

STATE OF MINNESOTA

IN SUPREME COURT

C1-01-927

**ORDER FOR HEARING TO CONSIDER PROPOSED  
RULES OF ADOPTION PROCEDURE FOR THE  
MINNESOTA JUVENILE PROTECTION RULES**

IT IS HEREBY ORDERED that a hearing be had before this court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on June 15, 2004 at 1:30 p.m., to consider the report filed on February 6, 2004, by the Minnesota Supreme Court Juvenile Protection Rules Committee. The Committee has proposed the promulgation of Rules of Adoption Procedure. A copy of the report is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King, Jr. Boulevard, St. Paul, Minnesota 55155, on or before June 7, 2004, and
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before June 7, 2004.

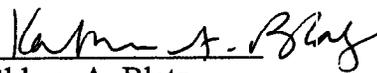
Dated: April 19, 2004

BY THE COURT:

OFFICE OF  
APPELLATE COURTS

APR 19 2004

**FILED**

  
Kathleen A. Blatz  
Chief Justice

STATE OF MINNESOTA  
IN SUPREME COURT  
C1-01-927

OFFICE OF  
APPELLATE COURTS

FEB 6 - 2004

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**MINNESOTA SUPREME COURT  
JUVENILE PROTECTION RULES COMMITTEE**

**FINAL REPORT AND  
PROPOSED RULES OF ADOPTION PROCEDURE**

February 6, 2004

MINNESOTA SUPREME COURT  
STATE COURT ADMINISTRATION  
COURT SERVICES DIVISION  
105 MINNESOTA JUDICIAL CENTER  
25 REV. DR. MARTIN LUTHER KING JR. BLVD.  
ST. PAUL, MN 55155  
651-297-7587

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***In Memory of Amy Marie Silberberg***  
***August 24, 1953 – October 17, 2003***

*The Juvenile Protection Rules Committee members dedicate this Final Report and the Proposed Rules of Adoption Procedure to Amy Marie Silberberg, without whose tireless dedication, leadership, and expertise, neither would have been possible. A graduate of Hamline University School of Law, Amy dedicated her life and legal talents to the needs of others – especially her family. She and her husband, Chaim Teitelbaum, adopted two children, Samuel and Margaret. Her love of children developed into an interest in working with adoption matters. Amy was recognized as one of Minnesota’s leading adoption law experts. She had a strong commitment to a humane and respectful adoption practice in which the birth parents’ rights and wishes were honored throughout the adoption and for a lifetime. Amy will be deeply missed, both personally and professionally.*

## **I. INTRODUCTION**

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### **A. COMMITTEE MEMBERSHIP**

#### **Chair – Juvenile Protection Rules Committee**

Hon. Timothy Bloomquist, District Court Judge, 10<sup>th</sup> Judicial District

#### **Chair – Adoption Rules Subcommittee**

Amy Silberberg, Attorney, Silberberg Law Office

#### **Supreme Court Liaison**

Hon. Helen Meyer, Associate Justice, Minnesota Supreme Court

#### **Members**

Ann Ahlstrom, Staff Attorney, Minnesota Supreme Court

Richard Coleman, Manager, Child Protection Unit, Ramsey County Social Services

Gary Debele, Attorney, Walling & Berg

Robert DeNardo, Supervisor, Adoption and Guardianship Unit, Minn. Dept. of Human Services

James Dorsey, Attorney, Fredrikson & Byron

Heidi Drobnick, Director, Indian Child Welfare Law Center

Jane Glander, Manager, 3<sup>rd</sup> Judicial District Guardian Ad Litem Program

Peter Gorman, Assistant Public Defender, 4<sup>th</sup> District Public Defender's Office

Jane Gustafson, Assistant County Attorney, Todd County Attorney's Office

Dianne Heins, Attorney, Faegre & Benson

Elaine Hutton, Child Protection Worker, Washington County Social Services

Hon. Thomas Kalitowski, Associate Judge, Minnesota Court of Appeals

Anna Lamb, Manager, Hennepin County Juvenile Court Administration

Shireen Lee, Coordinator, St. Louis County (Range) Guardian Ad Litem Program

Joyce Miyamoto, Sr. Attorney, Child Protection Division, Hennepin County Attorney's Office

Irene Opsahl, Attorney, Legal Aid Society of Minneapolis

Hon. Denise Reilly, District Court Judge, 4<sup>th</sup> Judicial District

Marian Saksena, Attorney, Fredrikson & Byron

Diana Sweeney, Assistant Public Defender, 9<sup>th</sup> Judicial District Public Defender's Office

Hon. Richard Taylor, District Court Judge, 9<sup>th</sup> Judicial District

Joanne Vavrosky, Assistant County Attorney, St. Louis County Attorney's Office

Rockwell Wells, Assistant County Attorney, Crow Wing County Attorney's Office

Hon. Renee Worke, District Court Judge, 3<sup>rd</sup> Judicial District

#### **Staff Attorney**

Judith Nord, Staff Attorney, Minnesota Supreme Court, Court Services Division

## **I. INTRODUCTION**

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### **B. COMMITTEE PURPOSE**

On May 31, 2001, the Minnesota Supreme Court established the Juvenile Protection Rules Committee and directed it to submit to the Court recommendations for necessary revision of the Rules of Juvenile Protection Procedure. The Committee completed that task when it submitted its Final Report and proposed amendments in April 2003.

In October 2001, the Court also charged the Committee with the task of drafting Rules of Adoption Procedure. Minnesota Statutes Chapter 259 sets forth substantive law relating to adoption matters. However, Minnesota currently has no procedural rules to guide the bench and bar regarding implementation of such statutes. In charging the Committee with drafting such procedural rules, the Court had three main issues in mind:

- First, the Court intends to provide procedural guidance to judges and adoption law practitioners who presently have no such guidance and must look to the statutes to determine how to proceed. Given the lack of guidance, each county has developed its own procedures. For example, many judges and practitioners assume that the Rules of Civil Procedure apply to contested adoption matters, but not all share that view. Similarly, some judges believe that discovery should be allowed in such matters, and others do not. Likewise, a variety of practices exist about what findings must be made and the content of the final adoption decree. The lack of procedural guidance has resulted in non-uniform practices and procedures.
- Second, the Court intends to establish uniform statewide practices and procedures so that attorneys, petitioners, and families may come to expect similar treatment throughout the state.
- Finally, the Court intends for such procedural rules to serve as a kind of "how to" guide for judges and practitioners in all types of adoptions, such as step-parent adoptions, intercountry adoptions, and adoptions resulting from termination of parental rights in child protection matters.

The Committee was given a clear directive that the Court would be unlikely to adopt proposed rules that are inconsistent with existing statutes.

### **C. COMMITTEE PROCEDURES – PUBLIC COMMENT PROCESS**

An Adoption Rules Subcommittee was formed and met regularly during the 14-month period from November 2001 through April 2003. At its inception, the Subcommittee contacted other states to solicit copies of their Adoption Rules, but learned that no such rules exist. As a result, the Subcommittee began the arduous task of drafting such rules from scratch. The Subcommittee submitted the proposed rules to the full Juvenile Protection Rules Committee, which began reviewing the proposed rules in June 2003.

In mid-September 2003 the Committee completed its first draft of Proposed Adoption Rules. On October 3, 2003, the State Court Administrator distributed by email a "Notice of Opportunity to Comment Regarding Proposed Adoption Rules" to nearly 1,200 public and private adoption and child protection system stakeholders statewide, including all trial court,

## **I. INTRODUCTION**

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tribal court, and appellate court judges; county attorneys; social services directors; tribal court services directors; public defenders; adoption and foster care agencies; adoption and foster care parent support groups; district administrators and assistant district administrators; court administrators; guardian ad litem program managers and coordinators; public and private attorneys; and other interested persons. The Committee sought comments regarding:

- any perceived gaps or overlaps in the Proposed Rules,
- any inconsistencies between the Proposed Rules and any federal or state statutes or case law, and
- any problems that might be encountered when implementing the procedures set forth in the Proposed Rules.

The Committee held a public hearing on October 21, 2003. During meetings held in October and November, the Committee discussed in detail the nearly 35 pages of written comments received from judges, court administrators, county attorneys, and state agencies involved with adoption matters. The Committee's deliberations resulted in numerous technical and substantive revisions to the initial draft. Through this process the Committee refined and finalized the Proposed Rules of Adoption Procedure and the other recommendations contained in this report.

### **D. CONSENSUS REACHED REGARDING ALL PROPOSED RULES**

At its first meeting, the Committee discussed its decision-making process and agreed that, to the greatest extent possible, decisions would be made based upon a "consensus" process. "Consensus" was defined to mean that all members agreed to the proposed amendment "for the overall good of the Rules" and to avoid minority reports, even though some members disagreed with the proposed rule. The Committee achieved consensus regarding all proposed rules.

### **E. OVERVIEW OF REPORT**

In addition to this *Section I, Introduction*, the report also contains the following sections:

*Section II, Summary of Technical Recommendations:* A summary of technical recommendations to make uniform the format, citation form, and word choices used in the Rules;

*Section III, Summary of Recommended Statutory Revisions:* A summary of recommended revisions to Minnesota's adoption law statutes; and

*Section IV, Proposed Rule of Adoption Procedure:* The text of the proposed adoption rules.

## **II. SUMMARY OF TECHNICAL RECOMMENDATIONS**

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Following is a summary of technical recommendations made to make uniform the format, citation form, and word choices used in the Rules:

1. Citations to rules of procedure are uniform. Internal cites to the Rules of Adoption Procedure appear in the form “Rule X.” Citations to other rules of procedure are spelled out (e.g., “Civil Appellate Procedure Rule X”).
2. Citations to Minnesota Statutes are uniform (e.g., Minnesota Statutes § 260C.212, subd. 1(a)(8)).
3. Numbers are uniform so that they appear in both text and numeral format (e.g., “three (3) years”).

### III. SUMMARY OF RECOMMENDED STATUTORY REVISIONS

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Following is a summary of recommendations regarding amendment of existing adoption statutes:

1. Move Minnesota Statutes § 259.10 – § 259.13 regarding change of name so that those provisions are placed elsewhere. Name changes occur in contexts other than adoption matters. Thus, it would be appropriate to create Minnesota Statutes § 259A “Name Change” as a stand-alone statute.
2. Revise Minnesota Statutes § 259.21, subd. 3, regarding the definition of “parent” to provide as follows:
  - “Parent means the biological natural or adoptive parent of a child.”
3. Revise Minnesota Statutes § 259.22, subd. 4, and § 259.23, subd. 1, so that the proper venue for filing an adoption petition is the county where the child resides rather than the county where the prospective adoptive parent resides. This would negate the venue and other problems that now occur when petitions regarding the same child are filed in multiple counties:
  - Minn. Stat. § 259.22, subd. 4: “. . . the agency supervising the placement shall file with the district court in the county where the child ~~prospective adoptive parent~~ resides . . . .”
  - Minn. Stat. § 259.23, subd. 1: “The proper venue for an adoption proceeding involving a child under the guardianship of the Commissioner of Human Services shall be the county of the responsible social services agency ~~petitioner’s residence~~.”
4. Revise Minnesota Statutes § 259.24, subd. 1(b), so that consent **must** be required of a parent who has lost custody of the child during divorce or who has abandoned the child:
  - “Consent shall ~~not~~ be required of a parent who has abandoned the child, or of a parent who has lost custody of the child through a divorce decree or a decree of dissolution, and upon whom notice has been served as required by section 259.49.”
5. Revise Minnesota Statutes § 259.24, subd. 1(c), as follows because the statute is unclear as to what is meant by “through a final commitment of the juvenile court”:
  - “Consent shall not be required of a parent whose parental rights to the child have been terminated by a juvenile court ~~or who has lost custody of a child through a final commitment of the juvenile court~~ or through a decree in a prior adoption proceeding.”
6. Amend Minnesota Statutes § 259.63 regarding “Appeals” to provide that the time for filing an appeal is 30 days triggered by the court’s Notice of Filing of Order:
  - ~~“Any order, judgment, or decree of a court pursuant to the provisions of sections 259.21 to 259.63 may be appealed by any person against whom the order judgment, or decree is made or who is affected by it as in other civil cases. Any appeal shall be taken within thirty (30) days of the filing of the appealable order. The time for appeal runs for all parties from the time of service of the court’s Notice of Filing of Order.”~~

## **IV. PROPOSED RULES OF ADOPTION PROCEDURE**

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## **IV. PROPOSED RULES OF ADOPTION PROCEDURE**

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### **RULE 1. SCOPE AND PURPOSE**

#### **Rule 1.01. Scope**

These rules govern the procedure in the juvenile courts of Minnesota for all adoptions pursuant to Minnesota Statutes § 259.20 – § 259.89. These rules do not apply to a change of name under Minnesota Statutes § 259.10 – § 259.13.

#### **Rule 1.02. Purpose**

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

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

#### **2004 Advisory Committee Comment**

Rule 1.02 reflects the policy set forth in Minnesota Statutes § 259.20 and § 259.29. The purpose statement also reflects the policy set forth in the federal Adoption and Safe Families Act of 1997, 42 U.S.C. § § 601, 603, 622, 629, 653, 675, 670-679, and 1320, which emphasizes that the overriding objective in any juvenile protection matter is to timely provide a safe, stable, permanent home for the child.

### **RULE 2. DEFINITIONS**

#### **Rule 2.01. Definitions**

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

- (a) **“Adjudicated father”** means an individual determined by a court, or pursuant to a Recognition of Parentage under Minnesota Statutes § 257.75, subd. 3, to be the biological father of the child.
- (b) **“Adoption case records”** means all records of the court regarding a particular adoption matter, including all records filed with the court, all records maintained by the court, and all reporter’s notes and tapes, electronic recordings, and transcripts of hearings and trials relating to the adoption matter.
- (c) **“Adoption matter”** means any proceeding for adoption of a child or an adult in the juvenile courts of Minnesota, including a step-parent adoption, relative adoption, intercountry adoption, adoption resulting from a juvenile protection matter, and any other type of adoption proceeding.
- (d) **“Agency,”** as defined in Minnesota Statutes § 259.21, subd. 6; § 245A.02 to § 245A.16, or § 252.28, subd. 2, means an organization or department of government designated or authorized by law to place children for adoption or any person, group of persons, organization, association, or society licensed or certified by the Commissioner of Human Services to place children for adoption, including a Minnesota federally recognized tribe.
- (e) **“Birth relative,”** for purposes of entering into a communication or contact agreement pursuant to Rule 32, means a parent, stepparent, grandparent, brother, sister, uncle, or aunt of a child. This relationship may be by blood, adoption, or marriage. “Birth relative” of an

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Indian child includes members of the extended family as defined by the law or custom of the Indian child's tribe or, in the absence of laws or custom, also includes nieces, nephews, or first or second cousins, as provided in the Indian Child Welfare Act, 25 U.S.C. § 1903.

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

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

(h) **“Commissioner”** means the Commissioner of Human Services of the State of Minnesota.

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

(1) there are two or more adoption petitions regarding the same child;

(2) a party has filed a written challenge to the adoption; or

(3) the Commissioner of Human Services or a legal custodian or legal guardian who is not a parent has withheld consent.

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

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

(l) **“Indian child,”** as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(1)(4), and Minnesota Statutes § 260.755, subd. 8, means any unmarried person who is under age eighteen (18) and is (1) a member of an Indian tribe or (2) eligible for membership in an Indian tribe.

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

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

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

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

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

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

(s) **“Parent”** means the biological or adoptive parent of a child, including an adjudicated father. Pursuant to Minnesota Statutes § 260.755, subd. 14, “parent” also means the biological parent of an Indian child, or any Indian person who has lawfully adopted an Indian child, including a person who has adopted a child by tribal law or custom. “Parent” does not mean an unmarried father whose paternity has not been acknowledged or established.

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(t) **“Petitioner”** means a person, with a spouse, if any, petitioning for the adoption of any person pursuant to Minnesota Statutes § 259.21 to § 259.63

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

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

(1) placement of a child;

(2) arranging or providing short-term foster care pending an adoptive placement;

(3) facilitating placement by maintaining a list in any form of biological parents or prospective adoptive parents;

(4) collecting health and social histories of a birth family;

(5) conducting an adoption study;

(6) witnessing consents to an adoption; or

(7) engaging in any activity listed in clauses (1) to (6) for purposes of fulfilling any requirements of the Interstate Compact on the Placement of Children.

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

(1) is not married to the child’s mother on or before the date that the child was or is to be born; and

(2) has not established paternity of the child according to Minnesota Statutes § 257.57 in a court proceeding before the filing of an adoption petition regarding the child; or

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

(x) **“Relative”** means a person related to the child by blood, marriage, or adoption, or an individual who is an important friend with whom the child has resided or had significant contact. For an Indian child, relative includes members of the extended family as defined by the law or custom of the Indian child’s tribe or, in the absence of laws or custom, nieces, nephews, or first or second cousins, as provided in the Indian Child Welfare Act of 1978, 25 U.S.C. § 1903. Distinguish “Individual Related to Child” under Rule 2.01(o).

(y) **“Responsible social services agency”** means the county agency acting on behalf of the Commissioner of Human Services as legal guardian or legal custodian of the child.

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

### **RULE 3. APPLICABILITY OF OTHER RULES AND STATUTES**

#### **Rule 3.01. Rules of Civil Procedure**

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

#### **Rule 3.02. Rules of Evidence**

The Rules of Evidence apply to adoption matters.

#### **Rule 3.03. Rules of Guardian Ad Litem Procedure**

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

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### **Rule 3.04. Indian Child Welfare Act and Other Minnesota Statutes**

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

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

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

### **Rule 3.06. Interstate Compact on the Placement of Children**

Adoption matters concerning children crossing state lines for the purpose of adoption are subject to the provisions of the Interstate Compact on the Placement of Children, Minnesota Statutes § 260.851 to § 260.91.

### **Rule 3.07. Human Services Licensing Act**

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

#### **2004 Advisory Committee Comment**

The Human Services Licensing Act establishes that only Minnesota licensed adoption agencies or county social services agencies are authorized to complete adoption “placement activities” defined under Rule 2.01(v).

## **RULE 4. TIME; TIMELINES**

### **Rule 4.01. Computation of Time**

Unless otherwise provided by statute or these rules, the day of the act or event from which the designated period of time begins shall not be included in the computation of time. The last day of the period shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday. When a period prescribed or allowed is three (3) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in these rules, “legal holiday” includes New Year’s Day, Martin Luther King’s Birthday, Washington’s Birthday (Presidents’ Day), Memorial Day, Independence Day, Labor Day, Veteran’s Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Day, and any other day designated as a holiday by the President, Congress of the United States, or by the State. For purposes of calculating time for the revocation of consent under Rule 31, the definition of “working day” under Rule 2.01(z) applies.

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

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

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### **RULE 5. CONTINUANCES**

#### **Rule 5.01. Findings**

Upon its own motion or motion of a party, the court may continue a scheduled hearing or trial to a later date. To grant a continuance, the court must make written findings or oral findings on the record that the continuance is necessary for the accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown. A final hearing pursuant to Rule 39 and a trial pursuant to Rule 42 shall be commenced and completed not sooner than ninety (90) days after the child is placed, unless there is a waiver pursuant to Rule 33, but not later than ninety (90) days after the petition is filed.

#### **Rule 5.02. Notice of Continuance**

The court shall provide written notice to the parties of the date and time of the continued hearing or trial.

#### **Rule 5.03 Existing Orders; Interim Orders**

Unless otherwise ordered, existing orders shall remain in full force and effect during a continuance. When a continuance is ordered, the court may make any interim orders it deems to be in the best interests of the child in accordance with Minnesota Statutes § 259.20 to § 259.89.

### **RULE 6. REFEREES AND JUDGES**

#### **Rule 6.01. Referee Authorization to Hear Matter**

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

#### **Rule 6.02. Objection to Referee Presiding Over Matter**

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

#### **Rule 6.03. Removal of Particular Referee**

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

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

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constitutes an affirmative showing of prejudice. A judge shall rule on a motion to remove a substitute referee.

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

### **2004 Advisory Committee Comment**

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

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

**Subd. 1. Transmittal.** Upon the conclusion of a hearing, the referee shall provide to a judge the written findings and recommended order, including the findings of fact, conclusions of law, order for judgment, and adoption decree required pursuant to Rule 43. Notice of the findings and recommended order, along with notice of the right to review by a judge, shall be given either orally on the record or in writing to all parties, and to any other person as directed by the court.

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

### **Rule 6.05. Review of Referee's Findings and Recommended Order**

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

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

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

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

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

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

### **2004 Advisory Committee Comment**

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

### **Rule 6.06. Order of the Court**

When no review is requested, or when the right to review is waived, the findings and recommended order of the referee become the order of the court when confirmed by the judge as written or when modified by the judge sua sponte. The order shall be confirmed or modified by the court within ten (10) days of the transmittal of the findings and proposed order.

### **Rule 6.07. Removal of Judge**

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

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

### **Subd. 3. Motion to Remove.**

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

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

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

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to remove, or if a litigant makes an affirmative showing of prejudice against a substitute judge, the chief judge of the judicial district shall assign any other judge of any court within the district to hear the matter. If there is no other judge of the district who is qualified, the chief judge shall immediately notify the Chief Justice of the Minnesota Supreme Court.

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

#### **Rule 7.01. Access to Adoption Case Records Limited**

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

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

#### **2004 Advisory Committee Comment**

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

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

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

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

#### **Subd. 2. Service of Petition.**

(a) **Request for Access to Identifying Information in Birth Record – Commissioner of Health.** Where access to identifying information in the birth record is sought, the court administrator shall serve the petition on the Commissioner of Health by U.S. mail.

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Upon service of the petition on the Commissioner of Health, the Commissioner shall supply to the court any affidavit of notification it has from the Department of Human Services pursuant to Minnesota Statutes § 259.89 and any other information the Commissioner of Health has regarding the legal basis for its refusal to disclose the requested information, including whether:

- (1) the biological parent has consented to disclosure of identifying information in the adoption record or birth record;
- (2) the biological parent has filed an affidavit objecting to the release of identifying information which remains unrevoked; and
- (3) the biological parent is living or deceased.

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

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

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

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

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

### **2004 Advisory Committee Comment**

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

### **Rule 7.03. Stepparent Adoption**

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

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### **Rule 7.04. Disclosure to Employer and Military Prohibited**

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

### **Rule 7.05. Protective Order**

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

### **Rule 7.06. Suitability of Proposed Adoptive Parents**

Pursuant to Minnesota Statutes § 259.53, subd. 3(b), a judge of the court having jurisdiction of the adoption matter shall upon request disclose to a party to the proceedings or the party's counsel any portion of a report or record that relates only to the suitability of the proposed adoptive parents. In this disclosure, the judge may withhold the identity of individuals providing information in the report or record. When the judge is considering whether to disclose the identity of individuals providing information, the agency with custody of the report or record shall be permitted to present reasons for or against disclosure.

### **Rule 7.07. Release of Identifying Information**

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

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

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

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

(b) **Biological Parent's Refusal.** If the biological parent refuses release of identifying information, including through an affidavit objecting to the release of identifying information under Minnesota Statutes § 259.83, the agency shall inform the court of the parent's refusal. If the parent's address is known, it shall be provided to the court administrator who shall maintain it in a confidential manner. Upon receipt of the parent's address, the court shall serve a copy of the petition requesting release of information and any supporting documentation on the biological parent by Certified U.S. Mail designated "deliver to addressee only".

(c) **Biological Parent Cannot be Located.** If the agency is unable to locate the biological parent's address, the agency shall inform the court about the efforts made to locate the

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parent's address. The court may then either direct the agency to conduct further search or grant the request for release of identifying information.

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

### **Rule 7.08. Access to Original Birth Record Information; Decision**

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

**Subd. 2. Adoptive Placements After August 1, 1982.** Pursuant to Minnesota Statutes § 259.83 for adoptive placements made on or after August 1, 1982, and after consideration of the interests of all known persons involved, if a living biological parent has filed an unrevoked affidavit objecting to the release of identifying information and the court determines that disclosure of the birth record information would be of greater benefit than nondisclosure, the court shall grant the petition and order the agency responsible for supervising the adoptive placement to disclose identifying information retained by the agency including the name of the biological parent, the biological parent's last known address, the birth date, and birth place of the biological parent named on the adopted person's original birth record.

#### **2004 Advisory Committee Comment**

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

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

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

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### **RULE 8. PRESENCE AT HEARINGS**

#### **Rule 8.01. Attendance at Hearings**

Only the parties, their legal counsel, their witnesses, persons entitled to notice pursuant to Rule 29, and any other persons authorized by the court may attend hearings relating to adoption matters.

#### **Rule 8.02. Absence Does Not Bar Hearing**

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

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

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

#### **Rule 8.04. Record of Exclusion and Right to Continued Participation**

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

### **RULE 9. EX PARTE COMMUNICATION**

#### **Rule 9.01. Ex Parte Communication Prohibited**

Ex parte communication is prohibited, except as to procedural matters not affecting the merits of the case. All communications between the court and a party shall be in the presence of all other parties or in writing with copies to the parties or, if represented, the party's attorney, except as otherwise permitted by statute or these rules.

#### **2004 Advisory Committee Comment**

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

#### **Rule 9.02. Disclosure**

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

### **RULE 10. ORDERS**

#### **Rule 10.01. Written or Oral Orders**

Court orders may be written or stated on the record. An order stated on the record shall also be reduced to writing by the court. An order shall remain in full force and effect until the occurrence of any of the following:

- (a) issuance of an inconsistent order;
- (b) the order ends pursuant to the terms of the order; or
- (c) jurisdiction of the juvenile court is terminated.

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### **Rule 10.02. Immediate Effect of Oral Order**

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

### **Rule 10.03. Delivery; Mailing**

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

**Subd. 2. Adoption Decree.** The findings of fact, conclusions of law, order for judgment, and adoption decree issued pursuant to Rule 43 shall be delivered at the hearing or mailed by the court administrator to:

- (a) each party;
- (b) the Commissioner of Human Services;
- (c) the Secretary of the Interior and the child's tribal social services agency, if the child is an Indian child; and
- (b) such other persons as the court may direct.

If a party is represented by counsel, delivery or service shall be upon such counsel. Filing and mailing of the adoption decree by the court administrator shall be accomplished within ten (10) days of the date the judicial officer delivers the adoption decree to the court administrator. Upon request and payment of the applicable fee, the court administrator shall provide a certified copy of the adoption decree to persons entitled to receive a copy as permitted by statute or these rules.

### **Rule 10.04. Notice of Filing of Order and Adoption Decree**

Each order or adoption decree delivered or mailed pursuant to Rule 10.03 shall be accompanied by a notice of filing of order. The State Court Administrator shall develop a "notice of filing" form, which shall be used by court administrators.

## **RULE 11. RECORDING AND TRANSCRIPTS**

### **Rule 11.01. Procedure**

A verbatim recording of all hearings shall be made by a stenographic reporter or by an electronic sound recording device. If the recording is made by an electronic sound recording device, qualified personnel shall be assigned by the court to operate the device. Any required transcripts shall be prepared by personnel assigned by the court.

### **Rule 11.02. Availability of Transcripts**

Transcripts shall be available only to the parties or their counsel if represented.

### **Rule 11.03. Expense**

If a party requesting a transcript is unable to pay the preparation cost, the party may apply to the court for an order directing the preparation and delivery of the transcript to the party requesting it, at public expense. A party's request for a transcript shall be accompanied by an In

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Forma Pauperis application. Upon a finding of the party's ability to do so, the court may order partial reimbursement for the cost of the transcript.

### **RULE 12. USE OF TELEPHONE AND INTERACTIVE VIDEO**

#### **Rule 12.01. Motions and Conferences**

The court may hear motions and conduct conferences by telephone or interactive video where testimony is not required and to resolve procedural matters.

#### **Rule 12.02. Hearings and Taking Testimony**

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

#### **Rule 12.03. In Court Appearance Not Precluded**

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

### **RULE 13. SUBPOENAS**

#### **Rule 13.01. Subpoena for a Hearing or Trial**

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

#### **Rule 13.02. Form; Purpose; Notice**

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

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

- (a) attend and give testimony at a final hearing pursuant to Rule 39, a deposition pursuant to Rule 17, or trial pursuant to Rule 42;
- (b) bring the child to court; or
- (c) produce books, papers, documents, or other tangible things designated in the subpoena.

**Subd. 3. Notice.** Every subpoena shall contain a notice to the person to whom it is directed advising the person of the right to reimbursement for certain expenses pursuant to Rule 13.07.

#### **Rule 13.03. Service**

A subpoena may be served by the sheriff, a deputy sheriff, or any other person over the age of eighteen (18) who is not a party to the proceeding. Service of a subpoena upon a person named in the subpoena shall be made by delivering a copy of the subpoena to the named person or by leaving a copy at the person's usual place of abode with a person of suitable age and discretion residing at such abode. A subpoena may be served by mail upon agreement of the witness.

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### **Rule 13.04. Motion to Quash a Subpoena**

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

- (a) direct compliance with the subpoena;
- (b) modify the subpoena if it is unreasonable or oppressive;
- (c) deny the motion to quash the subpoena on the condition that the person requesting the subpoena prepay the reasonable cost of producing the books, papers, documents, or tangible things; or
- (d) quash the subpoena.

### **Rule 13.05. Objection**

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

### **Rule 13.06. Subpoena for Taking Deposition; Place of Deposition**

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

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

### **Rule 13.07. Expenses**

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

**Subd. 2. Expenses of Experts.** Subject to the provisions of Rule 17, a witness who is not a party to the action or an employee of a party and who is required to give testimony or produce documents relating to a profession, business, or trade, or relating to knowledge, information, or facts obtained as a result of activities in such profession, business, or trade, is entitled to reasonable compensation for the time and expense involved in preparing for and giving such testimony or producing such documents. The party serving the subpoena shall make arrangements for such reasonable compensation prior to the time of the taking of the testimony.

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If such arrangements are not made, the person subpoenaed may proceed pursuant to Rule 13.04 or Rule 13.05. If the deponent has moved to quash or otherwise objected to the subpoena, the party serving the subpoena may, upon notice and motion to the deponent and all parties, move for an order directing the amount of such compensation at any time before the taking of the deposition.

### **Rule 13.08. Failure to Appear**

If any person personally served with a subpoena fails, without reasonable cause, to appear or bring the child if ordered to do so, or if the court has reason to believe the person is avoiding personal service, the court may sua sponte or upon the motion of a party pursuant to Rule 15 proceed against the person for civil contempt of court pursuant to Rule 14, or the court may issue a warrant for the person's arrest, or both.

## **RULE 14. CONTEMPT**

### **Rule 14.01. Initiation**

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

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

### **Rule 14.02. Supporting and Responsive Affidavits**

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

### **Rule 14.03. Hearing**

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

### **Rule 14.04. Sentencing**

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

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

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

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

### **RULE 15. MOTIONS**

#### **Rule 15.01. Form**

**Subd. 1. Generally.** An application to the court for an order shall be by motion. Motions may be made for any purpose authorized by statute or these rules.

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

- (a) set forth the relief or order sought;
- (b) state with particularity the grounds for the relief or order sought;
- (c) be signed by the person making the motion;
- (d) be filed with the court;
- (e) be accompanied by a supporting affidavit; and
- (f) be accompanied by a memorandum of law, if appropriate.

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

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

#### **Rule 15.02. Service and Notice of Motion**

**Subd. 1. Upon Whom.** The moving party shall serve the notice of motion and motion, along with any supporting affidavit or other supporting documentation or a memorandum of law, on all parties and any other persons designated by the court.

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

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### **Subd. 3. Time.**

(a) **Motion.** With the exception of motions pursuant to Rules 27 and 28, no motion shall be heard until the moving party serves a copy of the following documents on the other parties and files the original with the court administrator at least fourteen (14) days prior to the hearing:

- (1) notice of motion and motion;
- (2) proposed order;
- (3) any affidavits and exhibits to be submitted in conjunction with the motion;

and

- (4) any memorandum of law the party intends to submit.

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

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

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

### **Rule 15.03. Ex Parte Motion**

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

## **RULE 16. SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS; SANCTIONS**

### **Rule 16.01. Signing of Pleadings, Motions and Other Papers**

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

**Subd. 2. Party Not Represented by an Attorney.** A party who is not represented by an attorney shall personally sign the pleading, motion, or other paper filed with the court and shall state the party's address and telephone number. If providing the address and telephone number is not in the best interests of the child, the address and telephone number may be provided to the court in a separate informational statement and shall not be accessible to the public or to the parties. Upon notice of motion and motion, the court may disclose the address and telephone number as it deems appropriate.

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

- (a) the pleading, motion, or other paper has been read;

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(b) to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, the pleading, motion, or other paper is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(c) it is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

### **Rule 16.02. Sanctions**

If a pleading, motion, affidavit, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, affidavit, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, including sanctions permitted pursuant to Rule 11 of the Rules of Civil Procedure, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, affidavit, or other paper, including reasonable attorney fees.

## **RULE 17. DISCOVERY**

### **Rule 17.01. Applicability**

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

### **Rule 17.02. Regulation of Discovery**

Discovery in adoption matters shall be governed by Rules 26 through 37 of the Minnesota Rules of Civil Procedure.

## **RULE 18. DEFAULT**

### **Rule 18.01. Procedure**

If a party fails to appear, as that term is defined in Rule 5.01 of the Rules of Civil Procedure, after being properly served with a notice pursuant to Rule 29, the court may take testimony in support of the petition. If the court determines that the petition is proven by the applicable burden of proof and the adoption is in the best interests of the child, the court shall enter an order granting the relief sought. The court shall not grant a default if a party was not served with notice within the time period set forth in Rule 29. The court shall not grant a default regarding the issue of consent to adopt.

### **2004 Advisory Committee Comment**

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

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### **RULE 19. SETTLEMENT**

#### **Rule 19.01. Generally**

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

#### **Rule 19.02. Partial Settlement**

The parties may enter into a settlement of one or more issues and shall proceed to final hearing pursuant to Rule 39. Any remaining contested issues shall proceed to trial pursuant to Rule 42.

#### **Rule 19.03. Content of Settlement Agreement**

Any settlement agreement shall include information that identifies:

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

#### **Rule 19.04. Procedure**

Every settlement agreement shall be filed with the court or stated and agreed to on the record by the settling parties. Before approving a settlement agreement, the court shall determine that the agreement is in the best interests of the child and that each party to the agreement understands the content and consequences of the settlement agreement and voluntarily consents to the agreement. If the court approves the settlement agreement, it shall issue an order, judgment, or decree as appropriate. If the court rejects the settlement agreement, it shall advise the parties of this decision in writing or on the record and the matter shall proceed as any other contested adoption matter.

### **RULE 20. PARTIES**

#### **Rule 20.01. Party Status**

Parties to an adoption matter shall include:

- (a) the child's guardian ad litem;
- (b) the adoptee, if age ten (10) or older;
- (c) the child's legal custodian;
- (d) the child's legal guardian;
- (e) the petitioner;
- (f) the child's biological parent, if the consent of the biological parent is required and has not been executed pursuant to Rule 31;
- (g) the child's Indian tribe, if the child is an Indian child and the tribe is or was a party in an underlying juvenile protection matter as defined in Rule 2.01(k) of the Rules of Juvenile Protection Procedure;
- (h) the responsible social services agency, if the child is under the guardianship of the Commissioner of Human Services;
- (i) the child placing agency, if the child has been placed;

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- (j) any person who intervenes as a party pursuant to Rule 21; and
- (k) any person who is joined as a party pursuant to Rule 22.

### **Rule 20.02. Rights of Parties**

A party shall have the right to:

- (a) notice pursuant to Rule 29;
- (b) legal representation pursuant to Rule 23;
- (c) be present at all hearings unless excluded pursuant to Rule 8;
- (d) conduct discovery pursuant to Rule 17;
- (e) bring motions before the court pursuant to Rule 15;
- (f) participate in settlement agreements pursuant to Rule 19;
- (g) subpoena witnesses pursuant to Rule 13;
- (h) make argument in support of or against the petition;
- (i) present evidence;
- (j) cross-examine witnesses;
- (k) ask the court to order that witnesses be sequestered;
- (l) request review of the referee's findings and recommended order pursuant to Rule 6, if a referee presides over the matter;
- (m) bring post-trial motions pursuant to Rules 44 and 45;
- (n) appeal from orders of the court pursuant to Rule 46; and
- (o) any other rights as set forth in statute or these rules.

### **Rule 20.03. Parties' Addresses**

It shall be the responsibility of the petitioner to set forth in the petition the names and addresses of all parties if known to the petitioner after reasonable inquiry. It shall be the responsibility of each party to inform the court administrator of any change of address. For good cause shown, the court may grant a party's request to keep the party's address confidential.

## **RULE 21. INTERVENTION**

### **Rule 21.01. Intervention of Right**

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

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

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

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

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### **Rule 21.02. Parent Intervention Prohibited**

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

### **Rule 21.03. Permissive Intervention**

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

**Subd. 2. Procedure.** A person or agency seeking permissive intervention shall file with the court and serve upon all parties a notice of motion and motion to intervene pursuant to Rule 15. The motion form shall be available from the court administrator and shall state the nature and extent of the person's interest in the child and the reason(s) that the person's intervention would be in the best interests of the child. A hearing on a motion to intervene shall be held within ten (10) days of the filing of the motion to intervene.

### **Rule 21.04. Effect of Intervention**

The court may conduct hearings, make findings, and issue orders at any time prior to intervention being accomplished or denied. The intervention shall be effective as of the date accomplished or granted and shall not affect prior proceedings and decisions of the court, unless otherwise ordered by the court or required by the Indian Child Welfare Act.

## **RULE 22. JOINDER**

### **Rule 22.01. Procedure**

The court sua sponte, or upon notice of motion and motion of a party pursuant to Rule 15, may join a person or entity as a party if the court finds that joinder is:

- (a) necessary for a just and complete resolution of the matter; and
- (b) in the best interests of the child.

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

## **RULE 23. RIGHT TO REPRESENTATION; APPOINTMENT OF COUNSEL**

### **Rule 23.01. Right to Representation**

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

### **Rule 23.02. Appointment of Counsel**

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

**Subd. 2. Putative Father.** Pursuant to Minnesota Statutes § 259.52, subd. 12, upon proof of indigency, a putative father who has registered with the fathers' adoption registry, has

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received a notice to registered putative father, and has timely filed an intent to claim paternal rights form with the court administrator, shall be appointed counsel at public expense.

### **2004 Advisory Committee Comment**

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

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

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

### **Rule 23.03. Representation of Responsible Social Services Agency**

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

### **Rule 23.04. Biological Parent Counsel in Direct Placement Adoption**

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

**Subd. 2. Waiver of Right to Counsel.** A biological parent may waive the right to counsel only by written waiver signed and filed with the court at the time the biological parent’s consent to the adoption is executed pursuant to Minnesota Statutes § 259.47, subd. 7.

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

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

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### **Rule 23.05. Certificate of Representation**

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

### **Rule 23.06. Withdrawal of Counsel**

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

- (a) all proceedings in the matter have been completed;
- (b) the attorney has been discharged by the client in writing or on the record;
- (c) the court grants the attorney's ex parte motion for withdrawal; or
- (d) the court approves the attorney's ex parte written substitution of counsel.

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

## **RULE 24. GUARDIAN AD LITEM**

### **Rule 24.01. Appointment**

**Subd. 1. Generally.** A guardian ad litem appointed to serve in a juvenile protection matter, as defined in Rule 2.01(k) of the Rules of Juvenile Protection Procedure, shall continue to serve in the adoption matter following a termination of parental rights or transfer of guardianship to the Commissioner of Human Services. In any other adoption matter, the court may appoint a guardian ad litem. The guardian ad litem shall advocate for the best interests of the child and shall continue to serve until the adoption decree is entered pursuant to Rule 43.

**Subd. 2. Guardian Ad Litem Not Also Attorney for Child.** Counsel for the child shall not also serve as the child's guardian ad litem or as legal counsel for the guardian ad litem.

### **2004 Advisory Committee Comment**

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

Rule 24.01 is intended to reflect the clear legislative mandate that the guardian ad litem in a juvenile protection matter shall continue to serve until the adoption decree is entered. See Minnesota Statutes § 260C.317, subd. 3, and Rule 26.03 of the Rules of Juvenile Protection Procedure. It is preferable that the same individual serve continuously as the child's guardian ad litem for both the juvenile protection matter and the adoption matter. However, if that is not practicable, the guardian ad litem program shall assign another individual to serve as the child's guardian ad litem in the adoption matter following the termination of parental rights in the juvenile protection matter. Upon the assignment of a new individual to serve as guardian ad litem, the Court shall issue a new appointment order.

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### **Rule 24.02. Responsibilities**

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

### **Rule 24.03. Reimbursement**

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

#### **2004 Advisory Committee Comment**

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

## **RULES 25. METHODS OF FILING AND SERVICE**

### **Rule 25.01. Types of Filing**

**Subd. 1. Generally.** Any paper may be filed with the court either personally, by U.S. mail, or by facsimile transmission.

**Subd. 2. Filing by Facsimile Transmission.** Any paper may be filed with the court by facsimile transmission. Filing shall be deemed complete at the time the facsimile transmission is received by the court. The facsimile shall have the same force and effect as the original. Only facsimile transmission equipment that satisfies the published criteria of the supreme court shall be used for filing in accordance with this rule.

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

- (a) a \$5 transmission fee, unless otherwise provided by statute or rule or otherwise ordered by the court;
- (b) the original signed document; and
- (c) the applicable filing fee, if any.

**Subd. 4. Noncompliance.** Upon failure to comply with the requirements of this rule, the court may make such orders as are just including, but not limited to, an order striking pleadings or parts thereof, staying further proceedings until compliance is complete, or dismissing the adoption matter, proceeding, or any part thereof.

### **Rule 25.02. Types of Service**

**Subd. 1. Personal Service.** Personal service means personally delivering the original document to the person to be served or leaving it at the person's home or usual place of abode with a person of suitable age and discretion residing therein, unless the court authorizes service by publication.

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

**Subd. 3. Publication.** Service by publication means the publication in full of the summons, notice, or other papers in the regular issue of a qualified newspaper, once each week for the number of weeks specified pursuant to Rule 29.04, subd. 2. Service by publication substitutes for personal service where authorized by the court. The court shall authorize service by publication only if the petitioner has filed a written statement or affidavit describing unsuccessful efforts to locate the party to be served. Service by publication shall be completed by the petitioner in a location approved by the court.

**Subd. 4. Facsimile Service.** Service by facsimile means transmission by facsimile equipment that satisfies the published criteria of the supreme court, addressed to the person to be served.

### **Rule 25.03. Service by Facsimile Transmission**

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

### **Rule 25.04. Service Upon Counsel; Social Services Agency**

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

### **Rule 25.05. Service of Subpoena**

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

### **Rule 25.06. Completion of Service**

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

### **Rule 25.07. Proof of Service**

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

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

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

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### **RULE 26. COMMENCEMENT OF ADOPTION MATTER**

#### **Rule 26.01. Commencement of an Adoption Matter**

An adoption matter is commenced by filing:

- (a) a motion for a direct placement preadoptive custody order pursuant to Rule 27;
- (b) an adoption petition; or
- (c) a motion for waiver of agency placement pursuant to Minnesota Statutes § 259.22, subd 2(d).

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

### **RULE 27. DIRECT PLACEMENT – NON-EMERGENCY**

#### **Rule 27.01. Notice of Motion and Motion for a Preadoptive Custody Order**

In a direct adoptive placement, the petitioner shall file with the court and serve a notice of motion and motion for a preadoptive custody order upon:

- (a) the biological mother;
- (b) the biological father if his consent is required;
- (c) any parent whose consent is required; and
- (d) the Indian tribe, if the child is an Indian child.

#### **Rule 27.02. Timing**

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

#### **Rule 27.03. Content**

A notice of motion and motion for a preadoptive custody order in a direct placement adoption shall be in writing and shall contain or have attached:

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

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

- (d) a statement that the prospective adoptive parent meets the residence requirements;
- (e) an affidavit of intent to remain a resident of the state for at least three (3) months after the child is placed in the prospective adoptive home;
- (f) a notice of intent to file an adoption petition;
- (g) the adoption study required pursuant to Rule 35;
- (h) an itemized statement of expenses that have been paid and an estimate of expenses that will be paid by the prospective adoptive parents to the biological parents, any agency, attorney, or other party in connection with the prospective adoption; and
- (i) the name of counsel for each party, if any.

### **Rule 27.04. Decision and Order**

The court shall decide a motion for a preadoptive custody order within thirty (30) days of the filing of the motion or by the anticipated placement date stated in the motion, whichever is earlier.

## **RULE 28. DIRECT PLACEMENT – EMERGENCY**

### **Rule 28.01. Notice of Motion and Motion for an Emergency Preadoptive Custody Order**

In a direct adoptive placement where an emergency exists, the petitioner shall file with the court and serve a notice of motion and motion for a preadoptive custody order upon:

- (a) the biological mother;
- (b) the biological father if his consent is required,
- (c) any parent whose consent is required; and
- (d) the Indian tribe, if the child is an Indian child.

### **Rule 28.02. Content**

A notice of motion and motion for a preadoptive custody order in a direct placement adoption shall be in writing and shall contain or have attached:

(a) affidavits from the prospective adoptive parents and biological parents stating that an emergency order is needed because of the unexpected premature birth of the child or other extraordinary circumstances which prevented the completion of the requirements under Rule 27;

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

- (1) the child was conceived as the result of incest or rape;
  - (2) efforts to locate the father by the affiant or anyone acting on the affiant's behalf could reasonably result in physical harm to the biological mother or child; or
  - (3) efforts to locate the father by the affiant or anyone acting on the affiant's behalf could reasonably result in severe emotional distress of the biological mother or child;
- (c) a statement that the biological parents:

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- (1) have received the written statement of their legal rights and responsibilities prepared by the Department of Human Services; and
- (2) have been notified of their right to receive counseling; and
- (d) either:
  - (1) a completed adoption study report; or
  - (2) sworn affidavits stating whether the prospective adoptive parents or any person residing in the household have been convicted of a crime.

### **Rule 28.03. Decision and Order**

**Subd. 1. Generally.** An order granting or denying a motion for an emergency preadoptive custody order shall be issued within twenty-four (24) hours of the time it is filed. Any judge of district court may decide a motion for emergency preadoptive custody. An order granting the motion shall direct that an adoption study be commenced immediately, if that has not occurred, and that the agency conducting the study shall supervise the emergency placement.

**Subd. 2. Expiration of Emergency Order.** A court may issue an emergency order granting preadoptive custody of a child to a prospective adoptive parent for up to fourteen (14) days. An emergency order under this rule expires fourteen (14) days after it is issued. If the requirements for direct placement under Rule 27 are completed and a preadoptive custody motion is filed on or before the expiration of the emergency order, placement may continue until the court decides on the motion. The court shall decide the preadoptive custody motion within seven (7) days of filing.

## **RULE 29. NOTICE OF FINAL HEARING OR TRIAL**

### **Rule 29.01. Notice**

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

**Subd. 2. Upon Whom.** A notice of hearing shall be served by the petitioner upon:

- (a) all parties under Rule 20;
- (b) the parent of a child if:
  - (1) the person's name appears on the child's birth record as a parent;
  - (2) the person has substantially supported the child;
  - (3) the person either was married to the person designated on the birth record as the biological mother within the 325 days before the child's birth or married that person within the ten (10) days after the child's birth;
  - (4) the person is openly living with the child or the person designated on the birth record as the biological mother of the child, or both;
  - (5) the person has been adjudicated the child's parent;
  - (6) the person has filed a paternity action within thirty (30) days after the child's birth and the action is still pending; or
  - (7 vii) the person and the mother of the child signed a declaration of parentage before August 1, 1995, which has not been revoked or a recognition of parentage, which has not been revoked or vacated;
- (c) a person who has timely registered pursuant to Minnesota Statutes § 259.52;
- (d) the responsible social services agency;

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- (e) any parent who has abandoned the child or who has lost custody of the child through a divorce decree or dissolution of marriage; and
- (f) the child's Indian tribe, if the child is an Indian child.

### **Rule 29.02. Notice Not Required**

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

- (a) persons whose parental right have been terminated;
- (b) persons who have not timely registered pursuant to Minnesota Statutes § 259.52;
- (c) persons who have waived notice of hearing pursuant to Minnesota Statutes § 259.49, subd. 1;
- (d) a putative father who has timely registered with the Fathers' Adoption Registry but who fails to timely file an intent to claim parental rights form with the court; and
- (e) a putative father who has registered with the Fathers' Adoption Registry pursuant to Minnesota Statutes § 259.52 and who has filed a completed denial of paternity form and a consent to adoption form.

### **Rule 29.03. Content of Notice of Hearing**

A notice of hearing shall contain or have attached:

- (a) an adoption petition;
  - (b) a statement setting forth the time and place of the hearing;
  - (c) a statement describing the purpose of the hearing as either:
    - (1) a final hearing pursuant to Rule 39 if it is an uncontested adoption matter;
- or
- (2) a pretrial conference pursuant to Rule 41 if it is a contested adoption matter;
  - (d) a statement explaining the right to representation pursuant to Rule 23;
  - (e) a statement explaining intervention pursuant to Rule 21;
  - (f) a statement explaining that if the person fails to appear at the hearing, the court may still conduct the hearing and grant the adoption pursuant to Rule 18; and
  - (g) a statement explaining that it is the responsibility of the individual to notify the court administrator of any change of address.

### **Rule 29.04. Service of Notice of Hearing**

**Subd. 1. Timing.** A notice of hearing shall be served, within or without the state, at least thirty (30) days before the date of the hearing.

#### **Subd. 2. Method of Service – Parent.**

- (a) **Personal Service.** The petitioner shall serve the notice of hearing upon the child's parents by personal service.
- (b) **Service by Publication.** If personal service cannot be made upon the parent, the petitioner or petitioner's attorney shall file an affidavit setting forth the effort that was made to locate the parent, and the names and addresses of the known kin of the child. If satisfied that the parent cannot be served personally, the court shall order three (3) weeks published notice to be given, the last publication to be at least ten (10) days before the date set for the hearing. Service by publication shall be completed by the petitioner in a location approved by the court. Where service is made by publication, the court may cause such further notice to be given as it deems

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just. If, in the course of the proceedings, the court determines that the interests of justice will be promoted it may continue the proceeding and require that such notice as it deems proper shall be served on any person. In the course of the proceedings the court may enter reasonable orders for the protection of the child if the court determines that the best interests of the child require such an order.

**Subd. 3. U.S Mail.** The petitioner shall serve the notice of hearing by U.S. Mail upon the child's guardian ad litem; the child if age ten (10) or older; the child's Indian custodian, if the child is an Indian child; the child's legal custodian or legal guardian, if other than the Commissioner of Human Services; any person who has intervened as a party; any person who has been joined as a party; the responsible social services agency; and any person who has timely complied with the requirements of Minnesota Statutes § 259.52.

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

### **RULE 30. FATHERS' ADOPTION REGISTRY**

#### **Rule 30.01. Requirement to Search Fathers' Adoption Registry Before Adoption Petition Granted; Proof of Search**

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

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

#### **2004 Advisory Committee Comment**

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

#### **Rule 30.02. Fees for Fathers' Adoption Registry**

Pursuant to Minnesota Statutes 259.52, subd. 2, in addition to any other filing fees, the court administrator shall assess an adoption filing fee surcharge on each adoption petition filed in the district court for the purpose of implementing and maintaining the fathers' adoption registry. The court administrator shall forward fees collected under this rule to the Commissioner of Finance for deposit into the state government special revenue fund to be appropriated to the

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Commissioner of Health to administer the fathers' adoption registry. The fee shall not be assessed in adoptions or re-adoptions of children adopted in intercountry adoptions.

### **RULE 31. CONSENT TO ADOPTION**

#### **Rule 31.01. Persons and Agencies Required to Consent**

Written consent to an adoption is required by the following:

- (a) the child to be adopted, if the child is fourteen (14) years of age or older;
- (b) the adult to be adopted, whose consent shall be the only consent required;
- (c) a registered putative father, if he has:
  - (1) been notified under the fathers' adoption registry;
  - (2) timely filed an intent to claim parental rights form; and
  - (3) timely filed a paternity action;
- (d) the child's parents or legal guardian, except:
  - (1) a parent not entitled to notice of the proceedings;
  - (2) a parent who has abandoned the child or a parent who has lost custody of the child through a divorce decree or a decree of dissolution and upon whom notice has been served as required under Rule 29; and
  - (3) a parent whose parental rights to the child have been terminated by a juvenile court order or through a decree in a prior adoption matter;
- (e) if there is no parent or legal guardian qualified to consent to the adoption, the consent may be given by the Commissioner of Human Services; and
- (f) the Commissioner of Human Services or agency having authority to place the child for adoption who shall have the exclusive right to consent to the adoption of such child.

#### **2004 Advisory Committee Comment**

The Advisory Committee recommends that, with respect to a parent who has abandoned the child or a parent who has lost custody of the child through a divorce decree or a decree of dissolution, it is best practice to either obtain a parent's consent as provided under Rule 31 or to commence a termination of parental rights proceeding pursuant to the Rules of Juvenile Protection Procedure.

#### **Rule 31.02. Notice of Intent to Consent to Adoption**

**Subd. 1. Consent of Biological Parents.** Unless all biological parents from whom consent is required under Rule 31 are involved in making the adoptive placement and intend to consent to the adoption, a biological parent who intends to execute a consent to an adoption must give notice to the child's other biological parent of the intent to consent to the adoption prior to or within seventy-two (72) hours following the placement of the child if the other biological parent's consent to the adoption is required under Rule 31. Notice of intent to consent to adoption shall be provided to the other biological parent according to the Rules of Civil Procedure for service of a summons and complaint. The biological parent who receives notice shall have sixty (60) days after the placement of the child to serve upon the other biological parent either a consent pursuant to Rule 31 or a written objection to the adoption. If the biological parent who receives notice fails to consent or to respond with a written objection to the adoption within sixty (60) days after the adoptive placement, that parent shall be deemed to have irrevocably consented to the child's adoption.

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**Subd. 2. Consent of Minors.** If an unmarried parent who consents to the adoption of a child is under eighteen (18) years of age, the consent of the minor parent's parents or legal custodian or legal guardian, if any, also shall be required. If either or both parents are not required to consent pursuant to Rule 31.01(d), the consent of such parent shall be waived and the consent of the legal custodian or legal guardian only shall be sufficient. If there be neither parent nor legal custodian or legal guardian qualified to give such consent, the consent may be given by the Commissioner of Human Services. The responsible social services agency overseeing the adoption matter shall ensure that the minor parent is offered the opportunity to consult with an attorney, a member of the clergy, or a physician before consenting to adoption of the child. The advice or opinion of the attorney, clergy member, or physician shall not be binding on the minor parent. If the minor parent cannot afford the cost of consulting with an attorney, a member of the clergy, or physician, the county shall bear that cost. A parent or legal custodian or legal guardian of a minor or incapacitated person may not delegate the power to consent to adoption of a minor ward under Minnesota Statutes § 524.5-505(a).

### **Rule 31.03. Execution of Consent to Adoption**

**Subd. 1. Requirements of Consent.** Except as provided in subdivision 3, all consents to an adoption shall:

- (a) be in writing;
- (b) be executed before two competent witnesses;
- (c) be acknowledged by the consenting party;
- (d) be executed before a representative of the Commissioner of Human Services, the Commissioner's agent, or a licensed child-placing agency;
- (e) include a notice to the parent of the substance of Minnesota Statutes § 259.24, subd. 6a, providing for the right to withdraw consent; and
- (f) include the following written notice in all capital letters at least one-eighth inch high: "This agency will submit your consent to adoption to the court. The consent itself does not terminate your parental rights. Parental rights to a child may be terminated only by an adoption decree or by a court order terminating parental rights. Unless the child is adopted or your parental rights are terminated, you may be asked to support the child."

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

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

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

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### **Rule 31.04. Timing of Consent**

A consent to adoption form shall not be signed sooner than seventy-two (72) hours after the birth of a child. The seventy-two (72) hours is computed excluding the date of the birth and including Saturdays, Sundays, and legal holidays. A consent to adoption shall be executed by any person whose consent is required under Rule 31 within sixty (60) days after the child's placement in a prospective adoptive home.

### **Rule 31.05. Failure to Execute Consent**

With the exception of cases where a person receives notice under Minnesota Statutes § 259.24, subd. 2a, if a biological parent whose consent is required under Rule 31 does not execute a consent by the end of the period specified in Rule 31.04, the child placing agency shall notify the court and the court shall issue an order regarding continued placement of the child. The court shall order the local social services agency to determine whether to commence proceedings for termination of parental rights on grounds of abandonment as defined in Minnesota Statutes § 260C.301. The court may disregard the six-month and twelve-month requirements of Minnesota Statutes § 260C.201, subd. 11, in finding abandonment if the biological parent has failed to execute a consent within the time required under Rule 31.04 and has made no effort to obtain custody of the child.

### **Rule 31.06. Agreement Conferring Authority to Place for Adoption**

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

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

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

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

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

### **Rule 31.07. Consent to a Direct Placement Adoption Under Minnesota Statutes § 259.47**

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

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

**Subd. 3. Execution of Consent Before Judicial Officer – When Optional.** A biological parent whose consent to a direct placement adoption is required under Minnesota Statutes § 259.24 and who has received counseling through a licensed agency or a licensed social services professional trained in adoption issues, or any other parent or legal guardian whose consent to a direct placement adoption is required under Minnesota Statutes § 259.24, subd. 2, may choose to execute consent to the adoption under the procedures set forth in Minnesota Statutes § 259.24, subd. 5, and Rule 31.03, subd. 1, or at a consent hearing as described in subdivision 4.

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

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

- (a) the biological parent has had the opportunity to consult with independent legal counsel at the expense of the prospective adoptive parent, unless the biological parent knowingly waived the opportunity;
- (b) the biological parent was notified of the right to receive counseling at the expense of the prospective adoptive parent and has chosen to exercise or waive that right; and

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

### **Rule 31.08. Revocation of Consent to Adoption of a Non-Indian Child Under Minnesota Statutes § 259.24**

A parent's consent to adoption may be withdrawn for any reason within ten (10) working days after the consent is executed and acknowledged or pursuant to the law of the state where the consent is executed. Written notification of withdrawal of consent must be received by the agency to which the child was surrendered no later than the tenth working day after the consent is executed and acknowledged. On the day following the tenth working day after execution and acknowledgment, the consent shall become irrevocable, except upon order of a court of competent jurisdiction after written findings that consent was obtained by fraud. In proceedings to determine the existence of fraud, the adoptive parents and the child shall be made parties. The proceedings shall be conducted to preserve the confidentiality of the adoption process. There shall be no presumption in the proceedings favoring the biological parents over the adoptive parents. Failure to comply with the terms of a communication or contact agreement order entered by the court under Rule 32 is not grounds for revocation of a written consent to an adoption after that consent has become irrevocable.

### **Rule 31.09. Consent to Adoption of an Indian Child**

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

(a) executed in writing;

(b) recorded before the judge; and

(c) accompanied by the presiding judge's certificate that the terms and consequences of the consent were explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten (10) days after, the birth of the Indian child shall not be valid.

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

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

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### **2004 Advisory Committee Comment**

Rule 31.09 quotes the Indian Child Welfare Act. The regulations of the Bureau of Indian Affairs provide additional guidance as follows:

“In any proceeding for adoptive placement of an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of adoption by filing an instrument executed under oath by the parent stipulating his or her intention to withdraw such consent. The Court shall promptly notify the party or agency through whom adoptive placement was made and that party or agency shall insure the return of the child to the parent as soon as possible.”

### **RULE 32. COMMUNICATION OR CONTACT AGREEMENT**

#### **Rule 32.01. Persons Who May Enter Into a Communication or Contact Agreement**

**Subd. 1. Parties.** A communication or contact agreement must be in writing and may be entered into between the following persons:

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

**Subd. 2. Approval.** A communication or contact agreement must be approved as follows:

- (a) The responsible social services agency must approve, in writing, any agreement involving a child in the legal custody or guardianship of the Commissioner of Human Services.
- (b) A child placing agency must approve, in writing, any agreement involving a child under its legal custody or guardianship.
- (c) A biological parent must approve in writing an agreement between an adopting parent and any other birth relative or foster parent, unless an action has been filed against the biological parent by a county under Minnesota Statutes Chapter 260C.

### **2004 Advisory Committee Comment**

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

#### **Rule 32.02. Filing of Agreement**

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

#### **Rule 32.03. Written Order Required**

A communication or contact agreement is not legally enforceable unless the terms of the agreement are contained in a written court order entered pursuant to these rules.

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### **Rule 32.04. Timing**

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

### **Rule 32.05. Requirements for Entry of Order**

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

### **Rule 32.06. Service of Order**

The court administrator shall mail a certified copy of the communication or contact agreement order to the parties to the agreement or their legal representatives at the addresses provided by the petitioners.

### **Rule 32.07. Enforcement – Family Court**

**Subd. 1. Filing Requirement.** A communication or contact agreement order entered under this rule may be enforced by filing with the family court:

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

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

### **Rule 32.08. Failure to Comply with Order**

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

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

### **Rule 32.09. Modification**

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

- (a) the modification is agreed to by the parties to the agreement; or
- (b) exceptional circumstances have arisen since the agreed order was entered that justify modification of the order.

## **RULE 33. PETITION**

### **Rule 33.01. Residency of Petitioner**

**Subd. 1. Residency Requirement.** Any person who has resided in the state for one (1) year or more may petition to adopt.

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**Subd. 2. Exception to Residency Requirement.** The one (1) year residency requirement may be reduced to thirty (30) days by the court in the best interest of the child. The court may waive any residency requirement of this rule if the petitioner is an individual related to the child, as defined in Rule 2.01(o), or as a member of a child's extended family or important friend with whom the child has resided or had significant contact or, upon a showing of good cause, the court is satisfied that the proposed adoptive home and the child are suited to each other.

### **Rule 33.02. Residency of Child to be Adopted**

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

### **Rule 33.03. Timing**

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

- (a) that the time for filing a petition be extended because of the child's special needs as specified under Minnesota Statutes § 259.22, subd. 4,
- (b) that, based on a written plan for completing filing of the petition, including a specific timeline, to which the prospective adoptive parents have agreed, the time for filing a petition be extended long enough to complete the plan because such an extension is in the best interests of the child and additional time is needed for the child to adjust to the adoptive home; or
- (c) that the child be removed from the prospective adoptive home.

### **Rule 33.04. Conditions for Filing Petition for Adoption of a Child; Exceptions**

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

- (a) the Commissioner of Human Services;
- (b) an agent of the Commissioner of Human Services; or
- (c) a child-placing agency as defined in Rule 2.01(g).

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

- (a) the child is over fourteen (14) years of age;
- (b) the petitioner is an individual who is related to the child as defined in Rule 2.01(o);
- (c) the child has been lawfully placed under the laws of another state while the child and the petitioner resided in that state;

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(d) the court waives the requirement of subdivision 1 in the best interests of the child and the placement is not made by transfer of physical custody of the child from a biological parent or legal guardian to the prospective adoptive home; or

(e) the child has been lawfully placed pursuant to an order for direct placement pursuant to Rule 27.

### **Rule 33.05. Content**

**Subd. 1. Allegations.** An adoption petition may be filed regarding one or more children, shall be verified by the petitioner upon information and belief, and shall allege:

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

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

(c) the date the petitioner acquired physical custody of the child and from what person or agency;

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

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

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

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

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

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

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

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

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

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

**Subd. 2. Exception to Content.** In agency placements, the information required in subdivision 1(e) and (f) shall not be required to be alleged in the petition but shall be provided to the court by the Commissioner of Human Services. In the case of an adoption by a stepparent, the parent who is the stepparent's spouse shall not be required to join the petition.

**Subd. 3. Attachments.** The following shall be filed with the petition:

(a) the adoption study required under Rule 36, except if the petitioner is an individual related to the child as defined in Rule 2.01(o);

(b) any biological parent history required under Minnesota Statutes § 259.43, except if the petitioner is the child's stepparent; and

(b) proof of service.

**Subd. 4. Other Documents to be Filed.** The following shall be filed with the court prior to finalization of the adoption:

(a) a certified copy of the child's birth record;

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- (b) a certified copy of the findings and order for termination of parental rights, if any;
- (c) a copy of the communication or contact agreement, if any;
- (d) certification that the Fathers' Adoption Registry has been searched as required under Rule 30;
- (e) the original of each consent to adoption required under Rule 31; and
- (f) the post-placement assessment report required under Rule 36.

**Subd. 5. Missing Information.** If any information required by subdivision 1 or 2 is unknown at the time of the filing of the petition, as soon as such information becomes known to the petitioner it shall be provided to the court and parties either orally on the record, by sworn affidavit, or by amended petition. If presented orally on the record, the court shall annotate the petition to reflect the updated information.

**Subd. 6. Acceptance Despite Missing Information.** The court administrator shall accept a petition for filing even if, on its face, the petition appears to be incomplete or does not include all information specified in subdivision 1 and 2. The presiding judge shall determine whether the petition complies with the requirements of these rules.

### **Rule 33.06. Verification**

The petition shall be signed and dated by the petitioner and verified upon information and belief.

### **Rule 33.07. Amendment**

**Subd. 1. Uncontested Petitions.** An adoption petition may be amended at any time prior to the conclusion of the final hearing pursuant to Rule 39.

#### **Subd. 2. Contested Petitions.**

(a) **Prior to Trial.** An adoption petition may be amended at any time prior to the commencement of a trial pursuant to Rule 42. The petitioner shall provide notice of the amendment to all parties at least seven (7) days prior to the commencement of the trial. When the petition is amended, the court shall grant all other parties sufficient time to respond to the amendment.

(b) **After Trial Begins.** The petition may be amended after the trial has commenced if the court finds that the amendment does not prejudice a party and all parties are given sufficient time to respond to the proposed amendment.

### **Rule 33.08. Statement of Expenses**

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

## **RULE 34. ACTIONS UPON FILING OF PETITION**

### **Rule 34.01. Notice to Commissioner**

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

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- (a) the Commissioner of Human Services; and
- (b) if the petition relates to a child, the agency identified below:
  - (1) in an agency or a direct placement adoption, the court shall provide the petition to the agency supervising the placement; and
  - (2) in all other instances not described in clause (1), the court shall provide the petition to the local social services agency of the county in which the prospective adoptive parent lives if the child is to be adopted by an individual who is related to the child as defined in Rule 2.01(o).

### **RULE 35. ADOPTION STUDY**

#### **Rule 35.01. Adoption Study Required; Exception**

A written adoption study report shall be completed by an agency and filed with the court in all adoptions, except in an adoption by an individual related to the child as defined in Rule 2.01(o) or the adoption of an adult.

#### **Rule 35.02. Adoption Study Report**

An adoption study report must include the following information about each prospective adoptive parent:

- (a) a copy of the background check pursuant to Minnesota Statutes § 259.41, subd. 3;
- (b) an evaluation of the effect of any criminal conviction on the ability to care for a child;
- (c) an evaluation of the effect of any finding of substantiated maltreatment on the ability to care for a child;
- (d) an evaluation of medical and social history;
- (e) an assessment of current health;
- (f) an assessment of potential parenting skills and an assessment of ability to provide adequate financial support for a child; and
- (g) an assessment of the level of knowledge and awareness of adoption issues, including, where appropriate, matters relating to interracial, cross-cultural, and special needs adoptions.

#### **Rule 35.03. Direct Placement; Background Check Incomplete**

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

- (a) state whether the adoptive parent or any other person residing in the household is the subject of an open investigation of, or has been the subject of a substantiated allegation of, child or vulnerable adult maltreatment within the past ten (10) years;
- (b) include a complete description of the crime, open investigation, or substantiated allegation of child abuse or vulnerable adult maltreatment, and a complete description of any sentence, treatment, or disposition; and
- (c) include the following statement: “Petitioner acknowledges that if, at any time before the adoption is final, a court receives evidence leading to a conclusion that a prospective adoptive parent knowingly gave false information in the affidavit, it shall be determined that the adoption of the child by the prospective adoptive parent is not in the best interests of the child.”

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### **Rule 35.04. Background Check; Timing**

**Subd. 1. Timing of Background Check.** The background check required in Rule 35.03 shall be completed before an adoption petition is filed.

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

**Subd. 3. Agency Unable to Complete Background Check.** In the event that an agency is unable to complete any of the background records checks, the agency shall submit with the adoption petition an affidavit documenting the agency's efforts to complete the background checks.

### **Rule 35.05. Updates to Adoption Study Report; Period of Validity**

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

### **Rule 35.06. Filing of Adoption Study Report**

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

**Subd. 2. Direct Adoptive Placement.** The adoption study report shall be filed with the court in support of a motion for a preadoptive custody order pursuant to Rule 27, or, if the study and report are complete, in support of an emergency preplacement order pursuant to Rule 28.

### **Rule 35.07. Foster Parent Assessment May be Used for Adoption Study**

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

## **RULE 36. POST-PLACEMENT ASSESSMENT REPORT**

### **Rule 36.01. Timing**

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

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

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### **Rule 36.02 . Content**

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

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

### **Rule 36.03. Background Check**

If an adoption study is not required because the petitioner is an individual who is related to the child as defined in Rule 2.01(o), unless waived by the court the agency, as part of its post-placement assessment report, shall conduct a background check meeting the requirements of Minnesota Statutes § 259.41, subdivision 3(b).

### **Rule 36.04. Waiver by Court**

The post-placement assessment report and the background check may be waived by the court pursuant to Minnesota Statutes § 259.53.

## **RULE 37. ANSWER WHEN CONTESTED ADOPTION MATTER**

### **Rule 37.01. Answer When Contested**

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

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

### **Rule 37.02. Notice of Contested Adoption**

**Subd. 1. Content.** A Notice of Contested Adoption shall:

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

**Subd. 2. Service.** The Notice of Contested Adoption shall be served upon all parties in the same fashion as other motions are served under these Rules.

### **Rule 37.03. Pre-Trial Conference**

The court shall schedule a pre-trial conference within fifteen (15) days of the filing of a Notice of Contested Adoption and provide notice of hearing to the parties.

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### **RULE 38. VOLUNTARY WITHDRAWAL; INVOLUNTARY DISMISSAL; SUMMARY JUDGMENT**

#### **Rule 38.01. Voluntary Withdrawal of Petition**

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

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

#### **Rule 38.02. Involuntary Dismissal of Petition**

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

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

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

#### **Rule 38.03. Summary Judgment**

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

### **RULE 39. FINAL HEARING IN UNCONTESTED MATTERS**

#### **Rule 39.01. Generally**

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

#### **Rule 39.02. Commencement**

A final hearing relating to an uncontested adoption petition shall be held not sooner than ninety (90) days after the child is placed, unless there is a waiver pursuant to Rule 33, but not later than ninety (90) days after the adoption petition is filed. If the petitioner has not requested a hearing date within sixty (60) days of the filing of the petition, the court administrator may schedule a hearing and serve notice of such hearing pursuant to Rule 29.04.

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### **Rule 39.03. Hearing Procedure**

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

- (a) verify the name, age, and current address of the child who is the subject of the proceeding, except as provided in Rule 20.03;
- (b) determine whether the Indian child's tribe has been notified, if the child has been determined to be an Indian child;
- (c) determine whether all parties are present and identify those present for the record;
- (d) determine whether any necessary biological parent, guardian, or other person from whom consent to the adoption is required or whose parental rights will need to be terminated is present;
- (e) determine whether notice requirements have been met, and, if not, whether the affected person waives notice; and
- (f) determine whether the Interstate Compact on the Placement of Children applies.

### **Rule 39.04. Standard of Proof**

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

#### **2004 Advisory Committee Comment**

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

### **Rule 39.05. Timing of Decision**

Within fifteen (15) days of the conclusion of the final hearing in an uncontested adoption, the court shall issue findings of fact, conclusions of law, order for judgment, and adoption decree pursuant to Rule 43. For good cause, the court may extend this period for an additional fifteen (15) days.

## **RULE 40. CONSOLIDATION; BIFURCATION**

### **Rule 40.01. Consolidation Generally**

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

- (a) order a joint hearing or trial of any or all the adoption matters;
- (b) order consolidation of all such adoption matters;
- (c) order that the matters be heard sequentially; and
- (d) make any orders appropriate to avoid unnecessary delay or costs.

### **Rule 40.02. Consolidation with Other Proceedings; Competing Petitions**

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

**Subd. 2. Competing Petition.** When multiple adoption petitions have been filed with respect to the same child who is under the guardianship of the Commissioner of Human Services,

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the court shall consolidate the matters for trial. In all other cases, when two or more parties have petitioned for the adoption of the same child, the court may, after consideration of the factors specified in subdivision 4, order the petitions to be tried together.

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

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

### **2004 Advisory Committee Comment**

In determining whether to consolidate an adoption matter and termination of parental rights proceeding, the court must consider the impact of the consolidation on the eligibility of the child for financial adoption assistance or other financial benefits available under Minnesota Statutes § 259.67.

### **Rule 40.03. Bifurcation**

**Subd. 1. Permissive Bifurcation.** The court may order a trial pursuant to Rule 42 to be bifurcated as to one or more claims or issues.

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

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

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

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

## **RULE 41. PRETRIAL CONFERENCE IN CONTESTED MATTERS**

### **Rule 41.01. Timing**

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

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### **Rule 41.02. Purpose**

The purposes of a pretrial conference shall be to:

- (a) determine whether a settlement of any or all of the issues has occurred or is possible;
- (b) determine whether all parties have been served and, if not, review the efforts that have taken place to date to serve all parties;
- (c) determine whether all parties who seek legal representation have obtained legal representation and determine that attorneys of record have filed certificates of representation with the court;
- (d) advise any child or the child's parent or legal custodian or legal guardian who appears in court and is unrepresented of the right to representation pursuant to Rule 23;
- (e) determine whether the child shall be present and testify at trial and, if so, under what circumstances;
- (f) identify any unresolved discovery matters;
- (g) resolve any pending pretrial motions;
- (h) determine the order in which evidence will be presented pursuant to Rule 43;
- (i) identify and narrow issues of law and fact for trial, including identification of:
  - (1) the factual allegations admitted or denied;
  - (2) any stipulations to foundation and relevance of documents; and
  - (3) any other stipulations, admissions, or denials;
- (h) exchange witness lists and a brief summary of each witness' testimony;
- (i) set a deadline for the exchange of exhibits prior to trial and determine how exhibits shall be marked prior to the start of trial;
- (g) confirm the trial date and estimate the length of trial; and
- (k) determine any other relevant issues.

### **2004 Advisory Committee Comment**

Rule 41.02(e) addresses the need to determine whether the child will testify. The intent of the rule is to provide that an order protecting the child from testifying or placing conditions on the child's testimony can only be made after notice of motion and a hearing. The Committee intends that any such motion be heard and resolved at the pretrial conference.

### **Rule 41.03. Pretrial Order**

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

## **RULE 42. TRIAL IN CONTESTED MATTERS**

### **Rule 42.01. Generally**

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

### **Rule 42.02. Commencement**

A trial on an adoption petition shall commence within ninety (90) days of the filing of the petition or notice of a contested hearing, whichever is later. The trial shall be completed within

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thirty (30) days of commencement. Either or both deadlines may be extended for up to an additional thirty (30) days upon a showing of good cause and a finding by the court that the extension is in the best interests of the child.

### **Rule 42.03. Trial Procedure**

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

- (a) verify the name, age, and current address of the child who is the subject of the proceeding, except as provided in Rule 20.03;
- (b) determine whether the Indian child's tribe has been notified, if the child has been determined to be an Indian child;
- (c) determine whether all parties are present and identify those present for the record;
- (d) determine whether any necessary biological parent, guardian, or other person from whom consent to the adoption or whose parental rights will need to be terminated is present; and
- (e) determine whether notice requirements have been met, and, if not, whether the affected person waives notice.

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

- (a) The parties, in the order determined by the court at the pretrial conference, may make an opening statement or may make a statement immediately before offering evidence on their own petition and the statement shall be confined to the facts expected to be proved.
- (b) The parties, in the order determined by the court at the pretrial conference, may offer evidence.
- (c) The parties, in the order determined by the court at the pretrial conference, may offer evidence in rebuttal.
- (d) When evidence is presented, the parties may, in the order determined by the court at the pretrial conference, cross-examine the witnesses.
- (e) At the conclusion of the evidence, the parties may make closing statements in the reverse order in which they presented their evidence.
- (f) If a written argument is to be submitted, it shall be submitted within fifteen (15) days of the conclusion of testimony, and the trial is not considered completed until the time for written arguments to be submitted has expired.

### **Rule 42.04. Standard of Proof**

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

#### **2004 Advisory Committee Comment**

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

### **Rule 42.05. Motion for Judgment at Conclusion of Trial**

A motion for a judgment may be made at the close of the evidence offered by an opponent or at the close of all evidence. A party who moves for a judgment at the close of the evidence offered by an opponent shall, after denial of the motion, have the right to offer evidence

## **IV. PROPOSED RULES OF ADOPTION PROCEDURE**

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as if the motion had not been made. A motion for a judgment shall state the specific grounds therefore.

### **Rule 42.06. Timing of Decision**

Within fifteen (15) days of the conclusion of the trial in a contested matter, the court shall issue findings of fact, conclusions of law, order for judgment, and adoption decree pursuant to Rule 44. For good cause, the court may extend this period for an additional thirty (30) days.

## **RULE 43. FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER FOR JUDGMENT, AND ADOPTION DECREE**

### **Rule 43.01. Denial of Adoption Petition**

If the court finds that the consent of the adult person to be adopted is not valid, the court shall deny the petition. The court may dismiss an adoption petition if appropriate legal grounds have not been proved. If the court is not satisfied that the proposed adoption is in the best interests of the child, the court shall deny the petition and:

- (a) order that the child be returned to the custody of the person or agency legally vested with permanent custody; or
- (b) order the case transferred for appropriate action and disposition by the court having jurisdiction to determine the custody and guardianship of the child.

### **Rule 43.02. Granting Adoption Petition**

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

### **Rule 43.03. Findings of Fact, Conclusions of Law, Order for Judgment, and Adoption Decree**

**Subd. 1. Findings of Fact in a Contested Adoption Matter.** In its decision in a contested adoption matter, the court shall make findings about:

- (a) the petitioner's full name and date of birth;
- (b) the petitioner's marital status;
- (c) whether petitioner has resided in Minnesota for at least one (1) year prior to filing the adoption petition or whether the residency requirement has been waived pursuant to Rule 33.01;
- (d) the date petitioner acquired physical custody of the child and from whom;
- (e) the type of placement, including whether it is an agency placement, a direct preadoptive placement, a relative placement, or some other type of placement;
- (f) whether three (3) months have passed since the date petitioner acquired physical custody of the child or whether residency requirement has been waived pursuant to Rule 33.02;
- (g) the child's date of birth and the child's city, county, state, and country of birth;

## **IV. PROPOSED RULES OF ADOPTION PROCEDURE**

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(h) whether a certified copy of the birth record of the child or of the adult to be adopted has been filed with the court;

(i) whether the post-placement report required under Rule 35 and the adoption study report required under Rule 36 have been filed with the court;

(j) whether the child owns property and, if so, a list of such property;

(k) whether all consents required under Rule 31 have been properly executed and filed with the court or whether orders for termination of parental rights have been entered;

(l) whether all notices required under Rule 29 have been properly served and proof of service has been filed with the court;

(m) whether, if applicable, a communication or contact agreement pursuant to Rule 32 has been properly executed and filed with the court and whether the court finds that the communication or contact agreement is in the best interests of the child;

(n) whether a statement of expenses paid by the petitioner pursuant to Rule 33.07 has been filed with the court and the expenses are approved;

(o) whether a search of the Fathers' Adoption Registry has been conducted and the results have been filed with the court pursuant to Rule 30; and

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

**Subd. 2. Findings of Fact in an Uncontested Adoption Matter.** In its decision in an uncontested adoption matter, the court:

(a) shall include findings about the issues identified in subdivision 1 (a), (b), (c), (d), (g), (j), and (m); and

(b) may include findings about the issues identified in subdivision 1 (e), (f), (h), (i), (k), (l), (n), (o), and (p).

**Subd. 3. Conclusions of Law.** In its decision, the court shall make conclusions of law about whether all of the allegations contained in the adoption petition have been proved by the applicable burden of proof and whether the adoption is in the child's best interests.

**Subd. 4. Order for Judgment.** If the court decides to grant the adoption petition, in its decision the court shall include an order:

(a) stating the child's new name;

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

(c) that an adoption decree shall be issued.

**Subd. 5. Adoption Decree.** If the court decides to grant the adoption petition, in its decision the court shall order that the child is the child of the petitioner and of any parent retaining parental rights.

## **IV. PROPOSED RULES OF ADOPTION PROCEDURE**

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### **Rule 43.04. Filing and Service**

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

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

## **RULE 44. POST-TRIAL MOTIONS**

### **Rule 44.01. Motion for Amended Findings**

Upon motion of a party served and heard not later than the times allowed for a motion for a new trial pursuant to Rule 44.02, the court may amend its findings or make additional findings, and may amend the judgment accordingly if judgment has been entered. The motion may be made with a motion for a new trial and may be made on the files, exhibits, and minutes of the court. The question of the sufficiency of the evidence to support the findings may be raised on appeal whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

### **Rule 44.02. Motion for New Trial**

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

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

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

**Subd. 2. Basis Of Motion.** A motion for a new trial shall be made pursuant to Rule 15 and shall be made based upon on the files, exhibits, and minutes of the court. Pertinent facts that would not be a part of the minutes may be shown by affidavit. A full or partial transcript of the court reporter's notes may be used on the hearing of the motion.

## **IV. PROPOSED RULES OF ADOPTION PROCEDURE**

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

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

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

### **Rule 44.03. Timing of Decision**

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

## **RULE 45. RELIEF FROM ORDER**

### **Rule 45.01. Clerical Mistakes**

Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time upon its own initiative or upon motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected with leave of the appellate court.

### **Rule 45.02. Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud**

Upon motion and upon such terms as are just, the court may relieve a party or the party's legal representatives from a final order or proceeding and may order a new trial or grant such other relief as may be just for any of the following reasons:

- (a) mistake, inadvertence, surprise, or excusable neglect;
- (b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial;
- (c) fraud (whether denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (d) the judgment is void; or
- (e) any other reason justifying relief from the operation of the order.

The motion shall be made within a reasonable time, but in no event shall it be more than ninety (90) days following the filing of the court's order.

## **IV. PROPOSED RULES OF ADOPTION PROCEDURE**

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### **Rule 45.03. Invalidation of District Court Action – Indian Child Cases**

**Subd. 1. Petition.** Any Indian child who is the subject of an adoption proceeding under State law, parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may file with any court of competent jurisdiction a Petition to Invalidate such action upon a showing that such action violates any provisions of the Indian Child Welfare Act, 25 U.S.C. §§ 1911, 1912, or 1913 (1978).

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

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

### **Rule 45.04. Vacation of Adoption Decree – Indian Child Cases**

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

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

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

## **RULE 46. APPEAL**

### **Rule 46.01. Applicability of Rules of Civil Appellate Procedure**

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

### **Rule 46.02. Procedure**

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

#### **Subd. 2. Timing**

Any appeal shall be taken within thirty (30) days of the filing of the appealable order. In the event of the filing and service of a proper post-trial motion under Rule 44 and 45, the provisions of Minnesota Rules of Civil Appellate Procedure Rule 104.01, subdivisions 2 and 3, apply, except that the time for appeal runs for all parties from the time of filing of the order.

## **IV. PROPOSED RULES OF ADOPTION PROCEDURE**

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### **2004 Advisory Committee Comment**

The Committee recognizes that the timing provision of Rule 46.02 is a departure from the Rules of Civil Appellate Procedure. This departure is intended to expedite the appellate process, which the Committee deems to be in the best interests of the child.

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

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

(b) file with the clerk of appellate courts a notice of appeal, together with proof of service upon all parties, including notice of the correct case caption as required under Rule 8.08 of the Rules of Juvenile Protection Procedure.

**Subd. 4. Notice to Court Administrator.** At the same time as the appeal is filed the appellant shall provide notice of the appeal to the court administrator. Failure to notify the court administrator does not deprive the court of appeals of jurisdiction.

**Subd. 5. Failure to File Proof of Service.** Failure to file proof of service does not deprive the court of appeals of jurisdiction over the appeal, but is grounds only for such action as the court of appeals deems appropriate, including a dismissal of the appeal.

**Subd. 6. Notice to Legal Custodian.** The court administrator shall notify the child's legal custodian of the appeal. Failure to notify the legal custodian does not affect the jurisdiction of the court of appeals.

### **Rule 46.03. Application for Stay of Trial Court Order**

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

### **Rule 46.04. Right to Additional Review**

Upon an appeal, any party or the county attorney may obtain review of an order entered in the same case which may adversely affect that person by filing a notice of review with the clerk of appellate courts. The notice of review shall specify the order to be reviewed, shall be served and filed within fifteen (15) days after service of the notice of appeal, and shall contain proof of service.

### **Rule 46.05. Transcript of Proceedings**

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

## **IV. PROPOSED RULES OF ADOPTION PROCEDURE**

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### **Rule 46.06. Time for Rendering Decisions**

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

## **RULE 47. INTERCOUNTRY ADOPTIONS**

### **Rule 47.01. Validity of a Foreign Adoption**

The adoption of a child by a resident of this state under the laws of a foreign country is valid and binding under the laws of this state if the validity of the foreign adoption has been verified by the granting of an IR-3 visa for the child by the United States Bureau of Citizenship and Immigration Service.

### **Rule 47.02. New Birth Record**

**Subd. 1. Petition.** The adoption of a child under the laws of a foreign country is valid in this state pursuant to Rule 48.01 and the petitioner may petition the court in petitioner's county of residence for a decree:

- (a) confirming and recognizing the adoption;
- (b) changing the child's legal name, if requested; and
- (c) authorizing the Commissioner of Health to issue a new birth record for the child pursuant to Minnesota Statutes § 144.218, subd. 1.

**Subd. 2. Documents to be Submitted.** A court shall issue the decree described in subdivision 1 upon receipt of the following documents:

- (a) a signed, sworn, and notarized petition by the adoptive parent:
  - (1) stating that the adoptive parent completed the adoption of the child under the laws of a foreign county;
  - (2) stating that the adoption is valid in this state under Rule 48.01; and
  - (3) requesting that the court issue a decree confirming and recognizing the adoption and authorizing the Commissioner of Health to issue a new birth record for the child
- (b) a copy of the child's original birth record, if available;
- (c) a copy of the final adoption certificate or equivalent as issued by the foreign jurisdiction;
- (d) a copy of the child's passport, including the United States visa indicating IR-3 immigration status; and
- (e) a certified English translation of any of the documents listed in (b) through (d) above.

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

### **Rule 47.03. Post-Adoption Report**

If a child is adopted by a resident of this State under the laws of a foreign country or if a resident of this state brings a child into the state under an IR-3 or IR-4 visa issued for the child by the Bureau of Citizenship and Immigration Services, the post-adoption reporting requirements

#### **IV. PROPOSED RULES OF ADOPTION PROCEDURE**

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of the country in which the child was adopted, applicable at the time of the child's adoption, shall be given full faith and credit by the courts of this state and apply to the adoptive placement of the child.

ADVOCACY DIRECTOR  
Maureen O'Connell

SUPERVISING ATTORNEY  
Nancy Mischel

RESEARCH ANALYST  
Khanh Nguyen

**LEGAL SERVICES ADVOCACY PROJECT**

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OFFICE OF  
APPELLATE COURTS

JUN 7 2004

**FILED**

June 7, 2004

Mr. Frederick Grittner  
Clerk of the Appellate Courts  
305 Judicial Center  
25 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

RE: Proposed Rules of Adoption Procedure

The Legal Services Advocacy Project (LSAP) was created more than 20 years ago by the six Minnesota regional civil legal services programs to represent the interests of low-income persons before legislative and administrative bodies. In addition, LSAP has participated on a number of judicial task forces and provided comments to the Court on behalf of civil legal services offices statewide. LSAP submits the following brief written comments for the Supreme Court's consideration with regard to the Proposed Rules of Adoption Procedure.

**Rule 13.07, subd. 2 Expenses for Experts**

This proposed rule requires the subpoenaing party to pay expert expenses up front. We are concerned this rule could be interpreted such that the general in forma pauperis (IFP) statute does not apply, since other places in the rules lay out when IFP status can be granted (Rule 13.07, subd.1, for example). We believe there should be language that allows the payment of expert expenses at county or public expense if testimony is necessary to the proceeding. This will ensure low-income parties have the ability to present or defend their case as fully as possible.

**Rule 23.04, subd. 1 Right to Counsel for Biological Parent**

This rule shifts the cost of legal counsel to the adoptive parents if the biological parents are indigent. We are concerned that if low-income adoptive parents have to bear the burden of the biological parent(s) attorneys fees, it may discourage lower income people from adopting. To prevent this from happening, we suggest that where both adoptive parents and biological parents are low-income, that legal counsel be provided at public expense.

Please feel free to contact me at (651) 222-3749, x.103 if there are any questions or I can provide additional information.

Sincerely,



Nancy Mischel  
Supervising Attorney

STATE OF MINNESOTA  
IN SUPREME COURT  
C1-01-927

OFFICE OF  
APPELLATE COURTS

APR 28 2004

**FILED**

RE: Proposed Rules of Adoption Procedure

1. Rule 14. Contempt.

A. Subdivision 1 and 2. Both subdivisions refer to “writ of attachment or bench warrant.” There is little or no law on what those are or what they should contain. They seem to have developed as a matter of practice and tradition. By referring to both instruments in the rule, the rule appears to equate them. I have no strong objection to that, but some clarification might be helpful.

The rule appears to have been modeled after Rules 309 and 374 of the Minnesota General Rules of Practice, which make similar omissions, except that Rule 374.04 also adds “arrest warrants” into the mix. Further, why should the contempt rules under the Adoption Procedure be different from the contempt rules in Family Court Procedure?

I suggest that omitting “bench warrant” following “writ of attachment” near the end of Subdivision 1 suggests that there is a difference that probably is not intended. Therefore, I suggest that Subdivision 1 be amended to read as follows:

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

B. I think Rule 14.04, subd. 3 inappropriately calls for a sanction for criminal contempt, when the rule is or should be dealing with civil contempt.

“Punishment,” as authorized under Minnesota Statute 588.10, is for criminal contempt rather than civil contempt. I suggest that Rule 14 confuses the distinction between civil contempt and criminal contempt. “Dealing with a Double-edged Sword: A Practical Guide to Contempt Law in Minnesota,” Hon. D.D. Wozniak and Cynthia L. Lehr, 18 William Mitchell Law Review 1, 9-12 (1992).

2. Rule 47.02, subd 2(a)(2) refers to non-existent Rule 48.01.

DATED: April 26, 2004



Richard T. Jessen  
Judge of District Court  
Stearns County Courthouse  
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*Making children's voices heard*

OFFICE OF  
APPELLATE COURTS

June 11, 2004

JUN 11 2004

**FILED**

Honorable Kathleen Blatz  
Chief Justice  
Minnesota Supreme Court  
25 Rev. Dr. Martin Luther King, Jr., Blvd.  
St. Paul, MN 55155

Re: Comments to Proposed Minnesota Rules of Adoption Procedure

Dear Justice Blatz and Members of the Supreme Court:

I wish to make an oral presentation at the Supreme Court public hearing on the proposed amendments to the Minnesota Rules of Minnesota Rules of Adoption Procedure scheduled for Tuesday, June 15, 2004.

As instructed, I enclose twelve copies of my presentation with twelve copies of this request.

Thank you for the opportunity to comment.

Very truly yours,

Gail Chang Bohr, Esq.  
Executive Director

enc.



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*Making children's voices heard*

Re: Comments to Proposed Rules of Adoption Procedure

Thank you for the opportunity to comment on the proposed rules. I am an attorney and since 1995, have been the executive director of Children's Law Center of Minnesota. I have also had experience with adoption and birth parents as a social worker at Children's Home Society of Minnesota. At Children's Law Center of Minnesota, we work with children who are wards of the state at the time of an adoption.

My comments follow:

We agree with the recommended statutory revision to define "parent" to mean biological or adoptive parent so there is consistency in meaning when the word "parent" is used,

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

This rule states on lines 9 and 10, that the Notice of the findings and recommended order, **along with notice of the right to review by the judge,** . . . In Ramsey County, under the Ramsey County Combined Jurisdiction project, Rule 53.05 (b) of the Rules of Civil Procedure was permanently suspended so that the referee's order is not subject to review by the district court judge. While referees are not routinely used on the child protection side of Juvenile Court in Ramsey County, there is nothing that guarantees that may not occur in the future. It would be helpful to have a comment to clarify what is or is not allowed under Rule 6.04 where the suspension of Rule 53.05 (b) is in place.

Rule 20.01 (b). We agree that the adoptee should be a party.

Rule 21.01, subd. 1. We agree that the child under age ten, the subject of the adoption matter should have the right to intervene as a party at any point in the proceeding.

Rule 27.03 (e) and (f) Content [of preadoptive custody order in direct placement adoption].

Question: if someone is not a resident of Minnesota, how does the court keep track that the adoption indeed is finalized?

Rule 31. Consent to Adoption

(d) (ii) written consent is required except when a parent has abandoned the child or a parent has lost custody of the child through a divorce decree or a decree of dissolution . . .

We agree with the recommended statutory revision of Minn. Stat. §259.24, subd. 1(b) to require the consent of the parent who lost custody because of a divorce decree or who abandoned the child or that there be a termination of parental rights. The Comment refers to either consent or a termination but the statutory recommendation only refers to requiring consent. Our comment here is to make the statutory recommendation consistent with the Comment to Rule 31 and require termination when consent is not available.

Rule 31.03, subd. 1(f) Execution of Consent to Adoption

Consent does not terminate parental rights, must be read with the following execution of adoption agreement.

Rule 31.06, subd. (4) Execution of Agreement states that if the child is not adopted within two years, the agency can notify the birthparent and request that the parent take custody of the child.

Is this consistent with the best interests of the child? Birthparents I know want what is best for the child and having signed the consent to adoption, do not anticipate that they would be asked to take custody of the child after two years have lapsed. This is a long period for uncertainty particularly when one takes into consideration that permanency is within one year when children are in the custody of the county.

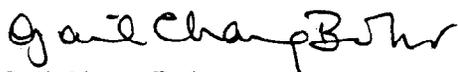
I understand the rules follow the statutes and so this may be an area to recommend further study and legislative action particularly in light of the fact that Rule 33.03 Timing [of petition to adopt] requires the adoption petition to occur within one year of placement.

Rule 32 – Communication or Contact Agreement.

We agree with the rule and comment regarding the communication or contact agreement between siblings.

Finally, because this is the first time rules have been promulgated for Adoption Procedure, and because of the recommendations for statutory revisions, I would recommend that the rules be adopted as Interim Rules. I believe that the practical application of the rules will help practitioners and court personnel to distinguish what could help to ensure that the due process rights of all the participants in the adoption process are protected.

I am happy to answer any questions about these comments.

  
Gail Chang Bohr

JUN 10 2004

**FILED**

STATE OF MINNESOTA

IN SUPREME COURT

C1-01-927

**STATEMENT IN SUPPORT OF FINAL REPORT  
AND PROPOSED RULES OF ADOPTION PROCEDURE**

TO: THE SUPREME COURT OF THE STATE OF MINNESOTA

As an Assistant Hennepin County Attorney practicing in the area of Juvenile Protection, and specializing in the representation of the Hennepin County Human Services Department [the responsible social service agency] as it pursues permanency through adoption for children under state guardianship, I am submitting this written statement in support of the Final Report and Proposed Rules of Adoption Procedure of the Minnesota Supreme Court Juvenile Protection Rules Committee dated February 6, 2004.

While I fully support the proposed Adoption Rules in total, I strongly support the following rules that clarify the role of the Commissioner of Human Services and the responsible social services agency for children under state guardianship and in contested adoption matters:

Rule 20.01: The responsible social services agency is a party to an adoption matter if the child is under the guardianship of the Commissioner of Human Services.

Rule 37: Notice provisions for contested adoption matters.

Rule 40: Consolidation and bifurcation for competing adoption petitions and contested adoption matters.

Rule 46: Shortened timelines for appeals in adoption matters.

Finally, I recommend that Rule 46 be amended to include a provision, as follows:

Upon appeal of an order dismissing an adoption petition under Rule 40.03, or denying an adoption petition under Rule 43.01, the trial court shall stay the finalization of the adoption of the child on any other adoption petition.

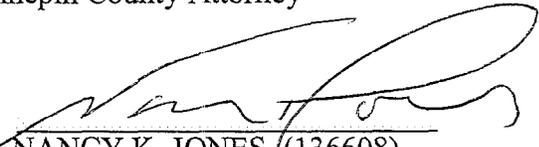
I am concerned that without such a provision there is potential for uncertainty in the finality of an adoption of a child who is the subject of an adoption matter on appeal.

I look forward to the promulgation of the Minnesota Rules of Adoption Procedure by the Minnesota Supreme Court.

Respectfully submitted,

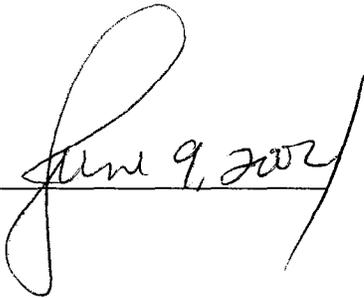
AMY KLOBUCHAR  
Hennepin County Attorney

By:

  
NANCY K. JONES (136608)

Assistant County Attorney  
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Date:



STATE OF MINNESOTA

IN SUPREME COURT

C1-01-927

OFFICE OF  
APPELLATE COURTS

JUN 7 2004

FILED

**REQUEST FOR ORAL PRESENTATION TO ADDRESS PROPOSED RULES OF  
ADOPTION PROCEDURE FOR THE MINNESOTA JUVENILE  
PROTECTION RULES**

TO: FREDERICK GRITTNER, CLERK OF THE APPELLATE COURTS,  
305 JUDICIAL CENTER, 25 REV. DR. MARTIN LUTHER KING, JR. BLVD,  
ST. PAUL, MN 55155

Please take notice that undersigned counsel requests an opportunity to make an oral presentation in the above-referenced matter at the hearing to be held on June 14, 2004 at 1:30 p.m., in support of undersigned counsel's comments filed regarding same.

Respectfully submitted,

June 7, 2004  
Dated

  
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Louise A. Bruce,  
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JUN 7 2004

FILED

STATE OF MINNESOTA

IN SUPREME COURT

C1-01-927

**WRITTEN STATEMENT TO ADDRESS PROPOSED RULES OF  
ADOPTION PROCEDURE FOR THE MINNESOTA JUVENILE  
PROTECTION RULES**

TO: FREDERICK GRITTNER, CLERK OF THE APPELLATE COURTS,  
305 JUDICIAL CENTER, 25 REV. DR. MARTIN LUTHER KING, JR. BLVD,  
ST. PAUL, MN 55155

The Committee states as its purpose that it “was given a clear directive that the Court would be unlikely to adopt proposed rules that are inconsistent with existing statutes.” However, in its recommendations, the Committee recommends various changes to the statutes, and these legislative recommendations clearly appear to be beyond the directive of the Court. There is also no stated recommendation as to when the Rules would take effect, although if they are contingent upon changes to the statutes, it would seem inconsistent to have the Rules take effect unless or until the statutes in question are changed.

The Committee has not defined “best interests of the child” anywhere in the rules. This should be included in **Rule 2.01, Definitions**. This should reference the best interests statute used in custody proceedings, although that statute is simply a starting point, and needs modification. For example, it should be clearly stated that there is no presumption regarding custody, since anyone seeking to adopt a child would have no legal relationship to the child – unlike the family court test, there are no built-in presumptions regarding joint custody, primary custody, etc.

As regards **Rule 2.01 (x), "Relative,"** the expanded definition of a relative as "an individual who is an important friend with whom the child has resided or had significant contact" needs clarification that this should exclude a foster provider. As foster providers come in contact with a child in order to provide an out-of-home placement, said providers should not be allowed to parlay this into a quasi-legal relationship.

As regards **Rule 5.01, Findings,** this section needs details regarding adoptions by relatives, and should specifically reference that having the child in placement for three months is not required if the child is adopted by a relative. Also, it needs to be clearly stated that a termination of parental rights must have occurred before an adoption petition can be filed with a court.

As regards **Rules 27, Rule 27.03 (c) (1) (2) and (3) [Direct Placement – Emergency, Content of Notice] and Rule 28.02 (b) (1) (2) and (3) [Direct Placement- Non-Emergency, Content of Notice],** these encourage potential fraud by allowing the mother of a child to keep a child's existence secret from the father. Notice should be given to the father unless a police report or an order for protection was filed.

As regards **Rules 28.02 (d)(2) and 35.03, Criminal Background Checks,** it should be an absolute that criminal background checks are to be done. An affidavit cannot substitute for the safety of a child, nor should the burden be on the court to ascertain if such an affidavit is truthful.

As regards **Rule 29. Notice of Final Hearing or Trial, Rule 29.02 Notice Not Required, (d),** if a father has registered with the Adoption Registry, he should be given notice, since he may not otherwise know of a potential adoption. Conversely, if notice is not required at this point, it encourages (rather than limits) deceptive practices.

As regards **Rule 31.02, Notice of Intent to Consent To Adoption, Subd. 2. Consent of Minors**, there should be no substitute for an attorney, and the reference to clergy or doctors is inappropriate when a minor is giving up parental rights to a child.

As regards **Rule 33.02, Residency of Child to be Adopted**, the reference to an exception for relatives, as defined by 2.01 (o) is missing.

As regards **Rule 40.03, Bifurcation, Subd. 2, Mandatory Bifurcation**, a statement should be included, "If consent has been withheld from a relative, the agency must provide evidence that it properly complied with all laws regarding relative search and placement. If there is no such showing, this shall constitute *prima facie* evidence that the withholding of consent by the Commissioner is unreasonable."

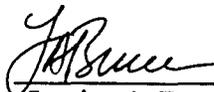
As regards **Rule 44.02, Motion for New Trial, Subd. 1 (g)** "in the interest of justice" states a new ground that is not consistent with Minnesota Rules of Civil Procedure Rule 59.01 and has not been defined anywhere in the Proposed Rules of Adoption Procedure.

It would also be helpful if there was an appendix of forms, to include forms for uncontested adoptions and for open adoption agreements. Open adoption agreements should specifically include notice stating that even if the agreement is not honored, consent for the adoption cannot be revoked once the time has passed.

Respectfully submitted,

Dated

June 7, 2004



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