MINORITY REPORT TO THE

PROPOSED JUVENILE COURT RULES

by Robert Scott

SECTION I

The most serious flaw of the proposed Rules of Procedure for Minnesota Juvenile Courts is the rejection by Rules 5, 6, 15, 21, 22, and 41 of the right of the juvenile to proceed as an individual party in the court process and to waive specified rights pursuant to a totality of the circumstances test. These rules also deny the juvenile certain rights by placing the decision-making power in another. Some of these rules grant rights to juveniles only when accompanied by a parent or guardian and, without reason, deny those same rights to a juvenile accompanied only by a guardian ad litem.

This report requests the adoption of a totality of the circumstances test for the above-stated rules. Such a test conforms to statute, caselaw, and the remainder of the proposed rules. Also, such a test is practical to administer and in the interest of juveniles.

The discussion below details by individual rule the objections to that rule and proposes the necessary changes to bring the rule in conformance with a totality of the circumstances test. Please see the index for the actual wording change recommended for each rule.

Rule 6: Right to Remain Silent

Rule 6 should be stricken. It should be stricken because:

A. The rule is inconsistent with the holdings of the United States Supreme Court and the Minnesota Supreme Court approving the totality of the circumstances test rather than the requirement of a parent's presence in determining the admissibility of a juvenile confession. (See Fare v. Michael C., 442 U.S. 707, 99 S. Ct. 2560 (1979), State v. Hogan, 212 N.W.2d 664 (Minn. 1973), In the Matter of the Welfare of S.W.T., 227 N.W.2d 507 (Minn. 1974), State v. Nunn, 297 N.W.2d (Minn. 1980), and In the Matter of the Welfare of M.A., 310 N.W.2d 699 (Minn. 1981).)

B. The rule is a rule of evidence and therefore must be promulgated pursuant to Minnesota Statute 480.0591 (Rules of Evidence) rather than pursuant to Minnesota Statute 480.0595 (Juvenile Court Rules).

C. The rule enlarges the substantive rights of a juvenile in violation of Minnesota Statute 480.059, Subd. 1, which states: "Such rules shall not abridge, enlarge, or modify the substantive rights of any person."

D. The rule is impractical because the factor of a parent's presence or notification of a parent will, in practice, become the only factor of significance in determining admissibility of the juvenile's statement.

E. The rule allows only the absolute sanction of inadmissibility without consideration to admissibility of the confession, admission, or other statement for impeachment, or for any of the other exceptions now recognized in the introduction of such statements in adult cases and, presently, in juvenile cases.

F. The rule violates the legislative intent that allows juveniles 12 years of age and older to waive their rights without a parent's consent or presence (Minnesota Statute 260.155, Subd. 8).

G. The rule creates the necessity of a parent's consent in certain circumstances before the waiver of the juvenile is effective. The court by rule mandates that a person's right (the juvenile's right to waive his or her right to remain silent) be controlled by another, the parent, guardian, or responsible adult.

H. The rule may be in violation of 2 MCAR Section 1.205 which allows the juvenile to deny his or her parents access to private data about himself or herself.

I. The rule enlarges the scope of Miranda to cover school staff personnel and parole and probation officers when the Miranda decision was specifically held to be applicable only to police.

J. The rule, as written, will create a plethora of litigation to define such phrases as "physically restraining" and "school staff personnel" as well as clarifying inconsistencies of wording in the rule.

K. The rule will be costly to administer, further adversarial litigation in juvenile court, and create administrative and education problems for both the police and education personnel.

Rule 6 is Inconsistent with Current Case Law

Case law, by both the Minnesota Supreme Court and the United States Supreme Court, supports the position that a totality of the circumstances test be applied to determine the validity of a juvenile's waiver of his right to remain silent and the voluntariness of his statement.

As early as 1974 in State v. Hogan, 212 N.W.2d 664 at 671 (Minn. 1973), the Minnesota Supreme Court laid down the rule:

> "We hold that the determination whether a waiver of rights is voluntary and intelligently made by a juvenile is a fact question dependent upon the totality of the circumstances. The child's age, maturity, intelligence, education, experience, and ability to comprehend are all factors to be considered in addition to the presence and competence of his parents during waiver."

In State v. Hogan, supra at 671 the juvenile's parents were not present during questioning and the court said:

> " . . . we reject the absolute rule that every minor is incapable and incompetent as a matter of law to waive his constitutional rights. In determining whether a juvenile has voluntarily and intelligently waived his constitutional rights, parental presence is only one factor to consider and is not an absolute prerequisite."

The court found basis for its decision from In re Gault, 387 U.S. 1, 5587 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), which it noted "indicates that while waiver of privileges by children may differ some in technique, it does not differ in principle from waiver by adults."

The Minnesota Supreme Court has remained firm in its test of totality of the circumstances since its holding in State v. Hogan. In the Matter of the Welfare of S.W.T., 227 N.W.2d 507 (Minn. 1974), the court noted that the majority of states, including Minnesota, hold that the validity of a juvenile's waiver is an issue of fact, and then the court quoted its totality of the circumstances test stated above in State v. Hogan.

In State v. Nunn, 297 N.W.2d 752 (Minn. 1980), with Chief Justice Sheran writing for a unanimous court (Judges Amdahl and Simmonett taking no part in the decision), the court reaffirmed the totality of the circumstances test and found that a parent's presence is but one factor which bears on the issue of the voluntariness and admissibility of the statement. Thus, the court has accepted the totality of the circumstances test for determining voluntariness of a statement and validity of the waiver.

As recently as In the Matter of the Welfare of M.A., 310 N.W.2d 699 (1981), the Minnesota Supreme Court used the totality of the circumstances test in determining the voluntariness of a juvenile's confession.

The Minnesota rule of totality of the circumstances is well grounded in case law set down by the United States Supreme Court. In Haley v. Ohio, 332 U.S. 596, 68 S. Ct. 302, 92 L. Ed. 224 (1948), and in Gallegas v. Colorado, 370 U.S. 49, 82 S. Ct. 1209, 8 L. Ed. 325 (1962), the court used a totality of the circumstances approach to determine the admissibility of a juvenile's confession. Then in Fare v. Michael C., 442 U.S. 707 at 724-725, 99 S. Ct. 2560 (1979), the court formally adopted the totality of the circumstances test for a juvenile.

> "Thus, the determination whether statements obtained during custodial interrogation are admissible against the accused is to be made upon inquiry into the totality of the circumstances surrounding the interrogation, to ascertain whether the accused in fact knowingly and voluntarily decided to forego his rights to remain silent and to have the assistance of counsel."

The United States Supreme Court continued in Fare v. Michael C., supra at 725-726, in language quoted by the Minnesota Supreme Court in State v. Nunn, supra, to state why this approach is the best way to resolve the issue:

> "This totality of the circumstances approach is adequate to determine whether there has been a waiver even where interrogation of juveniles is involved. We discern no persuasive reasons why any other approach is required where the question is whether a juvenile has waived his rights, as opposed to whether an adult has done so. The totality approach permits--indeed, it mandates--inquiry into all the circumstances surrounding the interrogation. This includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.
>
> "Courts repeatedly must deal with these issues of waiver with regard to a broad variety of constitutional rights. There is no reason to assume that such courts--especally juvenile courts with their special expertise in this area--will be unable to apply the totality of the circumstances analysis so as to take into account those special concerns that are present when young persons, often with limited experience in education and with immature judgment, are involved. Where the age and experience of a juvenile indicates that his request for his probation officer or his parents is, in fact, an invocation of his right to remain silent, the totality approach will allow the court the necessary flexibility to take this into account in making a waiver determination. At the same time, that approach refrains from imposing rigid restraints on police and courts in dealing with an experienced older juvenile with an extensive prior record who knowingly and intelligently waives his Fifth Amendment rights and voluntarily consents to interrogation."

Rule 6 is a Rule of Evidence

Rule 6 is drafted as a rule of evidence requiring the inadmissibility of a confession, admission, or other statement by a juvenile unless certain conditions are met. Minnesota Statute 480.0591 provides the authority for the court's promulgation of rules of evidence. Rule 6 is drafted under the authority of Minnesota Statute 480.0595 (Juvenile Court Rules), which in turn derives its authority, in part, from Minnesota Statute 480.059 (Criminal Rules). Neither Minnesota Statute 480.0595 nor 480.059 grant authority for promulgation of rules of evidence, but only have authority to promulgate

rules relating to pleadings, practice, procedure, and forms. Only Minnesota Statute 480.0591 relates to promulgation of rules of evidence. Therefore, any new rules of evidence must be presented to the court through the process established pursuant to Minnesota Statute 480.0591.

Rule 6 is Beyond the Authority of Juvenile Court Rules

Minnesota Statute 480.0595 grants authority to the Minnesota Supreme Court to promulgate rules to regulate the pleadings, practice, procedure, and forms in juvenile proceedings in all juvenile courts of the state in accordance with the provisions of Section 480.059, except with respect to the composition of the advisory committee.

Minnesota Statute 480.059 grants authority to the Minnesota Supreme Court to promulgate rules to regulate the pleadings, practice, procedure, and forms of criminal actions. Minnesota Statute 480.059, Subd. 1, states: "Such rules shall not abridge, enlarge, or modify the substantive rights of any person." The constitutional right to remain silent is a substantive right, and the conditions imposed by rule of parent notification, parent presence, and parent consent all enlarge or modify this constitutional right in violation of statute.

Because the authority of the juvenile court rules derives its statutory base from the same statute promulgating the adult criminal rules, the latter rules become a good guideline to determine what should be within the scope of the juvenile court rules. No rule of the Rules of Criminal Procedure control the taking of a statement of a defendant by another individual and neither should the juvenile court rules.

Absolute Requirement of Parental Presence Creates an Impractical Rule

The use of the totality of the circumstances test is practical and will benefit many juveniles by requiring a thorough review of the facts under which a statement was given.

The absolute requirement of a parent's, guardian's, or responsible adult's presence at the taking of a statement results in a checklist or formula approach to the admissibility of that statement. The presence of a parent, guardian, responsible adult, or even an attorney may not assist the juvenile in making an intelligent and voluntary waiver of his right to remain silent. It is widely known that juveniles confess more readily than adults. Parents often are the reason for the confession. Some parents have been known to physically accost their child in front of the police in order to obtain a confession. Other times a parent will ask police to leave them alone with a reluctant juvenile and several minutes later the police are called back and a confession is given. By far the most typical action by a parent is to give his or her child the advice and the order "to tell the truth." However, in court the basic approach to determining whether or not to contest the admissibility of a statement or, if contested, to allow the statement in as evidence is to determine if a parent was present. A parent's presence, in practical effect, becomes an irrebuttable presumption to admissibility.

Compare the number of appeals between adult and juvenile cases over the issue of confession admissibility. In the past ten years there have been countless number of adult cases, but only six Minnesota Supreme Court cases and one United States Supreme Court case discussed the issue of a juvenile's statement. Of these seven juvenile cases, only In the Matter of the Welfare of S.W.T., supra, concerned admissibility of a statement despite a parent being present.

Parent's presence as an absolute requirement to admissibility creates a formula or checklist that curtails further investigation into all the facts surrounding the statement. As the United States Supreme Court said in Haley v. Ohio, supra at 304:

> "Moreover, we cannot give any weight to recitals which merely formalize constitutional requirements. Formulas of any respect for constitutional safeguards cannot prevail over the facts of life which contradict them."

Rule 6 is Inconsistent with the Intent of Minnesota Statute 260.155, Subd. 8

Minnesota Statute 260.155, Subd. 8, mandates that any waiver by a juvenile 12 years of age or older of a right which the juvenile has under Chapter 260 must be an express waiver intelligently made by the juvenile after the juvenile has been fully and effectively informed of the right being waived. Clearly, the legislature intends that in juvenile proceedings the juvenile can exclusively exercise or waive his rights.

In other areas the legislature has adopted age levels of less than 18 at which a juvenile may be treated like an adult.

A. Medical - Minnesota Statute 144.342 to 144.345

> Consent may be given by a minor of any age to emergency treatment, or medical, mental, and other health services to determine the presence of or to treat pregnancy and conditions associated therewith, venereal disease, alcohol, or other drug abuse.

B. Service of Summons - Minnesota Statute 260.141, Subd. 1(a)

> Personal service of all juvenile court delinquency matters must be made on the juvenile and in non-delinquency matters personal service must be made on the juvenile if he or she is more than 12 years of age. This service is in addition to the service on the parent.

C. Reference for Prosecution - Minnesota Statute 260.125

> A juvenile 14 years of age or older at the time of a delinquent act may be tried as an adult.

D. Driver's License - Minnesota Statute 171.041, 171.042, 171.05

In some special instances, for farm work or personal or family medical reasons, a 15-year-old juvenile can obtain a driver's license. A 15-year-old can also obtain an instruction permit.

E. Appointment of Guardian for a Minor - Minnesota Statute 525.6175

A minor 14 years of age or older may nominate his or her own guardian.

F. Employment of Minors - Chapter 181A

Minors are allowed employment except under certain conditions dependent upon age.

In addition to the legislative actions, more and more juveniles are emancipating themselves and living independent of their families. This is especially so in the metropolitan area. The welfare assistance programs have taken this trend into consideration by allowing the distribution of welfare assistance, A.F.D.C., and medical assistance without contact or consent from the juvenile applicant's parents.

Again, the totality of the circumstances test provides the flexibility to decide each case on the juvenile's ability to knowingly and intelligently waive the right to remain silent and to voluntarily give a statement rather than relying on arbitrary conditions created by an arbitrary age level.

Rule 6 Limits a Right Belonging to a Juvenile

If a juvenile possesses a right to remain silent, then it certainly appears logical that a juvenile has the right to waive the right to remain silent. Rule 6, however, conditions the juvenile's right to waive upon either a parent's or guardian's notification or consent, or both. Such a limitation on the right to waive in effect removes control of the right from the juvenile which in itself could be considered a violation of the juvenile's rights. See State v. Hogan, supra at 671, in which it states: "In determining whether a juvenile has voluntarily and intelligently waived his

constitutional rights, parental presence is only one factor to consider and is not an absolute prerequisite." (Underlining added.)

Rule 6 May Violate the Regulations Promulgated Under the Data Privacy Act

Regulations for the Data Privacy Act are set out by 2 MCAR Section 1.205 pursuant to Minnesota Statute 15.162, Subd. 4 and Subd. 5(a), and Minnesota Statute 15.163. According to 2 MCAR Section 1.205C(1)(a), the Responsible Authority, as defined by 2 MCAR, Section 1.202K, shall provide the juvenile from whom it collects private or confidential data with a notification that the juvenile has the right to request that his parents' access to the private data be denied. A confession is private data pursuant to Minnesota Chapter 15 and Minnesota Statute 260.161.

Rule 6 Does Not Consider the Many Exceptions Made to the Miranda Rule

Rule 6 is an absolute sanction on admissibility of any confession, admission, or statement not taken in conformance with the rule. However, many exceptions have been made to the Miranda decision since its holding. These same exceptions will have to be re-litigated for Rule 6 and include:

A. Whether "made during an interrogation" includes:

1. Voluntary spontaneous statements,
2. Statements not in response to a question,
3. Threshold and clarifying questions,
4. Booking questions, and
5. Emergency questions.

B. Whether statements excluded in the State's case-in-chief can be used for impeachment. (See N.Y. v. Harris, 91 S. Ct. 693 (1971), and In re Larson's Welfare, 254 N.W.2d 388 (1977).)

C. Whether the doctrine of fruit of the poisonous tree will apply.

D. Whether the doctrine of purging the taint will apply.

E. Whether the good faith exception applies. (See U.S. v. Williams, 622 F.2d 830 (5th Circuit 1980).)

F. Whether the rule will apply when the constitutional right no longer applies after:

1. A finding of the petition being proved or an adjudication of delinquency, or

2. A grant of immunity.

G. Whether the rule will apply to protect an individual from a charge of purjury.

Rule 6 Leaves Key Phrases Undefined

The rule fails to define such key terms as "physically restrained" and "school staff personnel."

Is being physically restrained the same as being in custody? Is a juvenile physically restrained when asked to sit in the principal's office or the backseat of a squad car, or must the juvenile be physically touched?

Who is included in school staff personnel?—the principal, teacher, maintainance man, school secretary? Must the school staff personnel be acting in the course of his or her duties? Must the juvenile be enrolled in the school of the school staff personnel? Would this rule apply to the professor at the University of Minnesota who catches a 15-year-old junior high student going through his desk and the professor, blocking the doorway, asks, "What are you doing?"

The Waiver Provisions of Rule 6 are Unclear

Rule 6.02 allows a waiver of the right to remain silent, but the writing of the rule in the present tense makes it appear that the juvenile must in court also waive the right to an attorney.

Rule 6.03 absolutely requires parental or guardian presence during the questioning, and Rule 6.02 requires a written waiver by the parents or guardian. Rule 6.04 then sets out when questioning of the juvenile can be done outside the presence of the parent or guardian. Rule 6.04 only implies, but does not state, that it is an exception to the requirements of Rule 6.02 and 6.03.

Rule 6 Will be Costly to Administer

The rule requires school staff personnel to administer the Miranda Warning. In addition, school staff personnel will need to give parents notification and, in certain situations, have a parent present to obtain an admissible statement from a juvenile. Just the added cost of educating the individuals involved in the new requirements will be tremendous. Plus, there will be the additional cost of carrying out the requirements of the rule.

Other administrative issues are certain to arise. The need to have parents notified and/or present will require the taking of more juveniles into detention. Awaiting notification of parents and their presence will require a place for detention and, presumably, a limitation on the length of detention. Further, a determination will have to be made as to whether parents can include a non-custodial parent, what to do if the parent is the victim of the offense or appears to be coercing a statement, and how to determine who is a responsibile adult.

Conclusion

Because of the above reasons, Rule 6 should be stricken. The striking of the rule continues the determination of the admissibility of a juvenile's confession, admission, or other statement by the totality of the circumstances which is not only a better rule, but one that has been adopted by the Minnesota Supreme Court and the United States Supreme Court.

Rule 5: Guardian ad Litem and Rule 41: Guardian ad Litem

Rules 5 and 41 should be amended to conform to Minnesota Statute 260.155, Subd. 4(a) and (b).[1]

The rules proposed by the Commission[2] require at least a parent, guardian, or guardian ad litem to accompany the juvenile at every stage of the proceedings. The rule proposed by this report follows Minnesota law which requires at least a parent, guardian, guardian ad litem, or counsel to accompany the juvenile at every stage of the proceedings.

Minnesota Statute 260.155, Subd. 4(b), allows the juvenile to proceed without a parent, guardian, or the appointment of a guardian ad litem when the juvenile is without parent or guardian, or the parent is a minor or incompetent, or the parent or guardian is indifferent to or hostile to the juvenile's interests provided that:

A. Counsel has been appointed for the juvenile or otherwise retained, and

B. The court is satisfied that the interests of the juvenile are protected.

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1. M.S. 260.155, Subd. 4, states: "(a) The court shall appoint a guardian ad litem to protect the interests of the minor when it appears, at any state of the proceedings, that the minor is without a parent or guardian, or that his parent is a minor or incompetent, or that his parent or guardian is indifferent or hostile to the minor's interests, and in every proceeding alleging neglect or dependency. In any other case the court may appoint a guardian ad litem to protect the interests of the minor when the court feels that such an appointment is desirable. The court shall appoint the guardian ad litem on its own motion or in the manner provided for the appointment of a guardian ad litem in the district court. (b) The court may waive the appointment of a guardian ad litem pursuant to clause (a), whenever counsel has been appointed pursuant to subdivision 2 or is retained otherwise, and the court is satisfied that the interests of the minor are protected."

2. Supreme Court Juvenile Justice Study Commission.

This substantive statute was adopted by the Task Force[3] in the writing of the proposed rules, but the Commission amended Rules 5 and 41 by striking that part of each rule which included Minnesota Statute 260.155, Subd. 4(b).

The statute and the Task Force offer a philosophy that is practical, in the interest of the juvenile, lawful, and based on the totality of the circumstances.

The legal basis of the rule proposed by this report and adopted by the Task Force, as stated above, is found in Minnesota Statute 260.155, Subd. 4.

The court, in exercising its discretion on whether a juvenile can proceed without parent, guardian, or guardian ad litem, must find that the juvenile has retained or been appointed counsel, and must further find that the interests of the minor are protected. In making this latter determination the court looks at the totality of the circumstances. It is important to note that the statute requires more than just counsel for the child. The interests of the juvenile that the court considers must be more than just the legal interests of the juvenile.

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3. Approved March 10, 1982, the Task Force was appointed to prepare proposed rules and report to the Supreme Court Juvenile Justice Study Commission. The Task Force, after several meetings, assigned the responsibility of drafting proposed rules to a Drafting Committee, which then reported to the Task Force. The Drafting Committee was composed of three judges, three attorneys, and one reporter for the Supreme Court Juvenile Justice Study Commission who also was an attorney. The Task Force included all the members of the Drafting Committee and had a total of eight attorneys, including judges and four persons not attorneys. The Supreme Court Juvenile Justice Study Commission had only six members who were also on the Task Force. The Commission had only two attorneys and two judges who were actively practicing in juvenile courts, and each was on the Task Force.

The statute and Task Force, through a totality of the circumstances test approach, recognize that an increasing number of juveniles live in independent living situations and are sufficiently mature to make reasonable judgments with the assistance of counsel. Other statutes even allow juveniles adult-like decision-making authority or responsibility without the assistance of counsel or other adults (see page 9 of this report).

Courts throughout the state, but especially in Hennepin and Ramsey Counties where the statute is vitally important to the functioning of the court, have relied on the statute. No reason for change has been put forth. No claim of abuse of court discretion has been made. No showing of denial of rights to juveniles has been demonstrated.

Proponents for the change have failed to substantiate what change will occur with the court as concerns cost or processing of cases or what added protection will realistically be given to juveniles. Cost alone could become a major factor since Rule 40.02 allows for the guardian ad litem to have his or her own counsel even while the juvenile has separate counsel.

The proposed rule of the Commission is flawed in its wording. Paragraph two of Rule 5.01 and 41.01 uses the word "suggests." The word is vague and appears to require that the court make a decision of need for a guardian ad litem on the mere implication by a person that the factors requiring a guardian ad litem exist. A clear request for a guardian ad litem or statement setting forth the criteria for a guardian ad litem should be required.

The criteria, especially "interests in conflict with the child's interests," is very vague. Any suggestion that the parent or guardian has interests in conflict with the child's interests requires the court to review the situation, and the finding of <u>any</u> conflict of interests considered in the context of the matter requires the appointment of a guardian ad litem. What

is a conflict of interest? At disposition the parent agrees with the recommendation of the probation officer that the juvenile receive a chemical dependency evaluation. The juvenile disagrees. Should the proceedings be stopped until a guardian ad litem is appointed and familiarizes himself or herself enough with the matter to proceed?

The approach of the rule as proposed in this report would, if the child had counsel and the court believed the rights of the juvenile were protected, allow the proceeding to continue in the above hypothetical situation. The concerns of the parent and the juvenile would both be taken into consideration by the judge who would make the final decision to accept, reject, or modify the recommendation.

The statute, the Task Force, and the rule proposed in this report all require the juvenile to proceed through the juvenile court system accompanied by an adult.

The rule proposed in this report, in keeping with the Task Force recommendation, retains M.S. 260.155, Subd. 4(b). It is a substantive, legal, and practical way to protect a juvenile's rights by allowing court discretion to determine whether a guardian ad litem needs to be appointed by considering the totality of the circumstances.

Rule 15: Waiver of Counsel and Other Constitutional Rights

Rule 15 should be amended to use a totality of the circumstances test to any waiver in court by a juvenile of his or her rights.

Rule 15 governs waiver of all constitutional rights except the right to remain silent, which is governed by Rule 6.

Rule 15 requires written concurrence on the record by the juvenile's parent(s), guardian, or guardian ad litem before a voluntary and intelligent waiver by the juvenile of a constitutional right can be made.[4]

As shown in this report in the section on Rule 6, both Minnesota case law and United States Supreme Court case law hold that a juvenile alone may waive a constitutional right (the right to remain silent), and the test to determine a voluntary and intelligent waiver is totality of the circumstances.

Minnesota Statute 260.155, Subd. 8,[5] allows the waiver of a right given to a juvenile by Chapter 260 to be made by the juvenile alone when the juvenile is 12 years of age or older, has been fully and effectively informed of the right, and has expressly and intelligently waived the right.

Rule 15, as adopted by the Task Force,[6] adhered to case law and statutory authority with a totality of the circumstances test. The Commission amended the rule to its present proposed form.

The proposed rule of the Commission removes from the juvenile the right to make a waiver and places the right with the parent, guardian, or guardian ad litem. This is accomplished by requiring the written concurrence of the parent, guardian, or guardian ad litem before a waiver can be accepted by the court. This "veto power" strips away from the juvenile the ability to alone exercise the right to waive and makes the

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4. Rule 50, Waiver of Counsel and Other Rights which is for child protection matters repudiates such an approach and basically adopts M.S. 260.155, Subd. 8, and a totality of the circumstances test. Further, Rule 50 addresses only the right to counsel pursuant to Rule 40 and other rights given by the rules and not all constitutional rights.

5. Minnesota Statute 260.155, Subd. 8, states: "Waiver of any right which a child has under this chapter must be an express waiver intelligently made by the child after the child has been fully and effectively informed of the right being waived. If a child is under 12 years of age, the child's parent, guardian or custodian shall give any waiver or offer any objection contemplated by this chapter."

6. March 10, 1982, Task Force draft.

juvenile dependent upon another. In practice, though the delinquency or petty matter action is against the juvenile, the juvenile, even with counsel, is unable to make decisions without the consent of another who, especially in the case of the guardian ad litem, will not be affected by the outcome of the lawsuit. The juvenile in a delinquency matter or a petty matter has much more at risk than a possible adjudication. All the disposition statutes for these matters, Minnesota Statutes 260.185, 260.192, and 260.194, contain the possible removal of the juvenile from the family home. The constitutional rights being considered are those of the juvenile. The juvenile is the subject of the lawsuit. The potential loss of freedom is a risk only to the juvenile. Certainly then, the juvenile should be the individual who controls the decision to exercise or waive the right to exercise a constitutional right. The juvenile's decision may be dependent upon the juvenile knowing of the right and voluntarily and intelligently making a decision. This is exactly the approach used with a totality of the circumstances test.

The criteria for the parent's, guardian's, or guardian's ad litem concurrence or lack thereof is, besides written concurrence, non-existent. No matter how knowledgeable, intelligent, and voluntary the juvenile's actions are, simply the lack of written concurrence stops the juvenile from waiving his or her right.

If a parent or guardian does not concur in waiving a right a juvenile wants to waive, there appears to be a conflict of interest requiring under Rule 5.01 the appointment of a guardian ad litem. Thus, in reality, the blockage of the juvenile's right to waive a right under the Commission's proposed rules may only be accomplished by a guardian ad litem. The ability of the guardian ad litem to knowingly and intelligently make a decision on the juvenile's right is not subject to scrutiny by the proposed rule.

The totality of the circumstances test resolves the problems that beset Commission's proposed rule.

Interestingly, the Commission adopted a totality of the circumstances t with the juvenile making the decision in child protection matters e Rule 50). As concerns this issue, there is no rational distinction ween juveniles in child protection matters and delinquency and petty ters that would justify the differences between Rule 15 and Rule 50.

Rule 15 is also written inconsistently. In Rule 15.02, Subd 1, and Rule 03, Subd. 1, second paragraph, the determination of whether a juvenile has untarily and intelligently waived a right is based on the totality the circumstances. One of the circumstances is then stated to be "the sence and competence of the child's parent(s), guardian, or guardian litem . . ." How can parental, guardian, or guardian ad litem presence a factor to consider when in the same subdivision the written concurrence one of these people is absolutely required? Also, Rule 15.02, Subd. 3, fers to the child waiving the right to counsel; no reference is made to rent, guardian, or guardian ad litem.

Rule 15 applies only to the waiver of constitutional rights. Other ghts given by the rules are not included in the rule, and their waiver pears to be by a totality of the circumstances test.

The rule proposed by this report is the totality of the circumstances t to determine whether the waiver by the juvenile of a right created by rules is knowledgeable, voluntary, and intelligent.

e 21: Admission or Denial

Rule 21 should be amended to clearly show that the decision to admit or y is the juvenile's.

SECTION II

Rule 17: Intake

Rule 17 should be stricken.

Purpose of Intake

The purpose of intake is to screen cases prior to the filing of the case in court to determine if a lawsuit should be initiated or if the case should be diverted from court. In screening a case, the facts are reviewed to determine whether the incident alleged is within the jurisdiction of the court, whether there are sufficient facts to prove the case for which the court has jurisdiction, and whether the matter is sufficiently serious to warrant court intervention. Often a second purpose of intake is to hold actual hearings, including admission and disposition, of cases that are determined not to be serious enough for court involvement.

Intake is an Executive Function

Rule 17 gives the court the executive function of approval for charging. Intake screens the cases that would be referred to the county attorney for a petition. If intake personnel decide for any reason, legal or otherwise, not to refer the case to the county attorney, no petition could be issued, though the prosecutor still has the responsibility of drafting a petition. Intake personnel from the judicial branch control the giving to the prosecutor a case to review for charging.

As stated in Brown v. Dayton Hudson Corporation and City of Minneapolis, 314 N.W.2d 210 (Minn. 1982), "the discretionary decision whether to charge and whether to continue a prosecution lies at the very heart of the prosecutorial function." It is the prosecutor's decision to prosecute or not prosecute and

harge to file. These decisions are not subject to judicial review
proof by the defendant of deliberate discrimination based upon some
ifiabale standard such as race, sex, or religion. (See Brordenkircher
es, 434 U.S. 357 (1978), State v. Andrews, 282 Minn. 386, 165 N.W.2d 528
1968), City of Minneapolis v. Buschertte, 307 Minn. 60, 240 N.W.2d 500
1976), State v. Herme, 298 N.W.2d 454 (Minn. 1980), and ABA Standards
Prosecution Function, Section 3.9 (1971).)

Rule 17 not only places judicial review over the prosecutorial function,
effect removes the prosecutorial function from the prosecutor and
it first with the court. Such a removal is a serious violation
paration of powers between the judiciary and the executive branches.

17 is Without Precedent in Court Rules

The proposal of Rule 17 is without precedent in other rules adopted
Minnesota Supreme Court. Neither the Rules of Criminal Procedure nor
roposed rules for juvenile court as concerns traffic and child protection
rs contain intake provisions. No reasonable rationale has been put forth
stify judicial control over the review for initiation of petitions in
quency and petty matters.

17 is Outside the Jurisdiction of the Court

Rule 17 is outside the scope of the jurisdiction bestowed upon the
ile court pursuant to Minnesota Statutes 260.111 and 260.131. Both
ese statutes allow juvenile court jurisdiction to attach upon the
of a petition or a citation. Court action before jurisdiction has
ned is improper and is an attempt to enlarge the court's jurisdiction.

e 17 is Outside the Authority of the Proposed Rules

Rule 17 is outside the scope of the authority of the proposed juvenile rt rules. Minnesota Statute 480.059 sets out the perimeters of the es to include only regulation of pleadings, practice, procedure, and forms juvenile proceedings in all juvenile courts of the state. Rule 17 attempts regulate matters prior to the initiation of a proceeding by screening ters before they are even petitioned.

ersion from Adjudication is Allowed by Statute

The juvenile court already has, by statute, an effective means to ert juveniles from an adjudication. Minnesota Statute 260.185, Subd. 3, ows the court when it is in the best interests of the child to continue atter after a finding of delinquency, but before an adjudication, for a iod not to exceed 90 days. The 90-day period can be continued once for ther 90-day period. Minnesota Statute 260.192, Subd. 3, also provides for ontinuance of a case if the matter should so warrant. Both of these tutes allow the court to divert a juvenile from an adjudication while at same time being able to keep court control over the matter so that the erests of the child, as well as the public, are protected.

ctical Problems--Conflict of Interest

Rule 17 causes many practical problems.

The judicial screening of cases causes the court a conflict of interest. One of the basic functions of the court is to be an impartial finder of facts. To protect the courts' neutrality, the decision to bring a lawsuit outside the control of the court. The judge should neither make the sion himself or herself nor supervise the people or administrate the em that makes the decision.

Canon 1 of the Code of Judicial Conduct states that an independent nd honorable judiciary is indispensible to justice in our society. Therefore, as stated in the title of the canon, "A judge should uphold the ntegrity and independence of the judiciary." The court is not independent hen it is making a decision that a juvenile should be petitioned to court.

What some have argued is that with Rule 17 the court would not actively nvolve itself in the decision-making process, but would rather set the olicies that would then be carried out by others. However, if a judge sets ne policies, that judge has the responsibility to administrate and supervise o make sure that the policies are carried out. Canon 3B of the Code f Judicial Conduct sets out the administrative responsibilities of the udge, which in effect require the judge to actively administate. The judge ould not set policy without carrying out the responsibility to see that the olicy is adhered to.

Finally, Canon 2 of the Code of Judicial Conduct calls upon the judge o avoid inpropriety and the appearance of inpropriety in all his or her ctivities. Whenever the court takes an active role or a figurehead role in ie screening of cases for charging, the court is going to convey to the iblic that it is handling the role of the prosecutor. Such an image kes it impossible for the judge to also convey the image of the neutral ct-finder and the image of an individual independent of prosecution.

pervision by Court is Difficult

One of the important elements of any system in which there is sufficient wer of an individual to bring a person before a court where that person may se his or her freedom is that all decision-making within the system be held countable to the public. The difficulty that occurs with any intake system der court supervision and administration is staff decisions may not be held

accountable to the public. If the court does not take an active role in supervision or administration in an attempt to avoid a conflict of interest, and the prosecutor has no authority over the system, the people making the screening decisions are without control and leadership by an elected official.

Intake personnel may not even be employed by the court. In some counties court service personnel are employed by the county board and not by the court. In Arrowhead Regional Corrections Board v. Graff, 321 N.W.2d 53 (Minn. 1982), the judge fired a probation officer only to have the trial court find the order invalid as contrary to the employment agreement and collective bargaining agreement that existed between the probation officer and his employer, the Arrowhead Regional Corrections Board. The Minnesota Supreme Court affirmed the trial court. This case effectively points out the difficulty that the court would have if it tried to supervise an intake system in which the personnel of the system are not even employed by the court.

A prosecutor, unlike the court, has no real or apparent conflict of interest in carrying out the duty of screening cases for court. Also, the prosecutor, unlike the court, uses staff who are under his or her authority.

Administration by Court is Difficult

If the court attempts to administrate an intake system, additional problems arise. First, the court is often several judges, in which case there is no singular individual carrying out administrative responsibilities.

Staff within the intake system not only need supervision, but training. Day-to-day operation of an intake system will cause questions to arise for the on-line staff which will have to be worked out with supervisors. If there is no supervisor, as in counties that have only one probation

officer, or the supervisor himself or herself has questions, there is no individual to go to whose decision can be held accountable to the public.

Intake is More Than Screening

Also, the process of intake is far more extensive than reviewing a case to determine whether or not it is within the jurisdictin of the court and whether there are sufficient facts with which to prove the case. Since screening of cases is part of the juvenile justice system, the screener has a responsibility to explain the decision made. Explanation may be needed to be given in court for a case charged. If the case is not sent to the prosecutor for a petition, the police officers are entitled to know why the case did not go forward and what steps can and should be done in similar cases in the future. In some cases the screener should take on an investigative role to acquire more facts to determine whether or not to request a petition.

It is also the responsibility of the chief law enforcement officer, i.e. the person who handles the charging process, to not only explain his or her decisions, but also to train law enforcement personnel and to help coordinate the different parts of the law enforcement system. Training requires, at a minimum, informing the police what criteria is used to screen cases and what is expected of them in the investigation of a case. Training should also include updating police on new laws and cases. This responsibility is not a court function.

Legal Decisions Should Be Made By Lawyers

The determination that a case comes within the jurisdiction of the court and that there are sufficient facts to prove the case is a legal decision. Such decisions should be made by lawyers, and intake personnel almost always are not lawyers.

17 is Too Broad and Could Lead to a Mini-Court System

Rule 17 is so general that it could be used to circumvent all the other osed rules. In State v. Hejl, 315 N.W.2d 592 (Minn. 1982), the court ed that the judges may adopt rules of practice not in conflict with rules ulgated by the Minnesota Supreme Court. Rule 17 is designed to allow a to be diverted from the court. Any policies and rules set out by the l court for intake would not be in conflict with the remainder of the osed rules because the rules under Rule 17 would be pre-court.

Rule 17 establishes no control as to how extensive the diversion system juvenile court could be or what rights and protections must exist ıe local rules. In effect, an intake system could become a subcourt ɜm, with admission/denials, trials, and dispositions, which could include restrictions of freedom upon the juvenile. All this could :complished without any adherence to the rules used when a juvenile appear in court.

The Task Force position presented to the Commission was that there be no on intake.[1] For the reasons stated above, the Task Force position d be adopted and Rule 17 should be stricken.

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1. March 10, 1982, Task Force draft.

SECTION III

ule 2.02: Referee and Rule 38.02: Referee

Amend Rules 2.02 and 38.02 to conform to the wording of Minnesota Statute 34.70, Subd. 6,[1] by adding next to the word "hearing" in the first sentence ne words "contested trial, motion, or petition."

ule 18.09: Timing for Rule Eighteen (18)

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

Rule 18.09 requires the computation of time for a juvenile detained or a petty matter, a delinquency matter which would not be a felony if mmitted by an adult, or a traffic matter (see Rule 36.02, Subd. 5) to begin ie moment the child is taken into custody and to not exclude any day.

Present law states that a juvenile may be detained without a court aring for a maximum of 36 hours, excluding Saturdays, Sundays, and holidays linnesota Statute 260.171[2]). According to Minnesota Statute 645.15 and State . Bradley, 264 N.W.2d 387 (Minn. 1978), (a criminal case concerning when the urs begin to run after an arrest) the hours begin to run at the first dnight following detention. Rule 65 follows the statute and the Minnesota preme Court's interpretation of the statute.

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1. M.S. 484.70, Subd. 6: No referee may hear a contested trial, hearing, tion, or petition if a party or attorney for a party objects in writing to e assignment of a referee to hear the matter. The court shall by rule, ecify the time within which an objection must be filed.

2. The 1982 Minnesota Legislature amended M.S. 260.171 to allow tention for up to 72 hours, excluding Saturdays, Sundays, and holidays for veniles detained pursuant to a court order or warrant or juveniles detained cause they were found in conditions or surroundings which endanger the venile's health or welfare. (Laws of Minnesota 1982, Chapter 469.)

To change the statute by rule for certain types of cases is without good reason and will lead to serious problems.

Assume a juvenile is detained and is subject to Rule 18.09. That juvenile may be held only 36 hours, excluding no days, and the counting of the hours begins the moment of detention. If detention is at 7:00 p.m. Friday, the court hearing must be held by 7:00 a.m. Sunday. The rule allows no provision for extension. If detention is at 7:00 p.m. Saturday, the court hearing must be held by 7:00 a.m. Monday. If detention is at 7 a.m. Sunday and Monday is a legal holiday, the hearing is still required to be held by 7:00 p.m. Monday. If detention is at 7:00 p.m. Sunday, the hearing must be held by 7:00 a.m. Tuesday. What if the judge has court in two separate counties on Monday with court held in the county of detention only on Monday morning? Either the time for the preparation and filing of a petition is narrowed to Monday morning, court is held in another county at great inconvenience to many, or court is held between 5:00 p.m. and 7:00 a.m. in the county of detention.

Starting to count the hours at the first midnight following detention, and excluding Saturdays, Sundays, and holidays, has many practical advantages:

1. Court on Sundays or legal holidays, or at hours when most of us are sleeping, is avoided.

2. Sufficient time is allowed for the matter to be screened and court possibly avoided.

3. Sufficient time is allowed for the facts for a petition to be carefully reviewed.

4. Sufficient time is allowed for adequate notice to be given to the juvenile's parents.

5. Sufficient time is allowed to obtain counsel and/or guardian ad litem for the juvenile.

6. Time will expire for all 36-hour detentions at the same time, which will always be noon.

Some impracticalities will be avoided by striking Rule 18.09:

1. Adding another 36-hour catagory to the law, but establishing a different method to determine the time period just adds confusion to those who must carry out the law.

2. A juvenile may be detained for more than one reason and if those reasons happen to place the juvenile in the catagories covered by Rule 18.09 and Rule 65, which rule will control?

It will be far better in practice to have just Rule 65, and it will also be in accordance with the Task Force recommendations to the Commission.[3]

Rule 20.02, Subd. 2: Child Not in Custody and Rule 54.02: Possession of Petition

Amend Rule 20.02, Subd. 2, and Rule 54.02 by striking "three (3) day" and inserting "twenty-four (24) hours."

Minnesota Statute 260.141, Subd. 1(2), requires personal service to be made at least 24 hours before the time of the hearing. Amending the proposed rules makes them consistent with the statutory notice provisions.

Rule 24.01, Subd. 1: Disclosure by County Attorney Without Court Order and Rule 24.02, Subd. 1: Information Subject to Discovery Without Order of the Court

Amend Rule 24.01, Subd. 1, and Rule 24.02, Subd. 1, to allow local court rule to set a different time limit than five days for required disclosures.

In some counties, because of their size, administratively speaking, because of the number of investigative units within the county or used in a particular case, the five-day time limit may be too restrictive. The rule proposed by this report allows the local court by rule to increase or decrease the period of time.

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3. March 10, 1982, Task Force Meeting.

Rule 24.04: Depositions

Strike Rule 24.04 which concerns depositions.

There is a deposition rule in the Minnesota Rules of Criminal Procedure, but it is hardly ever used. Depositions are costly, they delay the proceedings, they subject witnesses who are without the immediate protection of the court to questioning, and, for juvenile delinquency matters, they have not been shown to be needed. Further, such a rule might be used by the county attorney to circumvent the fact that he or she does not possess a subpoena power for out-of-court questioning.

Rule 30.03, Subd. 5: Disposition

Amend Rule 30.03, Subd. 5, to require discussion of the disposition report with the juvenile and parents and guardian upon their request.

The juvenile, parents, and guardian should be notified of their right to request the person making the report to discuss the contents of the report with them, but actual discussion should take place only upon a request being made. A parent, especially a non-custodial parent, may not be taking part in the proceedings. It is a wasteful use of a report writer's time to require him or her to discuss something with someone who may not want to be a part of the discussion or who has not shown enough interest to attend earlier court hearings.

Rule 32: Reference of Delinquency Matters

Strike Rule 32.05, Subd. 2.

Rule 32.05, Subd. 2, sets out factors to be considered if a prima facie case has not been made or rebutted by significant evidence and the court is determining reference based on totality of the circumstances. It is more appropriate for the legislature to legislate such factors,

as it did in enacting a prima facie standard, than for the court to enact such substantive factors by court rule.

Rule 34.02, Subd. 2(c): County Attorney and Rule 64.02, Subd. 2(c): County Attorney

Amend Rule 34.02, Subd. 2(c), and Rule 64.02, Subd. 2(c), to allow the county attorney the right to inspect and copy court records until the juvenile is 19 years of age.

The rule as presently proposed is too restrictive. In delinquency and petty matters the court can continue to have jurisdiction over the juvenile even though the court has not taken any action during the past year. Even warrants are outstanding for longer than one year. In review of cases for reference and to determine if a prima facie case exists, the court record is needed.

The county attorney is an officer of the court and stands, in relation to the court, in a far different position than the public. The county attorney, to carry out his or her duties, needs access to court documents. Allowing the county attorney access to court records until the juvenile is 19 years old poses no danger to confidentiality as articulated in M.S. 260.161, and does allow the county attorney to efficiently exercise his or her duties.

RULE 2

REFEREE

2.02 Objection to Assignment of Referee

The child's counsel or the county attorney may object to a referee presiding at a contested trial, hearing, motion, or petition. This objection shall be in writing and filed with the court within three (3) days after being informed that the matter is to be heard by a referee or the right to object is waived. The court may permit the filing of a written objection to a referee at any time. After the filing of an objection, a judge shall hear any motion and preside at any hearing.

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.

~~If at any stage of the proceedings any person suggests to the court that the child is without a parent or guardian or considered in the context of the matter the child's parent(s) or guardian is unavailable, incompetent, indifferent to, hostile to or has interests in conflict with the child's interests and the court does not appoint a guardian ad litem, the court shall state in writing or on the record the facts supporting the court's decision.~~

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 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.

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.

RULE 6

RIGHT TO REMAIN SILENT

The complete rule should be stricken.

RULE 15

WAIVER OF COUNSEL AND OTHER CONSTITUTIONAL RIGHTS

15.01 Applicability

Rule 15 governs the waiver in court of the right to counsel and other constitutional rights, and the waiver of other rights pursuant to these rules ~~with the exception of the waiver of the right to remain silent which is set forth in Rule 6~~.

15.02 Waiver of a 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 and any other right only if the waiver is voluntary and intelligently made. In determining whether a child has voluntarily and intelligently waived a ~~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 in court of the right to counsel or any other right shall be on the record.

Rule 21.01 states: "The child may admit or deny the allegations or remain silent."

However, Rule 21.03, Subd. 1, grants the parent or guardian control over whether the court can accept a juvenile's admission. This is accomplished by requiring the court, before accepting the admission of the juvenile, to determine whether the parent(s) or guardian understand all applicable rights and, either on the record or in writing, to determine whether the parent(s) or guardian understand what is set forth in Rule 20.03, Subd. 1(a).[7]

Parental or guardian failure to understand all that the rule requires and in the manner that the rule requires prohibits the child from exercising his or her right to admit the allegations. The section of this report concerning Rule 15 discussed the problems of allowing the right of a juvenile to be controlled by another. Rule 21.03, Subd. 1, is even more onerous than Rule 15. No provision is made for a guardian ad litem to take the place of parent(s) or guardian. Lack of parental or guardian presence estops the entry of an admission. A parent or guardian present, but in conflict with the juvenile, estops the juvenile from admitting.

Again, a totality of the circumstances test is the appropriate approach. The juvenile by this approach holds the right to admit or deny the allegations. The court, in determining whether the admission is knowledgeable, voluntarily, and intelligently made, considers the totality of the circumstances. The presence of parent(s) or guardian and their understanding and wishes can be considered, among other factors, in determining whether the admission is valid.

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7. Rule 21.03, Subd. 1(a), implies parents have certain rights that don't exist. The rights stated in (ii), (iv), (v), (vi), and (vii) are all rights of the juvenile. Clearly, the subdivision was written to mean that the juvenile must understand these rights and the inclusion of parent or guardian was made without consideration to the actual wording of the remainder of the subdivision.

Rule 22: Settlement Discussions

Rule 22 should be amended to allow a juvenile to enter into settlement discussions when there is no counsel for the juvenile and the parent or guardian is either not present, in conflict with the juvenile, or incompetent.

Rule 22.02 allows the county attorney to enter into and reach a settlement agreement with a child represented by counsel only through child's counsel. This is appropriate. If the child is not represented by counsel, settlement discussions may be entered into with the child only in the presence of the parent(s) or guardian. Such a provision fails to consider the occasions when the parents or guardian have a conflict of interest and the child has been appointed a guardian ad litem.

Conclusion to Section I

The underlying philosophy of this report, especially considered in this section, is that as the juvenile proceeds through the court system he or she is accompanied, at a minimum, by an adult who is either a parent, guardian, guardian ad litem, or counsel. Each child, no matter by whom accompanied, possesses the same rights given and protected by the rules, and because the juvenile is accompanied by one person rather than another does not change the juvenile's rights. Further, the exercising of the juvenile's rights is done by the juvenile in consultation with those adults accompanying him or her, and the court accepts the juvenile's decision based on a totality of the circumstances test in determining that the decision was made according to the appropriate legal standard.

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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.

~~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, may voluntarily and intelligently waive any other constitutional right after being fully and effectively informed of the right by counsel or by the court on the record.~~

~~In determining whether the child has voluntarily and intelligently waived any other constitutional right 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 their interest in protecting the child's rights, and the child's age, maturity, intelligence, education, experience, and ability to comprehend.~~

~~Subd. 2~~ ~~Recording~~

~~A waiver of any constitutional right shall be on the court record.~~

RULE 17

INTAKE

The complete rule should be stricken.

RULE 18

DETENTION

18.09 Timing for Rule Eighteen (18)

Rule 18.09 should be stricken.

RULE 20

ARRAIGNMENT

20.02 Timing

Subd. 1 Child in Custody

The child in custody shall be arraigned within five (5) days of being taken into custody. A child in custody may be arraigned at a detention hearing. The child has the right to have a copy of the petition for twenty-four (24) hours ~~three (3) days~~ before being arraigned.

Subd. 2 Child Not in Custody

The child not in custody shall be arraigned within twenty (20) days after the child has been served with the petition.

The child has the right to have a copy of the petition for twenty-four (24) hours ~~three (3) days~~ before being arraigned.

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~~ understands 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,~~ understands:

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 rights 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.

RULE 22

SETTLEMENT DISCUSSIONS

22.02 Procedure

The county attorney may enter into settlement discussions and reach a settlement agreement with the child only through the child's counsel and may not enter into settlement discussions with a child not represented by counsel unless the parent(s), ~~or~~ guardian, or guardian ad litem are present with the child.

The child's counsel, or if the child is without counsel, the child's guardian ad litem may make a settlement agreement but only with the consent of the child and shall ensure that the decision to enter into a settlement agreement is made by the child.

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, and guardian ad litem and the county attorney of this decision on the record and shall call upon the child to either affirm or withdraw the admission.

22.05 Settlement Agreement Not to Include Disposition Recommendation

Settlement agreements shall not include binding recommendations as to disposition unless premitted by court rule.

RULE 24

DISCOVERY

24.01 Disclosure by County Attorney

Subd. 1 Disclosure by County Attorney Without Order of the Court

Without order of the court following the filing of a petition, the county attorney upon request for disclosure by the child's counsel shall within five (5) days of the receipt of the request, or at a different time as designated by local court rule, make the following disclosures.

24.02 Disclosure by Child

Subd. 1 Information Subject to Discovery Without Order of Court

Without order of the court, following the filing of a petition, the child's counsel on request of the county attorney, shall, within five (5) days of the receipt of the request, or at a different time as designated by local court rule, make the following disclosures.

24.04 Depositions

Rule 24.04 should be stricken.

RULE 30

DISPOSITION

30.03 Pre-Disposition Reports

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 of the child upon their request 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.

RULE 34

RECORDS

34.02 Availability of Juvenile Court Records

Subd. 2 No Order Required

(C) County Attorney

Juvenile court records shall be available for inspection, release to and copying by the county attorney without a court order until a child is 19 years of age or the record is expunged, whichever is first. ~~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.~~

RULE 38

REFEREE

38.02 Objection to Assignment of Referee

The county attorney and counsel for those persons who have the right to participate may object to a referee presiding at a contested trial, hearing, motion or petition. This objection shall be in writing and filed with the court within three (3) days after being informed that the matter is to be heard be a referee or the right to object is waived. The court may permit the filing of a written objection at any time. After the filing of an objection, a judge shall hear any motion and shall preside at any hearing.

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 42.02, 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.

~~If at any state of the proceedings any person suggests to the court that the child is without a parent or guardian or considered in the context of the matter the child's parent or guardian is unavailable, incompetent, indifferent to, hostile to or had interests in conflict with the child's interests and the court does not appoint a guardian ad litem, the court shall state in writing or on the record the facts supporting the court's decision.~~

42.02 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.

42.03 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 hostitility to, indifference to or interests in conflict with the interests of the child, the child's age, maturity, intelligence, eduction, 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.

42.07 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.

RULE 54

FIRST APPEARANCE

54.02 Timing

Subd. 3 Possession of Petition

The child and the child's parent(s) and guardian, their counsel and guardian ad litem have the right to have a copy of the petition for twenty-four (24) hours ~~three (3) days~~ before a first appearance.

RULE 64

RECORDS

64.02 Availability of Juvenile Court Records

Subd. 2 No Order Required

(C) County Attorney

Juvenile court records shall be available for inspection, copying or release to the county attorney without a court order until the child is 19 years of age or the record is expunged, whichever is first. ~~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.~~