matters. Summons or notice by personal service and summons or notice by mail shall be served on the person to whom it is directed sufficiently in advance of the hearing to which it relates to afford the person a reasonable opportunity to prepare for the hearing. At the request of counsel the hearing shall not be held at the scheduled time if the summons or notice has been served less than three (3) days before the hearing.

If personal service is made outside the state, it shall be made at least five (5) days before the date fixed for the hearing to which the summons or notice relates.

If service is made by mail a copy of the summons or notice shall be sent at least five (5) days before the time of hearing or fifteen (15) days before the hearing if mailed to addresses outside the state.

(b) Termination of Parental Rights Matters. Summons or notice by personal service or mail shall be made at least ten (10) days before the day of the hearing.

In addition to the requirements of statute and these rules, initial service by certified mail for a hearing for termination of parental rights shall also require publication as provided by Minn. Stat. 654.11 for three (3) weeks before the hearing with the last publication being at least ten (10) days before the day of the hearing.

(c) Juvenile Protection Matters Involving Indian Children. No juvenile protection matter involving an Indian child shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe, provided that the parent or Indian custodian, or the tribe, shall, upon request, be granted up to twenty additional days to prepare for the proceeding.

Subd. 8. Proof of Service.

(A) Personal Service. On or before the date set for appearance, the person who served a summons or notice by personal service shall file a written statement with the court showing:

(i) that the summons or notice was served, and

(ii) the person to whom the summons or notice was served, and

(iii) the date and place of service.

(B) Service by Mail. On or before the date set for appearance, the person who served a summons or notice by mail shall file a written statement with the court showing:

(i) the name of the person to whom the summons or notice was mailed, and

(ii) the date the summons or notice was mailed, and

(iii) whether the summons or notice was sent by certified mail.

Rule 44.03. Content of Summons or Notice

Any summons or notice shall contain or have attached:

(a) a copy of the petition, court order, motion, affidavit or other legal documents, not previously provided, necessary to provide notice required by Rule 44.02, and

(b) a statement of the time and place of the hearing, and

(c) a statement describing the purpose of the hearing and the possible consequence of the hearing that custody of the child may be removed from the parent(s) or legal custodian and placed with another, and

(d) a statement of rights explaining the right to counsel, and

(e) a statement that:

(i) even with failure to appear in response to the notice or summons the hearing may still be conducted and appropriate relief granted on the petition, and

(ii) further information concerning the date and place of subsequent hearings, if any, may be obtained from the court by a request, in writing, and

(f) such other matters as the court may direct.

In the case of an Indian child the notice shall include the following additional information:

(a) the name of the Indian child;

(b) the Indian Child's tribal affiliation;

(c) the name of the petitioner and the name and address of the petitioner's attorney.

(d) a statement of the right of the biological parents or Indian custodians and the Indian child's tribe to intervene in the proceedings and to have, on request, twenty additional days to prepare for the proceedings;

(e) the location,mailing address and telephone number of the court;

(f) a statement of the right of the parents or Indian custodians or the Indian child's tribe to petition the court to transfer the proceedings to the Indian child's tribal court.

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

RULE 51. IMMEDIATE CUSTODY

Rule 51.02. Contents of Order for Immediate Custody.

An order for immediate custody shall be signed by a judge and shall:

(a) order the child to be brought immediately before the court or the child to be taken to a placement facility designated by the court to be placed pursuant to Minn. Stat. 260.173, pending a hearing pursuant to Rule 52 and

(b) state the name and address of the child, or if unknown designate the child by any name or description by which the child can be identified with reasonable certainty, and

(c) state the age and sex of the child, if the age of the child is unknown,that the child is believed to be of an

age subject to the jurisdiction of the court, and

(d) state the reasons why the child is being taken into custody as set forth in Rule 51.01, and

(e) where applicable, state the reasons for a limitation on the time or location of the execution of the order, and

(f) state the date when issued, and the county and court where issued.

(g) state the other limitations as to time, circumstances, placement preferences and place of custody which are necessary for compliance under the Indian Child Welfare Act, 25 USCA Sections 1915(b) and 1922.

Rule 51.04. Emergency Removal of an Indian Child.

Subd. 1. Upon the emergency removal of an Indian child the agency responsible for the removal action shall immediately make inquiry as to the residence and domicile of the child.

Subd. 2. The petition for an Order for Immediate Removal shall be accompanied by an affidavit containing the following information:

(a) the name, age and last known address of the child;

(b) the name and address of the child's parents and Indian custodians, if any. If such persons are unknown, a detailed explanation of what efforts have been made to locate them shall be included;

(c) facts necessary to detemine the residence and domicile of the Indian child and whether either the residence or the domicile is on an Indian reservation. If either the residence or domicile is believed to be on an Indian reservation the name of the reservation shall be stated;

(d) the tribal affiliation of the child and of the parents and/or Indian custodians;

(e) a specific and detailed account of the circumstances that lead the agency responsible for the emergency removal of the child to take action;

(f) if the child is believed to reside or be domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and are being made to transfer the child to the tribe's jurisdiction.

(g) a statement of the specific actions that have been taken to assist the parents or Indian custodians so the child may safely be returned to their custody.

Subd. 3. No order for immediate custody shall issue absent a finding that immediate custody is necessary to prevent imminent physical damage or harm to the child.

Subd. 4. If the Indian child is not restored to the parents or Indian custodian or jurisdiction is not transferred to the tribe, the agency responsible for the child's removal must promptly commence a state court proceeding for foster care placement. If the child resided or is domiciled on a reservation where the tribe has exclusive jurisdiction over child custody matters, such placement must terminate as soon as the imminent physical damage or harm to the child which resulted in the emergency removal no longer exists or as soon as the tribe exercises jurisdiction over the case, whichever is earlier.

RULE 52. PREHEARING PLACEMENT(DETENTION)

Rule 52.02. Reports

Subd.1. Report by Detaining Officer. Any report required by Minn. Stat. 260.171, Subd. 5 shall be filed with the court on or before the court day following placement of the child and the report shall include at least:

(a) the name, age and last known address of the child, and

(b) the time the child was taken into custody, and

(c) the time the child was delivered for transporation to the placement facility, and

(d) a specific and detailed account of the reason why the child has been placed, and

(e) a statement that the child, the child's parent(s) and the child's Indian custodian have received the advisory required by Minn. Stat. 260.171, Subd. 4, or the reasons why the advisory has not been made, and

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

In the case of an Indian child the report shall include the following additional information:

(a) the name and address of the child's parent(s), guardian, and Indian custodian. If such pesons are unknown a detailed explanation of what efforts have been made to locate them shall be included, and

(b) the tribal affiliation of the child and of the parents and/or Indian custodians, and

(c) facts necessary to determine the residence and the domicile of the Indian child and whether either the residence or domicile is on an Indian reservation, and

(d) if the child is believed to reside or be domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and are being made to transfer the child to the tribe's jurisdiction, and

(e) a statement of the specific actions that have been taken to assist the parents or Indian custodians so the child may safely be returned to their custody, and

(f) a statement of the specific actions that have been taken to ensure that the child is placed in the least restrictive setting in accordance with the placement preferences of Rule 62.

Subd. 2 Report by Supervisor of Placement Facility. Any report required by Minn. Stat. 260.171, Subd. 6 shall be filed with the court on or before the court day following placement. The report shall include, at least, acknowledgement or receipt of the child and state the time the child arrived at the placement facility.

RULE 53. PETITION

Rule 53.02. Contents

Every petition filed with the court in a juvenile protection matter shall contain:

(a) a statement that the child is the subject of a juvenile protection matter and a simple, concise and direct statement of facts in support of the petition, and

(b) the name, date of birth, residence and post office address of the child, and

(c) the names, residences and post office addresses of the child's parent(s) when known, and

(d) the name, residence and post office address of the child's guardian if there is one, of the person having custody or control of the child, or of the nearest known relative if no parent or guardian can be found, and

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

(f) a citation of the subdivision(s) of Minn. Stat. 260.015, 257.071 or 260.221 on which the petition is based, together with a recitation of the relevant portion of the subdivision(s).

In the case of an Indian child the petition shall include the following additional information:

(a) a detailed statement of the specific efforts that have been made to provide remedial services and rehabilitative programs designed to prevent the break up of the Indian family, and

(b) a detailed statement of the nature of the serious emotional or physical damage that is likely to result to the child if the child is left in the custody of the parent(s), guardian or Indian custodian.

RULE 54. FIRST APPEARANCE

Rule 54.03. Hearing Procedure

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

(a) verify the name, age and residence of the child who is the subject of the matter, and

(b) determine whether all necessary persons are present and identify those present for the record, and

(c) determine whether the child and the child's parent(s), guardian and Indian custodian are either represented by counsel or waive counsel, and

(d) inquire whether the child is an Indian child and, if so, whether the child resides or is domiciled on a reservation that has exclusive jurisdiction over child custody matters and whether the child is a ward of a tribal court, and

(e) determine whether notice requirements have been met and if not, whether the affected persons waive notice, and

(f) if the child or the child's parent(s), guardian and Indian custodian appear without counsel, explain the right to counsel and other basic rights, and

(g) if the child or the child's parent(s), guardian and Indian Custodian appear without counsel, explain the purpose of the hearing and the possible transfer of custody of the child from the parent(s), guardian or custodian to another.

Subd. 2. Reading of Allegations of Petition. Unless waived by the child and the child's parents(s), guardian and Indian Custodian the court shall read the allegations of the petition and determine that the child and the child's parent(s), guardian and Indian Custodian understand the allegations of the petition, and if not, provide an explanation.

Subd. 3. Motions. The Court shall hear any motions, made pursuant to Rule 49, addressed to the sufficiency of the petition or jurisdiction of the court without requiring any person to admit or deny the allegations of the petition prior to making a finding on the motion.

RULE 54A TRIBAL MEMBERSHIP AND JURISDICTION

Rule 54A.01. Determination of Tribal Membership

Subd. 1. Verification. When the Court has reason to believe a child involved in a juvenile protection proceeding is an Indian, the court shall seek verification of the child's status from either the Bureau of Indian Affairs or the child's tribe. In a voluntary placement proceeding where a consenting parent evidences a desire for annonymity, the court shall make its inquiry in a manner that will not cause the parent's identity to become publcly known.

Subd. 2. More Than One Tribe. When an Indian child is a member of more than one tribe or is eligible for membership in more than one tribe but is not a member of any of them, the court shall determine the tribe with which the child has the more significant contacts. In making its determination the court shall consider:

(a) length of residence on or near the reservation of each tribe and frequency of contacts with each tribe; and

(b) child's participation in activities of each tribe; and

(c) child's fluency in the language of each tribe; and

(d) whether there has been a previous adjudication with respect to the child by a court of one of the tribes; and

(e) residence on or near one of the tribes' reservation by the child's relatives, and

(f) tribal membership of custodial parent or Indian custodian, and

(g) interest asserted by each tribe; and

(h) the child's self-identification.

The court's determination together with the reasons for it shall be set out in a written document and made a part of the record of the proceeding. A copy of that document shall be sent to each party to the proceeding and to each person or govermental agency that received notice of the proceeding.

Rule 54A.02. Determination of Jurisdiction. If the Indian child has previously resided or been domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody proceedings the court shall contact the tribal court to determine whether the child is a ward of the tribal court. Except as provided in Rule 51.04, if the child is a ward of the tribal court the state court proceedings shall be dismissed.

If the Indian child currently resides or is domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody proceedings, the state court proceedings shall be dismissed, except as provided in Rule 51.04.

Rule 54A.03. Transfer to Tribal Court.

Subd. 1. Requests for Transfer. Either parent, the Indian custodian or the Indian child's tribe may, orally or in writing, request the court to transfer the Indian child custody proceeding to the tribal court of the child's tribe. If the request is made orally it shall be reduced to writing by the court and made a part of the record. A request for transfer shall be made promptly after receiving notice of the proceeding.

Subd. 2. Transfer. Upon receipt of a request to transfer by a parent, Indian custodian or the Indian child's tribe, the court must transfer unless either parent objects to such transfer, the tribal court declines jurisdiction, or the court determines that good cause to the contrary exists for denying the transfer.

Subd. 3. Good Cause Not to Transfer. If the court believes or any party asserts that good cause to the contrary exists, the reasons for such belief or assertion shall be stated in writing and made available to the parties who are petitioning

for transfer. Good cause not to transfer may exist if any of the following circumstances exists:

(a) the proceeding was at an advanced stage when the petition to transfer was received and the petitioner did not file the petition promptly after receiving notice of the hearing, or

(b) the Indian child is over twelve years of age and objects to the transfer, or

(c) the evidence necessary to decide the case could not be adequately presented in the tribal court without undue hardship to the parties or the witnesses, or

(d) the parents of a child over five years of age are not available and the child has had little or no contact with the child's tribe or members of the child's tribe.

Socio-economic conditions and the preceived adequacy of tribal or Bureau of Indian Affairs social services or judicial systems may not be considered in a determination that good cause exists.

The burden of establishing good cause to the contrary shall be on the party opposing the transfer.

Subd. 4. Tribal-State Agreements. Where Minnesota has entered into an agreement with the Indian child's tribe regarding child custody jurisdiction the court shall follow the provisions of that agreement in determining jurisdiction and effectuating any transfer of jurisdiction.

RULE 55. ADMISSION OR DENIAL

Rule 55.01. Generally.

The child, the child's parent(s) and guardian, and the Indian Custodian may admit or deny the allegations of the petition or remain silent. If either the child, the child's parent(s) and guardian, or the Indian custodian who are present at the hearing deny the allegations of the petition, remain silent or if the court refuses to accept an admission, the court shall enter a denial of the petition.

RULE 59. TRIALS

Rule 59.05. Standard of Proof

Subd. 1. Proof Required

To be proved at trial, allegations of the petition must be proved by clear and convincing evidence, except in termination of parental rights cases involving an Indian child. In termination of parental rights cases involving an Indian child the petition must be proved by proof beyond a reasonable doubt, and in such cases mere proof the Indian child is neglected and in foster care is not sufficient.

Subd. 2. Expert Witnesses

Removal of an Indian child from his or her family must be based on competent testimony from one or more experts qualified to speak specifically to the issue of whether continued custody by the parents or Indian custodians is likely to result in serious physical or emotional damage to the child.

Persons with the following characteristics are most likely to meet the requirements for a qualified expert witness for purposes of juvenile protection matters involving an Indian child:

(a) A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and childbearing practices.

(b) A lay expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe. The court or any party may request the assistance of the Indian child's tribe or the Bureau of Indian Affairs agency serving the Indian child's tribe in locating persons qualified to serve as expert witnesses.

RULE 60. POST-TRIAL MOTIONS

Rule 60.04. Mistakes, Inadvertence, Excusable Neglect, Newly Discovered Evidence, Fraud, et cetera

Upon written motion of counsel for any person with the right to participate or the county attorney upon such terms as are just, the court may relieve a person from a final judgment, order or proceeding and may order a new trial, open the judgment, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions and direct entry of a new judgment, or grant such other relief as may be just for the following reasons:

(a) mistake, inadvertence, surprise or excusable neglect, or

(b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial pursuant to Rule 60.01, or

(c) fraud, misrepresentation or other misconduct of any person with the right to partcipate, their counsel, the county attorney or the guardian ad litem of the child, or

(d) the judgment is void, or

(e) the proceedings violated any provision of 25 U.S.C.A. §§1911, 1912 or 1913, or

(f) any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time. A motion under Rule 60.04 does not affect the finding of a judgment or suspend its operation.

RULE 62. DISPOSITION

Rule 62.015. Placement of Indian Children.

Subd. 1. Placement Preference. In any foster care or preadoptive placement of an Indian child the child must be placed in the least restrictive setting which most approximates a family, in which the child's special needs may be met, and which is in reasonable proximity to the child's home. Preference must be given in the following order, absent good cause to the contrary, to 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, whether on or off the reservation;

(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 child's needs.

The Indian child's tribe may establish a different order of preference by resolution, and that order of preference shall be followed so long as the criteria enumerated above are met.

Subd. 2. Good Cause to Modify Preferences.

For purposes of foster care, preadoptive or adoptive placement, a determination of good cause not to follow the order of preference set out above shall be based on one or more of the following considerations:

(a) The request of the biological parents or the child when the child is of sufficient age, or

(b) The extraordinary physical or emotional needs of the child as established by testimony of a qualified expert witness.

(c) The unavailability of suitable families for placement after a diligent search has been completed for families meeting the preference criteria.

The burden of establishing the existence of good cause not to follow the order of preferences established in Subdivison 1 shall be on the party urging that the preferences not be followed.

RULE 62.03. Pre-Disposition Reports.

Subd. 1. Investigations and Evaluations. At any time after the filing of a petition, the court may order upon its own motion, or the motion of the county attorney or counsel for a person with the right to participate:

(a) an investigation of the personal and family history and environment of the child, and

(b) medical, psychological or chemical dependency evaluations of the child, and

(c) in the case of an Indian child an investigation of the placement preferences as set forth in Rule 62.

Subd. 2. Advisory. The court shall advise the persons present in court that a pre-disposition investigation is being ordered, the nature of the evaluations to be included and the date when the reports resulting from the investigation are to be filed with the court.

Subd. 3. Filing and Inspection of Reports. The person making the report shall file the report forty-eight (48) hours prior to the time scheduled for the hearing and the reports shall be available for inspection, release to, and copying by the county attorney and counsel and guardian ad litem for persons with the right to participate. When the child or the child's parent(s) and guardian or Indian custodian are not represented by counsel, the court may limit the inspection of reports by the child or the child's parent(s) and guardian or Indian custodian but not their counsel or guardian ad litem if the court determines it is in the best interest of the child.

Subd. 4. Discussion of Contents of Reports. The person making the pre-disposition report shall discuss the contents of the report with the persons who have the right to participate unless:

(a) the child is unable to understand the contents of the report, or

(b) counsel or the guardian ad litem for a person with the right to participate objects to this discussion on the record or in a written statement filed with the court.

Subd. 5. Discussion of Content of Report-Limitation by Court. The court may limit the extent of the discussion of the contents of the pre-disposition report with the persons who have the right to participate if the court finds the limitation to be in the best interests of the child. The limitation may be made:

(a) on the court's own motion, or

(b) upon the objection of the counsel or guardian ad litem for a person who has the right to participate, or

(c) on the written request of the person making the pre-disposition report.

Rule 62.05. Order

The disposition order made by the court shall contain written findings of fact to support the dispostion ordered and shall also set forth in writing the following information:

(a) why the best interests of the child are served by the disposition ordered, and

(b) what alternative dispositions were recommended to the court and why such recommendations were not ordered, and

(c) in a disposition for an Indian child shall state specifically whether the placement preferences of Rule 62.015 were followed, and, if not, what the court found to be good cause for failure to follow the preference placement.

RULE 64. RECORDS

Rule 64.02. Availability of Juvenile Court Records.

Subd. 1. By Statute or Rule. Juvenile court records shall be available for inspection, copying and release as required by statute or these rules.

Subd. 2. No Order Required.

(a) **Court and Court Personnel.** Juvenile court records shall be available to the court and court personnel without a court order.

(b) **Child's Counsel, Guardian Ad Litem, and Indian Child's tribe.** Juvenile court records of the child shall be available for inspection, copying and release to the child's counsel, guardian ad litem, and Indian child's tribe, without a court order.

(c) **County Attorney.** Juvenile court records shall be available for inspection, copying or release to the county attorney. However, if the matter has not had court action taken on it for over one (1) year, the court may require an ex parte showing by the county attorney that inspection or copying of the court records is necessary and in the best interest of the child, public safety, or the functioning of the juvenile court system.

(d) **Counsel and Guardian Ad Litem for Child's Parent(s) and Guardian.** Juvenile court records shall be available for inspection by counsel and guardian ad litem for the child's parent(s) and guardian.

(e) **Counsel for Petitioner.** Juvenile court records shall be available for inspection, copying or release to counsel for a petitioner who has the right to participate pursuant to Rule 39.05. However, if the court no longer has jurisdiction over the matter the court may require an ex parte showing by counsel that inspection, copying or release of the court records is necessary and in the best interest of the child, public safety or the functioning of the juvenile court system.

Subd. 3. Court Order Required.

(a) **Person(s) with Custody or Supervision of the Child, and Others.** The court may order juvenile court records to be made available for inspection, copying disclosure or release, subject to such conditions as the court may direct, to:

(i) a representative of a state or private agency providing supervision or having custody of the child under order of the court, or

(ii) any individual for whom such record is needed to assist or to supervise the child in fulfilling a court order, or

(iii) any other person having a legitimate interest in the child or in the operation of the court.

(b) **Public.** A court order is required before any inspection, copying, disclosure or release to the public of the record of a child. Before any court order is made the court must find that inspection, copying disclosure or release is:

(i) in the best interests of the child, or

(ii) in the interests of public safety, or

(iii) necessary for the functioning of the juvenile court system.

The record of the child shall not be inspected, copied, disclosed or released to any present or prospective employer of the child or the military services.

RULE 64.04. Records of adoption of an Indian Child. When the court enters a final decree or order in any Indian child adoptive placement it shall provide the United States Secretary of the Interior with a copy of such decree or order together with such other information as may be necessary to show:

(a) the name and tribal affiliation of the child, and

(b) the names and addresses of the biological parents, and

(c) the names and addresses of the adoptive parents, and

(d) the identity of any agency having files or information relating to such adoptive placement.

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information.