

STATE OF MINNESOTA  
IN SUPREME COURT  
C1-01-927

**ORDER PROMULGATING AMENDMENTS TO THE  
RULES OF JUVENILE PROTECTION PROCEDURE  
AND THE RULES OF ADOPTION PROCEDURE**

**OFFICE OF  
APPELLATE COURTS**  
**JUN 10 2009**  
**FILED**

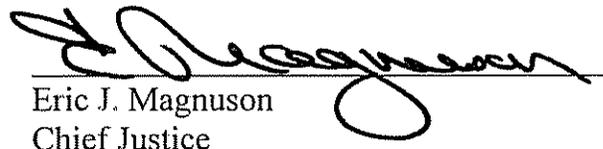
In its report filed February 6, 2009, the Supreme Court Advisory Committee on the Rules of Juvenile Protection Procedure recommended amendments to the Rules of Juvenile Protection Procedure and the Rules of Adoption Procedure. In an order filed February 12, 2009, this Court requested public comment on the proposed amendments. This Court has reviewed the proposed amendments and public comments, and is fully advised in the premises.

IT IS ORDERED that:

1. The attached amendments to the Rules of Juvenile Protection Procedure and the Rules of Adoption Procedure be, and the same are, prescribed and promulgated to be effective on August 1, 2009.
2. These amendments shall apply to all actions or proceedings pending on or commenced on or after the effective date.
3. The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the comments.

Dated: 6/10/09

BY THE COURT:

  
Eric J. Magnuson  
Chief Justice

**AMENDMENTS TO THE RULES OF JUVENILE PROTECTION PROCEDURE  
EFFECTIVE AUGUST 1, 2009**

*Note to publishers: Deletions are indicated by a line drawn through the words;  
additions are underlined.*

**RULE 1. SCOPE and PURPOSE**

**Rule 1.01. Scope**

These rules govern the procedure for juvenile protection matters in the juvenile courts in Minnesota. Juvenile protection matters include all matters defined in Rule 2.01(14) 2.01(k).

**RULE 2. DEFINITIONS**

**Rule 2.01. Definitions**

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

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

(~~2-b~~) **“Alleged father”** means an individual claimed by a party or participant to be the biological father of a child.

(~~3-e~~) **“Child placing agency”** means any agency licensed pursuant to Minnesota Statutes § 245A.02 to § 245A.16 or § 252.28, subd. 2.

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

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

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

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

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

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

(5-d) “Emergency protective care” means the placement status of a child when:

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

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

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

(7-e) “Foster care” means the 24-hour-a-day substitute care for a child placed away from the child’s parents or guardian and for whom a responsible social services agency has placement and care responsibilities under Minnesota Statutes § 260C.007, subd. 18. “Foster care” includes, but is not limited to, placement in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities not excluded in this subdivision, child care institutions, and preadoptive homes. A child is in foster care under this definition regardless of whether the facility is licensed and payments are made for the cost of care. Nothing in this definition creates any authority to place a child in a home or

facility that is required to be licensed which is not licensed. “Foster care” does not include placement in any of the following facilities: hospitals, inpatient chemical dependency treatment facilities, facilities that are primarily for delinquent children, any corrections facility or program within a particular correction's facility not meeting requirements for Title IV-E facilities as determined by the commissioner, facilities to which a child is committed under the provision of chapter 253B, forestry camps, or jails.

(8-f) “Independent living plan” is a plan for a child age sixteen (16) or older who is in placement as a result of a permanency disposition which includes the objectives set forth in Minnesota Statutes § 260C.212, subd. 1(c)(8).

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

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

(11) “Indian child’s tribe,” as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(5), and Minnesota Statutes § 260.755, subd. 9, means:

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

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

(12-i) “Indian tribe,” as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(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 Alaska Native village as defined in 43 U.S.C. § 1602(c), and exercising tribal governmental powers.

(13-j) **“Juvenile protection case records”** means all records of the juvenile court regarding a particular case or controversy, including all records filed with the court, and the official transcript. Juvenile protection case records do not include all records maintained by the court, and all reporter’s notes and tapes, electronic recordings, and unofficial transcripts of hearings and trials. See also “records” defined in subdivision (24 t).

(14-k) **“Juvenile protection matter”** means any of the following types of matters:

(a-1) child in need of protection or services matters as defined in Minnesota Statutes § 260C.007, subd. 6, including habitual truant and runaway matters;

(b-2) neglected and in foster care matters as defined in Minnesota Statutes § 260C.007, subd. 24;

(c-3) review of voluntary foster care matters as defined in Minnesota Statutes § 260C.141, subd. 2;

(d-4) review of out-of-home placement matters as defined in Minnesota Statutes § 260C.212;

(e-5) termination of parental rights matters as defined in Minnesota Statutes § 260C.301 to § 260C.328; and

(f-6) permanent placement matters as defined in Minnesota Statutes § 260C.201, subd. 11, including transfer of permanent legal and physical custody to a relative matters; termination of parental rights matters; and long-term foster care matters; foster care for a specified period of time matters; and guardianship and legal custody to human services matters.

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

(16-m) **“Parent”** as adapted from Minnesota Statutes § 260C.007, subd. 25, means the birth, legally adjudicated, or adoptive parent of a minor child. For an Indian child,

pursuant to Minnesota Statutes § 260.755, subd. 14, parent also includes any Indian person who has legally adopted an Indian child including a person who has adopted a child by tribal law or custom as provided in Minnesota Statutes § 260.755, subd. 22, but “parent” it—does not include an unmarried father whose paternity has not been acknowledged or established.

(17-#) “Person,” as defined in Minnesota Statutes § 260C.007, subd. 26, includes any individual, association, corporation, partnership, and the state or any of its political subdivisions, departments, or agencies.

(18-#) “Presumed father” means an individual who is presumed to be the biological father of a child under Minnesota Statutes § 257.55, subd. 1.

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

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

(21) “Qualified expert witness,” as defined in Minnesota Administrative Rule 9560.0221, subp. 3G, means:

(a) a member of an Indian child’s tribe who is recognized by the tribal community as knowledgeable in tribal customs of family organization and child rearing;

(b) a lay expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child’s tribe; or

(c) a professional person having substantial education and experience in the area of the professional person’s specialty, along with substantial knowledge of

prevailing social and cultural standards and child-rearing practices within the Indian community.

(~~22-f~~) **“Reasonable efforts to prevent placement.”** as defined in Minnesota Statutes § 260.012(d) means:

(~~a-1~~) the agency has made reasonable efforts to prevent the placement of the child in foster care; or

(~~b-2~~) given the particular circumstances of the child and family at the time of the child’s removal, there are no service or efforts available which could allow the child to safely remain in the home.

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

(~~23-s~~) **“Reasonable efforts to finalize a permanent plan for the child,”** as defined in Minnesota Statutes § 260.012(e) means due diligence by the responsible social services agency:

(~~a-1~~) to reunify the child with the parent or guardian from whom the child was removed;

(~~b-2~~) to assess a noncustodial parent’s ability to provide day-to-day care for the child and, where appropriate, provide services necessary to enable the noncustodial parent to safely provide the care, as required by Minnesota Statutes § 260C.212, subd. 4;

(~~c-3~~) to conduct a relative search as required under Minnesota Statutes § 260C.212, subd. 5; and

(~~d-4~~) when the child cannot return to the parent or guardian from whom the child was removed, to plan for and finalize a safe and legally permanent alternative home for the child, and consider permanent alternative homes for the child inside or outside of the state, preferably through adoption or transfer of permanent legal and physical custody of the child.

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

(~~24-t~~) **“Records”** means any recorded information that is collected, created, received, maintained, or disseminated by a court or court administrator, regardless of its physical form or method of storage, and specifically excludes judicial work product and drafts as defined in the Rules of Public Access to ~~the~~ Records of the Judicial Branch. See also “juvenile protection case records” defined in subdivision (~~13-j~~).

(~~25-u~~) **“Relative”** as defined in Minnesota Statutes § 260C.007, subd. 27, means a person related to the child by blood, marriage, or adoption, or an individual who is an important friend with whom the child has resided or had significant contact. For an Indian child, relative includes members of the extended family as defined by the law or custom of the Indian child’s tribe or, in the absence of laws or custom, nieces, nephews, or first or second cousins, as provided in the Indian Child Welfare Act of 1978, 25 U.S.C. § 1903(~~2~~).

(~~26-v~~) **“Removed from home-Home”** means the child has been taken out of the care of the parent or legal custodian, including a substitute caregiver, and placed in foster care or in a shelter care facility.

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

(~~28-w~~) **“Shelter care facility,”** as adapted from Minnesota Statutes § 260C.007, subd. 30, means a physically unrestricting ~~unrestricting~~ facility, including but not limited to, a hospital, a group home, or a facility licensed for foster care pursuant to Minnesota Statutes Chapter 245A, used for the temporary care of a child during the pendency of a juvenile protection matter.

(29-~~x~~) “Trial home visit—Home—Visit,” as defined in Minnesota Statutes § 260C.201, subd. 1(a)(3), means the child is returned to the care of the parent or legal custodian from whom the child was removed for a period not to exceed six months, with agency authority and responsibilities set forth in the statute.

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

(31) “Voluntary foster care” means placement of a child in foster care based on a written agreement between the responsible social services agency or child placing agency and the child’s parent, guardian, or legal custodian. The voluntary foster care agreement gives the agency legal responsibility for the placement of the child. The voluntary foster care agreement is based on both the agency’s and the parent’s, guardian’s, or legal custodian’s assessment that placement is necessary and in the child’s best interests. See Minnesota Statutes § 260C.212, subd. 8, and § 260D.02, subd. 5.

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

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

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#### **Rule 3.06. General Rules Practice for the District Courts**

Rule 10 of the General Rules of Practice for the District Courts applies to juvenile protection matters.

## 2008 Advisory Committee Comment

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

### **RULE 4. TIME; TIMELINE**

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#### **Rule 4.03. Timeline**

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

(a) **Emergency Protective Care Hearing.** If a child has been removed from the home of the parent or legal custodian pursuant to Rule ~~28.01–30.04~~, the court shall hold an emergency protective care hearing within seventy-two (72) hours of the child's removal pursuant to Rule 30.01.

(b) **Admit/Deny Hearing.** Pursuant to Rule 34.02, subd. 1(a), when the child is removed from home by court order, an admit/deny hearing shall be held within ten (10) days of the date of the emergency protective care hearing. Pursuant to Rule 34.02, subd. 2(a), when the child is not removed from home by court order, an admit/deny hearing shall be held no sooner than three (3) five (5) days, and no later than twenty (20) days after the parties have been served with the summons and petition. ~~In the case of an Indian child, no foster care placement proceeding or termination of parental rights proceeding shall be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior, provided, however, that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty (20) additional days to prepare for such proceeding.~~

(1) Parent's, Indian Custodian's or Tribe's Identity Known. In matters governed by the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., the admit/deny hearing on a petition requesting the foster care placement of an Indian child, the permanent placement of an Indian child, or the termination of parental rights to an Indian child shall not be held until at least ten (10) days after receipt of the notice required under

Rule 32.06, 25 U.S.C. § 1912(a), and Minnesota Statutes § 260.761, subd. 3. The parent, Indian custodian, or child's tribe shall, upon request, be granted up to twenty (20) additional days from receipt of the notice to prepare for the admit/deny hearing.

**(2) Parent's, Indian Custodian's, or Child's Tribe's Identity Unknown.**

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

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

(d-e) **Pretrial Hearing-Conference.** Pursuant to Rule 36.01, the court shall convene a pretrial hearing at least ten (10) days prior to trial-a pretrial conference may be held any time after the admit/deny hearing, but not later than ten (10) days before the date the trial is scheduled to commence.

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

(f-e) **Findings/Adjudication.** Pursuant to Rule 39.05, subd. 1-2, within fifteen (15) days of the conclusion of the testimony, during which time the court may require simultaneous written arguments to be filed and served, the court shall issue its findings and order regarding whether one or more statutory grounds set forth in the petition have

been proved. The court may extend the period for issuing an order for an additional fifteen (15) days if the court finds that an extension of time is required in the interests of justice and the best interests of the child.~~—concerning adjudication within fifteen (15) days of the date that the testimony is concluded. If written argument is to be submitted, such argument shall be submitted within fifteen (15) days of the conclusion of testimony. For good cause, the court may extend this period for an additional fifteen (15) days. The trial is not considered completed until the time for written arguments, if any, has expired.~~

(g-f) **Disposition.** Pursuant to Rule 41.02, to the extent when~~when~~ practicable, the court shall conduct a disposition hearing and enter a disposition order the same day it makes a finding that the statutory grounds set forth in the petition have been proved~~may order disposition at the same time as the adjudication. In the event disposition is not ordered at the same time as the adjudication, the court shall include in the adjudication order a date for a~~ the disposition order shall be issued within ~~hearing which shall take place no later than~~ ten (10) days of~~from~~ the date the court finds the statutory grounds set forth in the petition have been proved~~issues its adjudication order.~~

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

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

**Subd. 2. Permanent Placement Matters – Notice of Timeline for Permanency Proceedings.** In the case of a child who is alleged or found to be~~has been adjudicated in~~

need of protection or services and ordered into foster care or the home of a noncustodial parent, and where reasonable efforts for reunification are required, pursuant to Rule 42.01, subd. 1, the court in its first order placing the child in foster care or the home of a noncustodial parent shall set the date or deadline for the admit/deny hearing commencing permanent placement determination proceedings hearing—and the permanency progress review hearing required for a child who is under age eight (8) at the time the petition is filed alleging the child to be in need of protection or services. Pursuant to Rule 42.01, subd. 5, not ~~Not~~ later than when the court sets the date or deadline for the admit/deny hearing commencing the permanent placement determination proceedings hearing—and the permanency progress review hearing, the court shall notify the parties and participants of the following requirements—~~of Minnesota Statutes § 260C.201, subd. 11 and subd. 11(a):~~

(a) **Requirement of Six (6) Month Hearing for Child Under Eight (8) Years of Age.** For a child who is under eight (8) years of age at the time a petition is filed alleging the a child to be in need of protection or services—petition is filed concerning the child, pursuant to Rule 42.01, subd. 5(a), the court shall conduct a permanency progress review hearing not later than six (6) months after the child is placed in foster care or in the home of a noncustodial parent to review the progress of the case, the parent’s progress on the out-of-home placement plan, and the provision of services. At the hearing required under this paragraph, the court may conduct a permanency progress review hearing for any sibling of the child, regardless of age, when the sibling is also in foster care or in the home of a noncustodial parent.

(b) **Requirement of Twelve (12) Month Hearing.** ~~Regardless of the age of the child at the time a child in need of protection or services petition is filed concerning the child,~~ Pursuant to Rule 42.01, subd. 5(b), the court shall commence conduct a permanent placement determination proceedings to determine the permanent status of the child, regardless of age, hearing not later than twelve (12) months after the child is placed in foster care or in the home of a noncustodial parent ~~to determine the permanent status of the child.~~

**Subd. 3. (e) Permanent Placement Petition and Trial for Child Under Eight (8) Years of Age Matters.** ~~A trial regarding a permanent placement matter not involving a termination of parental rights matter shall commence on or before sixty (60) days after the admit/deny hearing or ninety (90) days after the filing of the petition, whichever is earlier.~~ In the case of a child under eight (8) years of age at the time the child in need of protection or services petition is filed, if the court determines ~~responsible social services agency demonstrates~~ at the permanency progress review hearing required under Rule 42.01, subd. 1(b), that the parent or legal custodian has not maintained regular contact with the child as outlined in the visitation plan or is not complying with the case plan or out-of-home placement plan or visiting the child and that the permanency plan for the child is transfer of permanent legal and physical custody to a relative or termination of parental rights, pursuant to Rule 42.04(a) a petition supporting the permanency plan shall be filed and served in juvenile court within thirty (30) days of the hearing under this paragraph. Pursuant to Rule 39.02, subd. 1(b), ~~a~~ A trial on the petition shall be commenced held within thirty (30) days of the filing of a petition in the case of a transfer of legal custody or within ninety (90) days of the filing of the petition in the case of a petition for termination of parental rights, and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and whenever possible should be over consecutive days. Pursuant to Rule 39.05, subd. 1, within fifteen (15) days of the conclusion of the testimony, during which time the court may require simultaneous written arguments to be filed and served, the court shall issue its findings and order regarding whether the statutory grounds set forth in the petition have or have not been proved. The court may extend the period for issuing an order for an additional fifteen (15) days if the court finds that an extension of time is required in the interests of justice and the best interests of the child.

**Subd. ~~4-3~~. Termination of Parental Rights ~~Matters~~ and Other Permanent Placement Matters at Twelve (12) Months.**

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

**(1) Parent's, Indian Custodian's, or Child's Tribe's Identity Known.**

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

**(2) Parent's, Indian Custodian's, or Child's Tribe's Identity Unknown.**

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

(b) **Pretrial Hearing.** Pursuant to Rule 36.01, the court shall convene a pretrial hearing at least ten (10) days prior to trial ~~a pretrial conference may be held any time after the admit/deny hearing, but not later than ten (10) days before the date the trial is scheduled to commence.~~

(c) **Trial.** Pursuant to Rule 39.02, subd. 1(c), a trial regarding a termination of parental rights matter or other permanent placement matter shall ~~a trial shall be~~

commenced within ~~sixty (60) ninety (90)~~ days of the first scheduled admit/deny hearing filing of the petition, and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and whenever possible should be over consecutive days.

(d) **Findings/Adjudication.** Pursuant to Rule 39.05 subd. 1, within fifteen (15) days of the conclusion of the testimony, during which time the court may require simultaneous written arguments to be filed and served, the court shall issue its findings and order regarding whether the statutory grounds set forth in the petition have or have not been proved. The court may extend the period for issuing an order for an additional fifteen (15) days if the court finds that an extension of time is required in the interests of justice and the best interests of the child.~~the court shall issue its findings and order concerning adjudication within fifteen (15) days of the date that the trial is completed. If written argument is to be submitted, such argument shall be submitted within fifteen (15) days of the conclusion of testimony. For good cause, the court may extend this period for an additional fifteen (15) days. The trial is not considered completed until the time for written arguments, if any, has expired.~~

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

(1) ~~Pursuant to Rule 43.03, when~~ If the court orders termination of parental rights and adoption as the permanency plan, pursuant to Rule 42.08, subd. 5, the court shall conduct a review hearing ninety (90) days from the date of the termination of parental rights order is filed, and at least every ninety (90) days thereafter, for the purpose of reviewing the progress towards finalization of the adoption~~to review progress toward adoptive placement at least every ninety (90) days.~~

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

(3) If the court orders long-term foster care, pursuant to Rule 42.11, subd. 4, the court shall review the matter in court at least every twelve (12) months to consider whether long term foster care continues to be the best permanent plan for the child.

(4) If the court orders foster care for a specified period of time, pursuant to Rule 42.12, subd. 3, not later than twelve (12) months after the child was ordered into foster care for a specified period of time the matter shall be returned to court for a review of the appropriateness of continuing the child in foster care and of the responsible social service agency's reasonable efforts to finalize a permanent plan for the child.

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

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

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

**Subd. 5. Hearing for Child on a Trial Home Visit.** Pursuant to Rule 42.01, subd. 2, when the child has been ordered on a trial home visit which continues at the time the court is required to commence permanent placement determination proceedings under Rule 42.01, within twelve (12) months of the date a child is placed in foster care the court shall hold a hearing pursuant to Rule 42.13 to determine the continued status of the child.

**Subd. 6. Cases Where Reasonable Efforts For Reunification Are Not Required.** Pursuant to Rule 42.01, subd. 6, when the court finds that the petition states a prima facie case that one or more of the five (5) circumstances under Minnesota Statutes § 260.012(a) and Rule 30.09, subd. 3, exist where reasonable efforts for reunification are not required, the court shall order that an admit/deny hearing under Rule 34 be conducted within thirty (30) days and a trial be conducted within ninety (90) days of its prima facie

finding. Unless a permanency or termination of parental rights petition under Rule 33 has already been filed, the county attorney requesting the prima facie determination shall file a permanency or termination of parental rights petition that permits the completion of service by the court at least ten (10) days prior to the admit/deny hearing.

**1999 Advisory Committee Comment (amended 2003 and 2009)**

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

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

<b>Day</b>	<b>Event</b>
1	Child removed from home
3	Emergency Protective Care Hearing
3-13	Admit/Deny Hearing
14-53	Pretrial <u>Hearing</u> <del>Conference</del>
63	Trial
79	Findings/Adjudication
79-88	Disposition Hearing
168-178	<u>Disposition</u> Review Hearing
180	<u>Permanency Progress Review Hearing</u>
258-268	<u>Disposition</u> Review Hearing

335	<u>Permanency Petition Filed</u>
348-358	<u>Disposition Review Hearing</u>
365	<u>Admit/Deny Hearing on Permanency Petition</u>
	<u>Permanent Placement Determination Hearing</u>
455+	<u>Post-Permanency Review Hearings (if appropriate)</u>

\* \* \* \* \*

**Rule 4.05. Application of Timing Provisions**

The timing provisions set forth in this rule are subject to the continuance provisions of Rule ~~5-41~~ and any other timing provisions set forth in each specific rule.

**RULE 6. SCHEDULING ORDER**

\* \* \* \* \*

**Rule 6.02. Order**

**Subd. 1. When Issued.** The court shall issue a scheduling order at the admit/deny hearing held pursuant to Rule 34 or within fifteen (15) ~~five (5)~~ days of the admit/deny hearing.

**RULE 7. REFEREES AND JUDGES**

\* \* \* \* \*

**Rule 7.06. Order of the Court**

When no review is requested, or when the right to review is waived, the findings and recommended order of the referee become the order of the court when confirmed by the judge as written or when modified by the judge sua sponte. The order shall be confirmed or modified by the court within fifteen (15) ~~ten (10)~~ days of the transmittal of the findings and proposed order.

## **RULE 8. ACCESSIBILITY OF JUVENILE PROTECTION CASE RECORDS**

### **Rule 8.01. Presumption of Access to Records**

Except as otherwise provided in this Rule, all juvenile protection case records relating to juvenile protection matters, as those terms are defined in Rule 2.01, are presumed to be accessible to any party and any member of the public for inspection, copying, or release. Records or information to which access is restricted under Rule 8.04 shall not be redacted prior to transmission to the clerk of appellate courts. If a party or a member of the public requests access to the juvenile protection case record during the appeal, the portion of the case record requested shall be returned to the trial court to be redacted pursuant to Rule 8.04 before access shall be allowed. The Minnesota Court of Appeals or the Minnesota Supreme Court shall deny access to the case records during the appeal if providing access would unduly delay the conclusion of the appeal. Minnesota Statutes § 260C.171, subd. 2(a), (b), and (c), is superseded insofar as it applies to public access to records of juvenile protection matters.—An order prohibiting access to the court file, or any record in such file, shall be accessible to the public.

\* \* \* \* \*

### **Rule 8.04. Records Not Accessible to the Public or Parties**

The following records (a) – (m) in the court file are not accessible to the public. Unless otherwise ordered by the court, parties shall have access for inspection and copying to all records in the court file, except records (b), (d), and (e) listed below.

(a) ~~transcripts, stenographic notes, and recordings of official transcript of testimony of anyone~~ taken during portions of proceedings that are closed by the presiding judge;

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

(c) victims' statements;

- (d) portions of juvenile protection case records that identify reporters of abuse or neglect;
- (e) HIV test results;
- (f) medical records, chemical dependency evaluations and records, psychological evaluations and records, and psychiatric evaluations and records;
- (g) sexual offender treatment program reports;
- (h) portions of photographs that identify a child;
- (i) applications for ex parte emergency protective custody orders, and any resulting orders, until the hearing where all parties have an opportunity to be heard on the custody issue, provided that, if the order is requested in a child in need of protection or services (CHIPS) petition, only that portion of the petition that requests the order shall be deemed to be the application for purposes of this section (i);
- (j) records or portions of records that specifically identify a minor victim of an alleged or adjudicated sexual assault;
- (k) notice of pending court proceedings provided to an Indian tribe by the responsible social services agency pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1912;
- (l) records or portions of records which the court in exceptional circumstances has deemed to be inaccessible to the public; and
- (m) records or portions of records that identify the name, address, home, or location of any shelter care or foster care facility in which a child is placed pursuant to an emergency protective care placement, foster care placement, pre-adoptive placement, adoptive placement, or any other type of court ordered placement.

## **RULE 10. ORDERS**

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

Court orders may be written or stated on the record. An order stated on the record shall also be reduced to writing by the court. Except for orders issued following a trial pursuant to Rule 39.05, all orders shall be filed with the court administrator within fifteen

(15) ~~ten~~(10)-days of the conclusion of the ~~hearing~~-testimony, unless the court finds that a fifteen (15)-day extension is required in the interests of justice or the best interests of the child. Each order issued following a hearing shall include the name and contact information of the court reporter. Failure to include the court reporter contact information does not extend the timeline for appeal. An order shall remain in full force and effect until the first occurrence of one 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.

#### **2008 Advisory Committee Comment**

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

\* \* \* \* \*

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

Service of court orders shall be made by the court administrator upon each party, county attorney, and such other persons as the court may direct, and may be made by delivery at the hearing, by U.S. mail, or as otherwise directed by the court. If a party is represented by counsel, delivery or service shall be upon counsel. If service of the summons was by publication and the person has not appeared either personally or through counsel, service of court orders upon the person is not required. Service of the order by the court administrator shall ~~must~~ be accomplished within five (5) days of the date the judicial officer delivers the order to the court administrator. In a termination of parental rights matter or other permanency matter, service by the court administrator of the findings and order terminating parental rights or establishing other permanency for

the child shall be accomplished within three (3) days of the date the judicial officer delivers the order to the court administrator.

**Rule 10.04. Notice of Filing of Order**

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

**RULE 15. MOTIONS**

\* \* \* \* \*

**Rule 15.02. Service and Notice of Motions**

**Subd. 1. Upon Whom.**

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

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

**2008 Advisory Committee Comment**

*Service of Motion to Transfer Juvenile Protection Matter to Jurisdiction of Tribal Court on Child Age 12 or Older. The Indian Child*

Welfare Act (ICWA) permits the district court to deny a request to transfer to tribal court when there is “good cause” to deny the transfer. 25 U.S.C. § 1911(b). While “good cause” to deny the transfer is not defined in the ICWA, it is addressed in the *Bureau of Indian Affairs Guidelines for State Courts: Indian Child Custody Proceedings (BIA Guidelines)*, which provides that “Good cause not to transfer the proceeding may exist if any of the following circumstances exists . . . [t]he Indian child is over twelve years of age and objects to the transfer.” *BIA Guidelines C.3 and C.3 Commentary*, 44 Fed. Reg. 67584, 67591 at C.3 (Nov. 26, 1979). Requiring service of the motion to transfer jurisdiction to tribal court upon a child age twelve (12) or older permits the child to be aware of the request to transfer and to raise an objection.

\* \* \* \* \*

**Rule 15.06. Obtaining Hearing Date; Notice to Parties**

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

**Rule 15.07 ~~15.06~~. Timing of Decision**

Orders regarding motions shall be filed with the court administrator within fifteen (15) ~~ten (10)~~ days of the conclusion of the hearing. Orders shall be served by the court administrator pursuant to Rule 10.03.

## RULE 21. PARTIES

### Rule 21.01. Party Status

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

- (a) the child's guardian ad litem;
- (b) the child's legal custodian;
- (c) in the case of an Indian child, the child's parents as defined in Rule 2.01(16), the child's Indian custodian, and the Indian child's tribe through the tribal representative;
- (d) the petitioner;
- (e) any person who intervenes as a party pursuant to Rule 23;
- (f) any person who is joined as a party pursuant to Rule 24; and
- (g) any other person who is deemed by the court to be important to a resolution that is in the best interests of the child.

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

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

- (a) the child's parents, including any noncustodial parent and any adjudicated or presumed father;
- (b) any person entitled to notice of any adoption proceeding involving the child; ~~and~~
- (c) the responsible social services agency when the agency is not the petitioner;  
and

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

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

**RULE 25. RIGHT TO REPRESENTATION; APPOINTMENT OF COUNSEL**

\* \* \* \* \*

**Rule 25.02. Appointment of Counsel**

**Subd. 1. Child.** Each child has the right to effective assistance of counsel in connection with a juvenile protection matter. Counsel for the child shall not also act as the child's guardian ad litem.

(a) **Juvenile Protection Matters.** Except in proceedings where the sole basis for the petition is habitual truancy, if the child desires counsel but is financially unable to employ it, the court shall appoint counsel to represent the child who is ten (10) years of age or older and may appoint counsel to represent a child under age ten (10) in any case in which the court determines that such appointment is appropriate.

(b) **Truancy Matters.** In any proceeding where the sole basis for the petition is habitual truancy, the child does not have the right to appointment of a public defender or other counsel at public expense. However, before any out-of-home placement, including foster care or inpatient treatment, can be ordered, the court shall ~~must~~ appoint a public defender or other counsel at public expense to represent the child.

(c) **Indian Child.** In any juvenile protection matter involving an Indian child, the court may, in its discretion, appoint counsel for an Indian child upon a finding that such appointment is in the best interests of the child.

(d) **Request; Timing.** The court may sua sponte appoint counsel for the child, or may do so upon the request of any party or participant. Any such appointment of counsel for the child shall occur as soon as practicable after the request is made. For purposes of appeal, appointment of counsel in a juvenile protection matter shall be made within three (3) days of the request for counsel. When possible, the trial court attorney should be appointed as appellate counsel.

**Subd. 2. Parent, ~~or~~ Legal Custodian, or Indian Custodian.** Each parent, ~~or~~ legal custodian, or Indian custodian has the right to effective assistance of counsel in connection with a juvenile court proceeding.

(a) **Juvenile Protection Matters.** Except in proceedings where the sole basis for the petition is habitual truancy, if the child's parent or legal custodian desires counsel but is financially unable to employ it, the court shall appoint counsel to represent the parent or legal custodian in any juvenile protection matter in which the court determines that such appointment is appropriate.

(b) **Truancy Matters.** In any proceeding where the sole basis for the petition is habitual truancy, the parent or legal custodian does not have the right to appointment of a public defender or other counsel at public expense. However, before any out-of-home placement, including foster care or inpatient treatment, can be ordered, the court shall ~~must~~ appoint a public defender or other counsel at public expense to represent the parent in accordance with subdivision 2(a).

(c) **Indian Parent or Custodian.** In any juvenile protection matter involving an Indian child, if the child's parent or Indian custodian is unable to afford it, the court shall appoint counsel to represent the parent or Indian custodian.

(d) **Timing.** The appointment of counsel for the parent, legal custodian, or Indian custodian shall occur as soon as practicable after the request is made. For purposes of appeal, appointment of counsel in a juvenile protection matter shall be made within three (3) days of the request for counsel. When possible, the trial court attorney should be appointed as appellate counsel.

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

## **RULE 26. GUARDIAN AD LITEM**

### **Rule 26.03. Term of Service of Guardian Ad Litem**

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

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

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

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

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

**RULE 30. EMERGENCY PROTECTIVE CARE HEARING**

\* \* \* \* \*

**Rule 30.08. Protective Care Determinations**

**Subd. 1. Initial Findings.**

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

(b) ~~Subd. 2.~~ **Endangerment.**

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

(~~i-1~~) the child or others would be immediately endangered by the child's actions if the child were released to the care of the parent or legal custodian; or

(~~ii-2~~) the child's health, safety, or welfare would be immediately endangered if the child were released to the care of the parent or legal custodian.

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

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

**Subd. 2. Indian Child Determination.** The court shall determine whether the child is an Indian child through review of the petition and other documents and an on-the-

record inquiry. If the court is unable to determine whether the child is an Indian child, the court shall direct the petitioner to make further inquiry and provide to the court and parties additional information regarding whether the child is an Indian child.

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

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

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

**2008 Advisory Committee Comment**

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

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

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

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

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

**Rule 30.09. Factors**

\* \* \* \* \*

**Subd. 3. Cases Permitting By-Pass of Child in Need of Protection or Services Proceedings.**

(a) **Permanency Determination.** At the emergency protective care hearing, or at any time prior to adjudication, and upon notice and request of the county attorney, the court shall determine whether a petition has as-been filed stating a prima facie case that:

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

(2) the parental rights of the parent to another child have been terminated involuntarily;

(3) the child is presumed to be an abandoned infant under Minnesota Statutes § 260C.301, subd. 2(a)~~(2)~~;

(4) the parent's custodial rights to another child have been involuntarily transferred to a relative under Minnesota Statutes § 260C.201, subd. 11(d)(1) or a similar law of another jurisdiction; or

(5) the provision of services or the provision of further services for the purpose of rehabilitation and reunification is futile and therefore unreasonable under the circumstances.

(b) **Permanency Hearing Required.** Once the court makes the determination required in subdivision 3(a), the court shall schedule a permanent placement determination hearing pursuant to Rule 42 within thirty (30) days.

**Rule 30.10. Protective Care Findings and Order**

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

(a) that the child:

(1) continue in protective care;

- (2) return home with conditions ~~in place to ensure~~ assure the safety of the child or others;
- (3) return home with reasonable conditions of release; or
- (4) return home with no conditions;
- (b) conditions pursuant to subdivision (a), if any, to be imposed upon the parent, legal custodian, or a party;
- (c) services, if any, to be provided to the child and the child's family;
- (d) terms of parental and sibling visitation pending further proceedings; ~~and~~
- (e) the parent's responsibility for costs of care pursuant to Minnesota Statutes § 260C.331, subd. 1;
- (f) if the court knows or has reason to know that the child is an Indian child, notice of the proceedings shall be sent to the Indian child's parents or Indian custodian and Indian child's tribe consistent with 25 U.S.C. § 1912(a); Minnesota Statutes § 260.761, subd. 3; and Rule 32.06; and
- (g) if the child is determined to be an Indian child and is proposed to be placed in foster care, testimony, pursuant to Rule 49, of a qualified expert witness.

### **2006 Advisory Committee Comment**

When the court orders a child into “protective care,” the court is ordering the child placed in foster care. That means the responsible social services agency has the right to temporary physical custody and control of the child. *See Rule 2.01(19-p); Minn. Stat. §§ 260C.178, subd. 1; and 260C.007, subd. 18.* The responsible social services agency must make an individualized determination that the placement selected is in the best interests of the child using the eight factors set out in the statute. *Minn. Stat. § 260C.201, subd. 1(a)(2)(ii), and § 260C.212, subd. 2.* The agency documents its use of the eight best interest factors in the Out-of-Home Placement Plan required under *Minn. Stat. § 260C.212, subd. 1, and Rule 37.02.* The court reviews the agency's use of the eight statutory best

interest factors during the hearing required under *Rule 41* and *Minn. Stat. § 260C.193, subd. 3*.

When a child is in foster care, the agency is responsible for the cost of placement, and may seek reimbursement from the child and parent under *Minn. Stat. § 260C.331, subd. 1*, and, in the case of eligible children, from the federal government under Title IV-E of the Social Security Act, *42 U.S.C. § 670 et al.* Federal reimbursement to counties for the cost of foster care in Minnesota is about 50% of the cost and offers the opportunity for significant savings to counties. One of the requirements for federal reimbursement is that the agency be the entity responsible for selecting the placement. The federal regulation that accompanies Title IV-E states “FFP [Federal Financial Participation – that is, Title IV-E reimbursement] is not available when a court orders a placement with a specific foster care provider.” *See 45 CFR § 1356.21(g)*. The Minnesota Department of Human Services recommends that orders for specific placements be limited to help ensure that Title IV-E reimbursements are not jeopardized. *See Minn. Dept. of Human Servs., Bull. No. 01-68-04, Title IV-E Updates (Apr. 11, 2001)–DHS Bulletin 01-68-04*. The only specific authority under Minnesota’s statutes for the court to order a particular placement is *Minn. Stat. § 260C.193, subd. 3*, which permits the court to order a child placed with a relative who qualifies to be licensed if the agency has not made efforts to locate a relative as required under *Minn. Stat. § 260C.212, subd. 5*. For these reasons, Rule 30.10 omits any requirement that the court order the child placed in a particular facility or with a particular relative.

### **2008 Advisory Committee Comment**

*Notice to Indian Child’s Parent, Indian Custodian, and Indian Tribe Required under ICWA.* See the 2008 Advisory Committee Comment

following Rule 34.03 for information about the notice required under the Indian Child Welfare Act (ICWA) to be provided to the Indian child's parent, Indian custodian, and Indian tribe, including timing of the notice and time to respond.

*Emergency Protective Care Placement Pending ICWA Notice.*

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

**RULE 32. SUMMONS AND NOTICE**

\* \* \* \* \*

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

\* \* \* \* \*

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

(a) a copy of the petition, but only if it is the initial hearing or the person has intervened or been joined as a party and previously has not been served with a copy of the petition;

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

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

(d) a statement explaining the right to representation pursuant to Rule ~~25-64~~;

(e) a statement explaining intervention as of right and permissive intervention pursuant to Rule 23;

(f) a statement pursuant to Rule 18.01 that failure to appear may result in:

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

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

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

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

(5) an order granting the relief requested; and

(g) a statement that it is the responsibility of the individual to notify the court administrator of any change of address.

\* \* \* \* \*

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

Pursuant to 25 U.S.C. § 1912(a), in any juvenile protection proceeding where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe of the pending proceedings and of the right of intervention pursuant to Rule 23. Such notice shall be by registered mail

with return receipt requested, unless personal service has been accomplished. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary of the Interior in like manner, who shall have fifteen (15) days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior, provided that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty (20) additional days to prepare for such proceeding. The original or a copy of each notice shall be filed with the court together with any return receipts or other proof of service.

### **2008 Advisory Committee Comments**

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

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

#### **"Notice Requirements**

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

child is a member of an Indian tribe and the child is eligible for membership in an Indian tribe.

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

i. The name of the Indian child.

ii. His or her tribal affiliation.

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

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

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

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

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

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

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

court to transfer the proceeding to the Indian child's tribal court.

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

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

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

### **RULE 33. PETITION**

\* \* \* \* \*

#### **Rule 33.02. Content**

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

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

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

(c) the names, race, dates of birth, residences, and post office addresses of the child's parents when known, and, if the child is believed to be an Indian child, the name of the child's tribe;

(d) the name, residence, and post office address of the child's legal custodian, the person having custody or control of the child, ~~or~~ the nearest known relative if no

parent or legal custodian can be found, and, if the child is believed to be an Indian child, the name and post office address of the child's Indian custodian, if any, and the Indian custodian's tribal affiliation;

- (e) the name, residence, and post office address of the spouse of the child;
- (f) the statutory grounds on which the petition is based, together with a recitation of the relevant portion of the subdivision(s);
- (g) a statement regarding the applicability of the Indian Child Welfare Act;
- (h) the names and addresses of the parties identified in Rule 21, as well as a statement designating them as parties;
- (i) the names and addresses of the participants identified in Rule 22, as well as a statement designating them as participants;
- (j) if the child is believed to be an Indian child, a statement regarding:
  - (1) ~~of~~ the specific actions that have been taken to prevent the child's removal from, and to safely return the child to, the custody of the parents or Indian custodian; ~~and~~
  - (2) whether the residence of the child is believed to be on an Indian reservation and, if so, the name of the reservation;
  - (3) whether the child is a ward of a tribal court and, if so, the name of the tribe; and
  - (4) whether the child's tribe has exclusive jurisdiction pursuant to 25 U.S.C. § 1911(a).

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

## 2008 Advisory Committee Comment

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

### **RULE 34. ADMIT/DENY HEARING**

\* \* \* \* \*

#### **Rule 34.02. Timing**

##### **Subd. 1. Child in Placement.**

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

(b) **Termination of Parental Rights Matters.** In a termination of parental rights matter the admit/deny hearing shall be held not less than ten (10) days after service of the summons and petition is complete upon the party.

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

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

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

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

\* \* \* \* \*

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

### **Rule 34.03. Hearing Procedure**

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

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

(b) inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe, parent, and Indian custodian have been notified;

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

(d) advise any child and the child's parent or legal custodian who appears in court and is not represented by counsel of the right to representation pursuant to Rule 25;

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

(f) if the child who is a party or the child's parent or legal custodian appears without counsel, explain basic trial rights;

(g) determine whether the child and the child's parent or legal custodian understand the statutory grounds and the factual allegations set forth in the petition and, if not, provide an explanation; ~~and~~

(h) explain the purpose of the hearing and the possible transfer of custody of the child from the parent or legal custodian to another, when such transfer is permitted by law and the permanency requirements of Minnesota Statutes § 260C.201, subd. 11;

(i) if the Admit/Deny Hearing is the first hearing in the juvenile protection matter, and if the court knows or has reason to know that the child is an Indian child, determine whether notice has been sent pursuant to Rule 32.06; 25 U.S.C. § 1912(a); and Minnesota Statutes § 260.761, subd. 3; and

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

**1999 Advisory Committee Comment (amended 2003 and 2008)**

Rule 34.03, subd. 2, is consistent with Minnesota Statutes § 260C.201, subd. 11, which provides that a permanency progress review permanent placement determination hearing must be held within six (6) months of a child's removal from the home if the child is under eight (8) years of age at the time the petition is filed. The requirements of Rule 34.03, subds. 3 and 4, are consistent with federal requirements regarding the timing of reasonable efforts determinations and permanency hearings.

**2008 Advisory Committee Comment**

Notice to Indian Child's Parent, Indian Custodian, and Indian Tribe Required Under ICWA. For a juvenile protection matter involving an

Indian child, the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1912(a); Minnesota Statutes § 260.761, subd. 3; and Rule 32.06 require that notice of the proceeding and of the right to intervene in the proceeding shall be given by registered mail with return receipt requested to the Indian child's parent or Indian custodian and the Indian child's tribe by the person seeking foster care placement or termination of parental rights. Minnesota Statutes § 260.761, subd. 2, also requires notice to the Indian child's tribe whenever the agency's involvement with the Indian child could lead to out-of-home placement and requires agency involvement longer than thirty (30) days. This requirement supports the practice of early involvement of the child's Indian tribe in planning for the child's safety and services for the family.

*Timing of ICWA Notice.* The ICWA, 25 U.S.C. § 1912(a), provides that no foster care placement or termination of parental rights proceeding shall be held until at least ten (10) days after receipt of notice by the Indian child's parent or Indian custodian and the Indian child's tribe, provided that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty (20) additional days from receipt of the notice to prepare for such proceeding.

*Emergency Protective Care Placement Pending ICWA Notice.* See 2008 Advisory Committee Comment to Rule 30.10.

## **RULE 36. PRETRIAL HEARING**

### **Rule 36.01. Timing**

The court ~~shall may~~ convene a pretrial hearing ~~on its own motion or upon the motion of any party.~~ Any pretrial hearing shall take place at least ten (10) days prior to trial.

### **Rule 36.02. Purpose**

The purposes of a pretrial hearing shall be to:

- (a) determine whether a settlement of any or all of the issues has occurred or is possible;
- (b) determine whether all parties have been served and, if not, review the efforts that have taken place to date to serve all parties;
- (c) advise any child or the child's parent or legal custodian who appears in court and is unrepresented of the right to representation pursuant to Rule 25. If counsel is appointed at the pretrial hearing, the hearing shall be reconvened at a later date;
- (d) determine whether the child shall be present and testify at trial and, if so, under what circumstances;
- (e) identify any unresolved discovery matters;
- (f) resolve any pending pretrial motions;
- (g) identify and narrow issues of law and fact for trial, including identification of:
  - (1) the factual allegations admitted or denied;
  - (2) the statutory grounds admitted or denied;
  - (3) any stipulations to foundation and relevance of documents; and
  - (4) any other stipulations, admissions, or denials;
- (h) exchange witness lists and a brief summary of each witness' testimony;
- (i) exchange exhibit lists;
- (j) confirm the trial date and estimate the length of trial;
- (k) determine the need for, and date for submission of, proposed findings; and
- (l-k) determine any other relevant issues.

### **Rule 36.03. Pretrial Order**

The pretrial order shall be filed within ten (10) days of the hearing and shall include the information specified in Rule 36.02 and shall specify all factual allegations and statutory grounds admitted and denied.

## **RULE 37. CASE PLANS AND OUT-OF-HOME PLACEMENT PLANS**

\* \* \* \* \*

### **Rule 37.02. Child in Court-Ordered Foster Care: Out-of-Home Placement Plan**

\* \* \* \* \*

**Subd. 3. Content.** The out-of-home placement plan shall include a statement about whether the child and parent, legal custodian, or Indian custodian, ~~and child~~ participated in the preparation of the plan. If a parent or legal custodian refuses to participate in the preparation of the plan or disagrees with the services recommended in the plan by the responsible social services agency, the agency shall state in the plan the attempts made to engage the parent, legal custodian, and child in case planning and note such refusal or disagreement. The plan shall also include a statement about whether the child's guardian ad litem; the child's tribe, if the child is an Indian child; and the child's foster parent or representative of the residential facility have been consulted in the plan's preparation. The agency shall document whether the parent, legal custodian, or Indian custodian, ~~and child~~, if appropriate; the child's tribe, if the child is an Indian child; and foster parents have received a copy of the plan. When the child is in foster care due solely or in part to the child's emotional disturbance, the child's mental health treatment provider shall also be consulted in preparation of the plan and the agency shall document such consultation in the plan filed with the court.

### **Rule 37.03. Child in Voluntary Foster Care: Out-of-Home Placement Plan**

**Subd. 1. Child in Voluntary Foster For Reasons Other than for Treatment Care Not Due Solely to Child's Disability.**

(a) **Timing.** The out-of-home placement plan required under Minnesota Statutes § 260C.212, subd. 1, shall be filed and served with the petition asking the court to review a voluntary placement of a child in placement when the placement is not due solely to the child's disability under Minnesota Statutes § 260C.141, subd. 2, and Rule 44.

(b) **Content.** The plan shall include a statement about whether the child and parent, legal custodian, or Indian custodian ~~and child~~ participated in the preparation of the

plan. The plan shall also include a statement about whether the child's guardian ad litem; the child's tribe, if the child is an Indian child; and the child's foster parent or representative of the residential facility have been consulted in the plan's preparation. The agency shall document whether the parent, ~~or legal custodian,~~ or Indian custodian; the child, if appropriate; the child's tribe, if the child is an Indian child; and foster parents have received a copy of the plan. When a child is in foster care due solely or in part to the child's emotional disturbance, the child's mental health treatment provider shall also be consulted in preparation of the plan and the agency shall document such consultation in the plan filed with the court.

**Subd. 2. Child in Voluntary Foster Care Due Solely to Child's Disability.**

~~(a) **Timing.** The out of home placement plan required under Minnesota Statutes § 260C.212, subd. 1, shall be filed with the report or petition asking the court to review a voluntary placement of a child in placement when the placement is due solely to the child's disability, as defined in Minnesota Statutes § 260C.007, subd. 12 or 16, under Minnesota Statutes § 260C.141, subd. 2, and Rule 44.~~

~~(b) **Content.** The plan shall include a statement about whether the parent, legal custodian, and child participated in the preparation of the plan. The plan shall also include a statement about whether the child's guardian ad litem; the child's tribe, if the child is an Indian child; and the child's foster parent or representative of the residential facility have been consulted in the plan's preparation. The agency shall document whether the parent, or legal custodian; the child, if appropriate; the child's tribe, if the child is an Indian child; and foster parents have received a copy of the plan. When a child is in foster care due solely to the child's emotional disturbance, the child's mental health treatment provider shall also be consulted in preparation of the plan and the agency shall document such consultation with the plan filed with the court.~~

**Subd. 2-3. Procedure for Approving Out-of-Home Placement Plan for Child in Voluntary Foster Care.** The court shall consider the appropriateness of the case plan

or out-of-home placement plan in determining whether the voluntary placement is in the best interests of the child as required under Rule 44.02.

## **RULE 39. TRIAL**

\* \* \* \* \*

### **Rule 39.02. Timing**

#### **Subd. 1. Commencement of Trial.**

(a) **Child in Need of Protection or Services Matters.** A trial regarding a child in need of protection or services matter shall commence within sixty (60) days from the date of the emergency protective care hearing or the ~~date of the admit/deny hearing,~~ whichever is earlier, and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and whenever possible should be over consecutive days.

(b) **Trial Following Permanency Progress Review Hearing for Child Under Age 8 Permanent Placement Matters.** ~~A trial regarding a permanent placement matter not involving a termination of parental rights matter shall commence on or before sixty (60) days after the admit/deny hearing or ninety (90) days after the filing of the petition, whichever is earlier. In the case of a child under eight (8) years of age at the time the child in need of protection or services petition is filed, if the responsible social services agency demonstrates at the permanency progress review hearing required under Rule 42 that the parent is not complying with the case plan or out of home placement plan or visiting the child and that the permanency plan for the child is transfer of permanent legal and physical custody to a relative or termination of parental rights, a petition supporting the permanency plan shall be filed in juvenile court within thirty (30) days of the hearing under this paragraph. A trial on the petition required by Rule 42.04(c) following a Permanency Progress Review Hearing shall be commenced held within thirty (30) days of the filing of a petition in the case of a transfer of legal custody or within ninety (90) days of the filing of the petition in the case of a petition for termination of parental rights, and testimony shall be concluded within thirty (30) days~~

from the date of commencement of the trial and whenever possible should be over consecutive days.

(c) **Termination of Parental Rights and Other Permanent Placement Matters.** Unless otherwise provided by these rules, a trial regarding a termination of parental rights matter or other permanent placement matter shall commence within sixty (60) ninety (90)-days of the first scheduled admit/deny hearing, from the date of the filing of the petition, and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and whenever possible should be over consecutive days.

(d) **Simultaneous Criminal Proceedings.** If criminal charges have been filed against a parent arising out of conduct alleged to constitute egregious harm, the county attorney shall determine whether the criminal matter or the juvenile court matter should proceed to trial first, consistent with the best interests of the child and subject to the defendant's right to a speedy trial.

~~(e) — **Sufficient Time.** The court shall set aside sufficient time, not to exceed thirty days (30), to provide for continuous testimony over consecutive days, until the trial is completed to avoid interruption of the trial.~~

## **Subd. 2. Continuance.**

~~(a) — **Generally.** The court may, either on its own motion or upon motion of a party or the county attorney, continue or adjourn a trial to a later date upon written findings or oral findings made on the record that a continuance is necessary for the protection of the child, for accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown, so long as the permanency time requirements set forth in these rules are not delayed. Failure to conduct a pretrial hearing shall not constitute good cause.~~

~~(b) — **Child in Need of Protection or Services Matters and Termination of Parental Rights Matters.** In child in need of protection or services matters and termination of parental rights matters, a trial may not be continued or adjourned for more than one (1) week unless the court makes specific findings that the continuance or~~

~~adjournment is in the best interests of the child. In any event, the trial shall be commenced and completed within ninety (90) days of the denial of the statutory grounds.~~

**Subd. 3. Effect of Mistrial; Order for New Trial.** Upon a declaration of a mistrial, or an order of the trial court or a reviewing court granting a new trial, a new trial shall be commenced within thirty (30) days of the order.

\* \* \* \* \*

**Rule 39.04. Standard of Proof**

**Subd. 1. Generally.** ~~To be proved at trial, the statutory grounds set forth in the Pursuant to Minnesota Statutes § 260C.163, subd. 1(a), and the Indian Child Welfare Act, 25 U.S.C. § 1912(e), in a child in need of protection or services matter, the standard of proof is~~ petition must be proved by clear and convincing evidence.

**Subd. 2. Termination of Parental Rights and Other Permanent Placement Matters.**

(a) **Non-Indian Child.** Pursuant to Minnesota Statutes § 260C.317, subd. 1, in a termination of parental rights or other permanency matter involving a non-Indian child, the standard of proof is clear and convincing evidence.

(b) **Indian Child.** Pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1912(f), in a termination of parental rights matter involving an Indian child, the standard of proof is beyond a reasonable doubt.

**~~Subd. 2. Indian Child.~~**

(a) ~~**Foster Care Placement.** In the case of an Indian child, no foster care placement may be ordered in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, as defined in Minnesota Rules parts 9560.0221 and 9560.0500 to 9560.0670, that the continued~~

~~custody of the child by the parent or legal custodian or Indian custodian is likely to result in serious emotional or physical damage to the child.~~

~~(b) **Termination of Parental Rights.** In the case of an Indian child, no termination of parental rights may be ordered in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, as defined in Minnesota Rules parts 9560.0221 and 9560.0500 to 9560.0670, that the continued custody of the child by the parent or legal custodian or Indian custodian is likely to result in serious emotional or physical damage to the child.~~

### **Rule 39.05. Decision**

**Subd. 1. Timing** ~~Generally.~~ Within fifteen (15) days of the conclusion of the trial testimony, during which time the court may require simultaneous written arguments to be filed and served, the court shall ~~make a finding and issue its findings and an order~~ regarding whether one or more ~~the~~ statutory grounds set forth in the petition have ~~or have not been~~ proved. The court may extend the this period for issuing an order for an additional fifteen (15) days if the court finds that an extension of time is required in the interests of justice and the best interests of the child. ~~The trial is not considered completed until written arguments, if any, are submitted or the time for submission of written arguments has expired. The court shall dismiss the petition if the statutory grounds have not been proved.~~

**Subd. 2. Child in Need of Protection or Services Matters and Habitual Truant, Runaway, and Prostitution Matters.** ~~The court shall issue its findings and order concerning adjudication within fifteen (15) days of the date that the trial is completed. If written argument is to be submitted, such argument must be submitted within fifteen (15) days of the conclusion of testimony. For good cause, the court may extend this period for an additional fifteen (15) days. The trial is not considered completed until written arguments, if any, are submitted or the time for submission of written arguments has expired. The court shall dismiss the petition if the statutory~~

~~grounds have not been proved. If the court finds~~ makes a finding ~~that one or more the~~ statutory grounds set forth in the petition have been proved, the court shall either enter or withhold adjudication pursuant to Rule 40 and schedule the matter for further proceedings pursuant to Rule 41-40. The findings and order shall be filed with the court administrator who shall proceed pursuant to Rule 10.

**Subd. 3. Termination of Parental Rights and Other Permanency Matters.**

(a) **Generally.** ~~Within fifteen (15) days of the conclusion of the trial, the court shall make a finding that the statutory grounds set forth in the petition have or have not been proved. The court may extend this period for an additional fifteen (15) days if the court finds that an extension of time is required in the interests of justice and the best interests of the child. If the court finds that the statutory grounds set forth in the petition are not proved, the court shall either dismiss the petition or determine that the child is in need of protection or services. and. If the court determines that the child is in need of protection or services, the court shall either enter or withhold adjudication pursuant to Rule 40 and schedule further proceedings pursuant to Rule 41-40. If the court finds that one or more the statutory grounds set forth in the termination of parental rights petition are proved, the court may terminate parental rights. If the court finds that any other permanency petition is proved, the court may order relief consistent with that petition. The findings and order shall be filed with the court administrator who shall proceed pursuant to Rule 10.~~

(b) **Particularized Findings.** In addition to making the findings in subdivision (a), the court shall also make findings regarding the following as appropriate. The court may not enter an order terminating parental rights unless it finds that the statutory grounds have been proved by the applicable standard of proof and the following:

(1) **Non-Indian Child Reasonable Efforts and Remedial Services.** In any termination of parental rights matter, the court shall make specific findings regarding the nature and extent of efforts made by the responsible social services agency to rehabilitate the parent and reunite the family, including, where applicable, a statement

that reasonable efforts to prevent placement and for rehabilitation and reunification are not required as provided under Minnesota Statutes § 260.012(a).

(2) **Active Efforts—Indian Child.** In any termination of parental rights proceeding involving an Indian child, the court shall make specific findings regarding the following:

(i) Active Efforts. The petitioner has proven beyond a reasonable doubt that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(ii) Serious Emotional or Physical Damage. Based upon the testimony, pursuant to Rule 49, of at least one qualified expert witness, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(3) **Best Interests of the Child.** Before ordering termination of parental rights, the court shall make a specific finding that termination is in the best interests of the child and shall analyze:

(i) the child's interests in preserving the parent-child relationship;

(ii) the parent's interests in preserving the parent-child relationship; and

(iii) any competing interests of the child.

(4) **Best interests of an Indian Child.** In proceedings involving an Indian child, the best interests of the child shall be determined consistent with the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq.

(5) **Child's Interests Paramount.** Where the interests of parent and child conflict, the interests of the child are paramount.

## RULE 41. DISPOSITION

\* \* \* \* \*

### Rule 41.02. Timing

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

\* \* \* \* \*

### Rule 41.05. Disposition Order

**Subd. 1. Findings.** The disposition order shall contain written findings of fact to support the disposition ordered and shall also set forth in writing the following information:

(a) a statement explaining how the disposition serves the best interests and safety of the child;

(b) a statement of all alternative dispositions or services under the case plan or out-of-home placement plan considered by the court and why such dispositions or services are not appropriate in the instant case;

(c) if the disposition is transfer of legal custody to a responsible social services agency, a statement about whether the proposed placement meets the child's needs and is in the child's best interests and reviewing the agency's use of the factors set out below in making the child's foster care placement:

- (1) the child's current functioning and behaviors;
- (2) the medical, educational, and developmental needs of the child;
- (3) the child's history and past experience;
- (4) the child's religious and cultural needs;

- (5) the child's connection with a community, school, and faith community;
- (6) the child's interests and talents;
- (7) the child's relationship to current caretakers, parents, siblings, and relatives; and
- (8) reasonable preference of the child, if the court deems the child to be of sufficient age to express a preference; and

(d) a brief description of the efforts made to prevent or eliminate the need for removal of the child from home and to reunify the family after removal, and why further efforts could not have prevented or eliminated the necessity of removal or that reasonable efforts were not required under Minnesota Statutes §§ 260.012 or 260C.178, subd. 1.

The court may authorize or continue an award of legal custody to the responsible social services agency despite a finding that the agency's preventive or reunification efforts have not been reasonable if the court finds that further preventive or reunification efforts could not permit the child to safely remain at home.

If the child has been identified by the responsible social services agency as the subject of concurrent permanency planning, the court shall review and make findings regarding the reasonable efforts of the agency to recruit, identify, and make a placement with a foster parent or relative who has committed to providing the legally permanent home for the child in the event reunification efforts are not successful.

(e) In the case of an Indian child, the foster care placement of the child shall be ordered only upon the testimony, pursuant to Rule 49, of at least one qualified expert witness that the continued custody of the child by the parent or legal custodian or Indian custodian is likely to result in serious emotional or physical damage to the child.

**Subd. 2. Content.**

\* \* \* \* \*

(b) **Additional Provisions.** As part of the disposition order the court shall also:

(1) approve or modify the plan for supervised or unsupervised visitation for the child's parent or legal custodian, relatives, and siblings of the child, if siblings are not in out-of-home placement together, as set out in the out-of-home placement plan; the court may set reasonable rules for visitation that contribute to the objectives of the court order and the maintenance of the familial relationship; the court may deny visitation when visitation would act to prevent the achievement of the court's disposition order or would endanger the child's physical or emotional well-being;

(1) review the case plan, make modifications supported by the evidence appropriate, and approve the plan;

(2) order all parties to comply with the approved case plan;

(3) incorporate into the order by reference the approved case plan and attach a copy of the plan only if it has been modified;

(4) give notice to the parent on the record and in writing of the requirements of Minnesota Statutes § 260C.201, subs. 11 and 11a; and

(5) set the date and time for the admit/deny permanency placement determination-hearing pursuant to Rule 42.

#### **Rule 41.06. Hearings to Review Disposition**

\* \* \* \* \*

##### **Subd. 2. Procedure in Reviewing Disposition.**

\* \* \* \* \*

(b) **Legal Custody to Agency with Trial Home Visit.** When the disposition is a trial home visit:

(1) the responsible social services agency shall advise the court and parties within three (3) days of the date a trial home visit is terminated by the responsible social services agency without a court order;

(2) the responsible social services agency shall prepare a report for the court when the trial home visit is terminated, whether by the agency or court order, which describes the child's circumstances during the trial home visit and recommends

appropriate orders, if any, for the court to enter to provide for the child's safety and stability. In the event a trial home visit is terminated by the agency by removing the child to foster care without prior court order or authorization, the court shall conduct a hearing within ten (10) days of receiving notice of the termination of the trial home visit by the agency and shall order disposition under this subdivision or conduct a permanency hearing under Rule 42. The time period for the hearing may be extended by the court for good cause shown and if it is in the best interests of the child as long as the total time the child spends in foster care without a permanent placement determination hearing does not exceed twelve (12) months;

(3) the court shall conduct a hearing while the child is in trial home placement the matter shall be reviewed in court at least every ninety (90) days to determine whether the trial home visit continues to be necessary. At least five (5) business days prior to the hearing, the responsible social services agency shall file with the court and serve upon the parties a report describing the services provided to the child and parent and the parent's progress on the case plan; and

\* \* \* \* \*

### **2008 Advisory Committee Comment**

To ensure that each child's developmental needs are timely met, federal and state statutes have established a 12-month permanent placement determination timeline. A trial home visit is a tool designed to support reunification efforts, while simultaneously ensuring the child's safety. Consistent with Rule 41.06, which requires 90-day review hearings for other types of dispositions, Rule 41.06, subd. 2(b), provides that in cases where a trial home visit has been ordered the disposition review hearing must occur at least every 90 days. However, to better support reunification efforts, the best practice is to hold such disposition review hearings more often than every 90 days and to establish the hearing frequency and date in court.

**RULE 42. PERMANENT PLACEMENT AND TERMINATION OF PARENTAL RIGHTS MATTERS; POST-PERMANENCY REVIEW REQUIREMENTS**

**Rule 42.01. ~~Timing and Purpose~~**

**Subd. 1. Timing of Required Permanency Proceedings for Child in Need of Protection or Services Matters.** In the case of a child who ~~has been~~ is alleged or found to be in need of protection or services, ordered into foster care or the home of a noncustodial parent, and where reasonable efforts for reunification are required, the ~~court~~ in its first order placing the child in foster care or the home of a noncustodial parent shall set the date or deadline for:

(a) the admit/deny hearing commencing the permanent placement determination ~~hearing~~ proceedings; and

(b) the permanency progress review hearing required for a child who is under age eight (8) at the time the petition alleging the child to be in need of protection or services is filed.

**Subd. 2. Timing of Hearing for Child on a Trial Home Visit.** When the child has been ordered on a trial home visit which continues at the time the court is required to commence permanent placement determination proceedings under Rule 42.01, within twelve (12) months of the date a child is placed in foster care the court shall hold a hearing pursuant to Rule 42.13 to determine the continued status of the child.

**Rule ~~42.02.~~ Subd. 3. Calculating Time Period**

The child shall be considered placed ~~out of the care of the parent~~ in foster care or the home of a noncustodial parent at the earlier of:

(a) the date of the child's placement in foster care or in the care of a noncustodial parent ~~was ordered by the court~~ order; or

(b) sixty (60) days after the date on which the child has been voluntarily placed in foster care as a result of a voluntary placement agreement between the parents and the responsible social services agency.

~~Rule 42.03.~~ **Subd. 4. Accumulation of Out-of-Home Placement Time**

The time period requiring the court to commence permanent placement determination proceedings ~~review of the permanent status of the child~~ shall be calculated as follows:

(a) during the pendency of a petition alleging a child to be in need of protection or services, all time periods during which a child is placed in foster care or in the home of a noncustodial parent are accumulated; ~~and~~

(b) if a child has been placed in foster care within the previous five years under one or more previous petitions, the lengths of all prior time periods during which the child was placed in foster care within the previous five years are accumulated. If a child under this clause has been in foster care for twelve (12) months or more, the court, if it is in the best interests of the child and for compelling reasons, may extend the total time the child may continue out of the home under the current petition up to an additional six (6) months before making a permanency determination; and

(c) time spent on a trial home visit under Minnesota Statutes § 260C.201, subd. 1(a)(3), counts toward the requirement that the court commence permanency proceedings under this rule. However, if the child is on a trial home visit at the time the court is required to commence permanency proceedings, the court may conduct the hearing under Rule 42.13. If a trial home visit is ordered or continued at the time set for the court to commence permanency proceedings or if the child is ordered returned to the parent's home as a trial home visit at the conclusion of permanency proceedings under this rule, and the child is subsequently returned to foster care, the court shall re-commence proceedings to determine an appropriate permanent order for the child not later than thirty (30) days after the child returns to foster care.

**Subd. 5. Notification of Timing.** Not later than when the court sets the date or deadline for the admit/deny hearing commencing the permanent placement determination ~~hearing proceedings~~ and the permanency progress review hearing, the court shall notify

the parties and participants of the following requirements—of—Minnesota Statutes § 260C.201, subd. 11 and subd. 11a:

(a) **Requirement of Six (6) Month Hearing for Child Under Eight (8) Years of Age.** For a child who is under eight (8) years of age at the time a petition is filed alleging the child to be in need of protection or services, the court shall conduct a permanency progress review hearing to review the progress of the case, the parent’s progress on the case plan or out-of-home placement plan, and the provision of services not later than six (6) months after the child is placed in foster care or in the home of a noncustodial parent. At the hearing required under this paragraph, the court may conduct a permanency progress review hearing for any sibling of the child, regardless of age, when the sibling is also in foster care or in the home of a noncustodial parent.

(b) **Requirement of Twelve (12) Month Hearing.** The court shall commence ~~conduct a permanent placement determination hearing proceedings~~ to determine the permanent status of the child, regardless of age, not later than twelve (12) months after the child is placed in foster care or in the home of a noncustodial parent.

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

**Rule 42.02-Subd. 2. Purpose of Permanent Placement Determination Proceeding and Permanency Progress Review Hearing**

**Subd. 1. (a) Any Child in Foster Care or in Home of a Noncustodial Parent.**

The purpose of ~~the~~ permanent placement determination ~~hearing~~ proceedings is to determine the permanent status of a child, including a review of the progress of the case and the parent's progress on the case plan or out-of-home placement plan, the services provided by the responsible social services agency, and whether or not the conditions that led to the child's placement in foster care or in the home of a noncustodial parent have been corrected so that the child can return to the care of the parent or custodian from whom the child was removed. The court shall determine whether the child shall be returned home or, if not, order permanent placement of the child consistent with the child's best interests and the pleadings and proof presented to the court.

**Subd. 2. (b) Permanency Progress Review: Child Under Eight (8) Years of Age.** The purpose of the permanency progress review hearing is to review the progress of the case, the parent's progress on the case plan or out-of-home placement plan, and the provision of services by the responsible social services agency. The court shall determine whether the parents or legal custodian have maintained regular contact with the child, the parents are complying with the court-ordered case plan or out-of-home placement plan, and the child would benefit from continuing this relationship.

**Subd. 3. (e) Matters Where Reasonable Efforts for Reunification Are Not Required.** The purpose of holding the trial on the petition within ninety (90) days of the prima facie determination permitted under Rule 30.09, subd. 3, and Minnesota Statutes § 260.012 in cases where reasonable efforts for reunification are not required is to ensure timely decision by the court that either:

(a) there is a sufficient evidentiary basis for an order for termination of parental rights or permanent placement of the child away from the parent and for finding the order

for termination of parental rights or permanent placement away from the parent is in the child's best interests; or

(b) there is an insufficient evidentiary basis for the order or that the order is not in the best interests of the child.

**~~Rule 42.02. Calculating Time Period~~**

~~The child shall be considered placed out of the care of the parent at the earlier of:~~

~~(a) the date of the child's placement in foster care or in the care of a noncustodial parent was ordered by the court; or~~

~~(b) sixty (60) days after the date on which the child has been voluntarily placed in foster care as a result of a voluntary placement agreement between the parents and the responsible social services agency.~~

**~~Rule 42.03. Accumulation of Out-of-Home Placement Time~~**

~~The time period requiring court review of the permanent status of the child shall be calculated as follows:~~

~~(a) during the pendency of a petition alleging a child to be in need of protection or services, all time periods during which a child is placed in foster care or in the home of a noncustodial parent are accumulated; and~~

~~(b) if a child has been placed in foster care within the previous five years under one or more previous petitions, the lengths of all prior time periods during which the child was placed in foster care within the previous five years are accumulated. If a child under this clause has been in foster care for twelve (12) months or more, the court, if it is in the best interests of the child and for compelling reasons, may extend the total time the child may continue out of the home under the current petition up to an additional six (6) months before making a permanency determination.~~

**Rule ~~42.03~~-42.04. Procedures for Permanency ~~Permanent~~ Progress Review Hearing and Permanent Placement Determination Hearing**

**~~Subd. 1. Permanency Progress Review Hearing: Child Under Eight (8) Years of Age.~~** The following procedures govern a permanency progress review hearing required within six (6) months of placement for a child under the age of eight (8) at the time the petition was filed alleging the child to be in need of protection or services and may also apply to any sibling of the child, regardless of age, when the sibling also is in foster care or the home of a noncustodial parent.

(a) **Written Report.** Not later than ten (10) days prior to the hearing, the county attorney shall ~~must~~ file with the court and serve upon the parties a written report prepared by the responsible social services agency describing the progress of the case and the case plan or out-of-home placement plan including the services provided to the parents.

(b) **Court Determination.**

(1) **Regular Contact Maintained and ~~or~~ Parent Not Complying.** If the court determines that parent or legal custodian has maintained regular contact with the child, the parent is complying with the court-ordered case plan or out-of-home placement plan, and the child would benefit from continuing this relationship, the court may either:

(i) return the child home, if the conditions which led to the out-of-home placement have been sufficiently mitigated and it is safe and in the child's best interests to return home; or

(ii) continue the matter up to a total of six (6) additional months.

(2) **Regular Contact Not Maintained or Parent Not Complying.** If the court determines that the parent or legal custodian has not maintained regular contact with the child as outlined in the visitation plan required under the case plan or out-of-home placement plan or the parent is not complying with the case plan or out-of-home placement plan, the court may order the responsible social services agency to develop a plan for permanent placement of the child away from the parent and to file a petition to

support an order for the permanent placement plan within thirty (30) days of the hearing.  
A trial on the petition shall be held as provided in subdivision 4(c).

(c) **Responsible Agency's or County Attorney's Duties.** Following the review under this subdivision:

(1) if the court ~~has either~~ returns ~~returned~~ the child home or continues ~~continued~~ the matter up to a total of six (6) additional months, the agency shall continue to provide services to support the child's return home or ~~to~~ continue to make reasonable efforts to achieve reunification of the child and the parent as ordered by the court under an approved case plan;

(2) if the court orders the agency to develop a plan for the transfer of permanent legal and physical custody of the child to a relative, a petition supporting the plan shall be filed with the court within thirty (30) days of the hearing required under this subdivision and a trial on the petition shall be held within thirty (30) days of the filing of the petition; or

(3) if the court orders the agency to file a termination of parental rights petition, unless the county attorney can show cause why a termination of parental rights petition should not be filed, a petition for termination of parental rights shall be filed with the court within thirty (30) days of the hearing required under this subdivision and a trial on the petition shall be held within ninety (90) days of the filing of the petition.

~~Subd. 2.~~ **Rule 42.04. Procedures for Permanent Placement Determination Proceedings for a Child Eight (8) Years of Age or Older or a Child Under Age Eight (8) for Whom Permanency Has Not Been Ordered; Admit/Deny Hearing Required at Month 12**

The following procedures govern permanent placement determination proceedings for a child eight (8) years of age or older, or a child under age eight (8) for whom permanency has not been ordered, who has not been returned home within twelve (12) months of an order placing the child in foster care or in the home of a noncustodial parent:

~~(a-b) **Petition or Motion.** Unless the responsible social services agency recommends return of the child to the custodial parent or files a petition and motion pursuant to Rule ~~42.06-42.14~~, not later than thirty (30) days prior to the admit/deny hearing required in paragraph (b) subd. 2(a) the responsible social services agency shall file with the court a petition required under Rule 33.01 to establish the basis for the juvenile court to order permanent placement of the child according to Rules 42.06 to 42.12-42.05.~~

~~(b-a) **Admit/Deny Hearing on Permanency Petition.** The court shall commence and complete an admit/deny hearing pursuant to Rule 34 on the permanency petition, termination of parental rights petition, or petition for alternative permanent placement relief under Rule 33.01 ~~pursuant to Rule 34~~ not later than twelve (12) months after the child is placed in foster care or in the care of a noncustodial parent.~~

~~(c) **Trial.** The court shall commence and complete any trial on the permanency petition within the time specified in Rule 39.~~

### **Rule 42.05. Permanent Placement Findings and Order**

~~**Subd. 1. Timing.** Within fifteen (15) days of the close of the permanent placement determination hearing the court shall issue a permanent placement order. The court may extend this period for an additional fifteen (15) days if the court finds that an extension of time is required in the interests of justice and the best interests of the child. The order shall be filed with the court administrator who shall proceed pursuant to Rule 10.~~

~~**Subd. 1. Findings.** Except in the case of an order terminating parental rights governed by Rule 42.08, an order permanently placing the child out of the home of the parent or guardian shall include the following findings:~~

~~(a) how the child's best interests are served by the order;~~

(b) the nature and extent of the responsible social services agency's reasonable efforts, or in the case of an Indian child active efforts, to reunify the child with the parent or guardian where reasonable efforts are required;

(c) the parent's efforts and ability to use services to correct the conditions which led to the out-of-home placement; and

(d) that the conditions which led to the out-of-home placement have not been corrected so that the child can safely return home.

**Subd. 2. Order.** At the conclusion of the permanent placement determination proceedings the court shall order one of the following permanency dispositions:

(a) Return the child home pursuant to Rule 42.06;

(b) Transfer permanent legal and physical custody to a relative pursuant to Rule 42.07;

(c) Terminate parental rights pursuant to Rule 42.08;

(d) Guardianship and legal custody to the Commissioner of Human Services upon consent by the child's parent to adopt pursuant to Rule 42.09;

(e) Long term foster care pursuant to Rule 42.11; or

(f) Foster care for a specified period of time pursuant to Rule 42.12.

**Rule 42.06. Subd. 2. Order. Return Child Home**

If the court orders the child to be returned to the care of a parent, the court may enter or continue a prior finding that the child is in need of protection or services and may order conditions directed to correction of the child's need for protection or services. The court may order:

(a-i) the child returned on a trial home visit pursuant to Rule 41.05, subd. 2(a)(3);

(b-ii) the child placed under the protective supervision of the responsible social services agency under Rule 41.05, subd. 2(a)(1); or

(c-iii) monitoring of the parent's continued ability to maintain the child safely in the home under Rule 41.05, subd. 2(a)(6).

**Rule 42.07. (b)–Transfer of Permanent Legal and Physical Custody to a Relative**

**Subd. 1. Order.** The court may order transfer of permanent legal and physical custody to a fit and willing relative pursuant to Minnesota Statutes § 260C.201, subd. 11(d)(1).

**Subd. 2. Jurisdiction Terminated Unless Retained.** If the court transfers permanent legal and physical custody to a relative, juvenile court jurisdiction is terminated unless specifically retained by the court in its order.

**Subd. 3. Further Hearings If Jurisdiction Retained.** ~~If The the court may maintain~~ retains jurisdiction, ~~over the responsible social services agency, the parents or legal custodian of the child, the child, and the permanent legal and physical custodian for purposes of ensuring that appropriate services are delivered to the child and permanent legal custodian or for the purpose of ensuring that conditions ordered by the court related to the care and custody of the child are met.~~ ~~The~~ the court may order further in-court hearings at such intervals as it determines to be in the best interests of the child pursuant to subdivision 7.

**Subd. 4. Order and Further Proceedings in Family Court.** When juvenile court jurisdiction is terminated, the court shall include an order directing the juvenile court administrator to file the order with the family court. Any further proceedings for modification of the order transferring permanent legal and physical custody to a relative shall be brought in the family court of the county where the original order was filed. The review shall be pursuant to Minnesota Statutes § 518.18 and § 518.185. Notice of any family court proceedings shall be provided by the court administrator to the responsible

social services agency which shall be a party to the family court proceeding pursuant to Minnesota Statutes § 260C.201, subd. 11(j).

**Subd. 5. Voluntary Transfer of Custody.** A parent or legal custodian may voluntarily agree to transfer permanent legal and physical custody of the child to a fit and willing relative by either filing a petition to transfer permanent legal and physical custody pursuant to Rule 33.01 and establishing that such transfer is in the child's best interests under Minnesota Statutes § 260C.201, subd. 11, or by entering an admission to such a petition filed by another party and stating, under oath, that the parent or legal custodian believes such a transfer is in the child's best interests and establishes good cause for the transfer on the record before the court.

**Subd. 6. Order Requirements.** In addition to the findings required under Rule 42.05, ~~The~~the order transferring permanent legal and physical custody shall address parental and sibling visitation and ongoing services to be delivered to the child while the juvenile court has jurisdiction, and shall state whether the transfer was voluntary or involuntary. The order shall state whether a child support order exists or if the issue is reserved for future determination.

**Subd. 7. ~~Rule 42.22.~~ Review for a Child Who is with a Relative Who Has Permanent Legal and Physical Custody**

When the court orders transfer of permanent legal and physical custody to a relative under this Rule, the court may retain jurisdiction over the responsible social services agency, the parents or guardian of the child, the child, and the permanent legal and physical custodian. The court may conduct reviews at such frequency as the court determines will serve the child's best interests for the purpose of ensuring:

(a) appropriate services are delivered to the child and the permanent legal and physical custodian; or

(b) conditions ordered by the court relating to the care and custody of the child are met.

**Subd. 5. Rule 42.08. Involuntary and Voluntary Termination of Parental Rights Proceedings**

**Subd. 1. Involuntary Termination of Parental Rights Proceedings.** Upon petition pursuant to Minnesota Statutes § 260C.301, subd. 1(b), and after an admit/deny hearing under Rule 34 or a trial under Rule 39, as appropriate, the court may issue an order granting or denying a petition to involuntarily terminate parental rights which shall include the following:

- (a) a statement of the facts upon which the court bases its order;
- (b) findings regarding how the order is in the best interests of the child;
- (c) findings regarding the responsible social services agency's reasonable efforts, or, in the case of an Indian child active efforts, to reunify the child and the parent or that reasonable efforts for reunification are not required under Minnesota Statutes § 260.012;
- (d) if the child is an Indian child, findings regarding the testimony, pursuant to Rule 49, of at least one qualified expert witness;
- (e) if termination of parental rights is ordered, the specific statutory grounds under Minnesota Statutes § 260C.301, subd. 1(b), upon which the court issued its order and the facts supporting those grounds; and
- (f) the effective date of the order.

**Subd. 2. Voluntary Termination of Parental Rights Proceedings.**

(a) **Petition and Consent.** Upon petition pursuant to Minnesota Statutes § 260C.301, subd. 1(a), and voluntary consent of the parent, the court shall conduct a hearing regarding the voluntary termination of the person's parental rights.

(b) **Oath.** At the hearing, the parent shall be placed under oath for the purpose of:

(1) asking that the petition be granted; and

(2) establishing that there is good cause for termination of parental rights and that it is in the best interests of the child to terminate parental rights.

(c) **Hearing.** During the hearing, the court shall:

(1) advise the parent of the right to representation by counsel pursuant to Rule 25;

(2) determine whether the parent fully understands the consequences of termination of parental rights and the alternatives to termination;

(3) inquire as to the true voluntary nature of the parent's consent; and

(4) obtain a waiver of the right to trial on the involuntary petition when the parent is voluntarily consenting to termination of parental rights after an involuntary termination of parental rights petition has been filed.

(d) if the parent is not present in court but has signed a voluntary consent to termination of parental rights, the court shall determine whether there has been compliance with all statutory requirements regarding a written consent to termination of parental rights and whether the parent was thoroughly advised of and understood the right to trial, the right to representation by counsel, the consequences of termination of parental rights, and the alternatives to termination.

### **Subd. 3. Voluntary Termination of Parental Rights in Matters Governed by the Indian Child Welfare Act**

When the child is an Indian child and the matter is governed by the Indian Child Welfare Act, 25 U.S.C. § 1913, the following procedures apply to a voluntary termination of parental rights by an Indian parent.

(a) **Procedures for Consent.** The consent to terminate parental rights by the parent shall not be valid unless:

(1) executed in writing;

(2) recorded before the judge; and

(3) accompanied by the presiding judge's certificate that the terms and consequences of the consent were explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that the parent or Indian custodian fully understood the explanation in English or that it was translated into a language that the parent or Indian custodian understood.

(b) **Timing of Consent.** Any consent to termination of parental rights given prior to, or within ten days after, the birth of the Indian child shall not be valid.

(c) **Parent's Right to Withdraw Consent.** Any consent to termination of parental rights by a parent of an Indian child may be withdrawn by the parent at any time prior to the time the final order terminating the parent's rights.

**Subd. 4. Notice to Parents Whose Rights Have Been Terminated** Birth Certificate.—Upon entry of an order terminating the parental rights of any person who is identified as a parent on the original birth record of the child, the court shall serve upon that person at the person's last known address written notice setting forth a statement regarding:

(a) the right of the person at any time to file with the state registrar of vital statistics a consent to disclosure, as defined in Minnesota Statutes § 144.212, subd. 11;

(b) the right of the person at any time to file with the state registrar of vital statistics an affidavit stating that the information on the original birth record shall not be disclosed as provided in Minnesota Statutes § 144.2252;

(c) the effect of failure to file either a consent to disclosure or an affidavit stating that the information on the original birth record shall not be disclosed; and

(d) the right of the parent to file an appeal pursuant to Rule 47.

#### **2008 Advisory Committee Comment**

See the 2008 Advisory Committee Comment to Rule 49.03 regarding qualified expert witness.

**Subd. 5. Review When Child is Under the Guardianship of the Commissioner of Human Services.**

**~~Subd. 1. Review When Plan is Adoption.~~** If the court terminates parental rights, the court shall schedule a review hearing ninety (90) days from the date the termination order is filed with the court, and at least every ninety (90) days thereafter, for the purpose of reviewing ~~the progress of the child~~ towards finalization of adoption. Review under this rule is required unless the court has ordered the child into long-term foster care. The court shall notify the county attorney, responsible social services agency, the child's guardian ad litem, the child, the child's attorney, and the child's foster parent, pre-adoptive parent, and relative caregiver ~~or other relative who has asked for notice~~ of the date and time of the hearing. In lieu of the court report required under Rule 38, not later than five (5) business days before the hearing the responsible social services agency shall file with the court and serve upon the parties ~~submit~~ a report which addresses the following:

(a) where the child currently resides, the length of time the child has resided in the current placement, the number of other placements the child has experienced, and whether the current foster care provider is willing to adopt the child;

(b) whether the responsible social services agency has made adequate efforts to identify, locate, and place the child with a relative willing to adopt the child; if the child is an Indian child, the agency's plan to meet the adoptive placement preferences of 25 U.S.C. § 1915;

(c) if the child has siblings in out-of-home placement or previously placed for adoption, whether the child is placed with the siblings; if the child is not placed with siblings, whether the agency:

- (1) must make further efforts to place the child with siblings; or
- (2) obtain the consent of the Commissioner of Human Services to separate the child from siblings for adoption under Minnesota Statutes § 259.24, subd. 1(e), and Minnesota Rules 9560.0450, subp. 2; and

(3) has developed a visitation plan for the siblings; if no visitation plan exists, the reason why;

(d) the efforts the agency has made to identify non-relative adoptive resources for the child including utilizing the State of Minnesota Adoption Registry and other strategies for identifying potential adoptive homes for the child; and

(e) if an adoptive home has been identified whether:

(1) placement has been made in the home;

(2) a preadoptive placement agreement has been signed;

(3) the child qualifies for adoption assistance payments, and if so, what the status of the adoption assistance agreement is;

(4) an adoption petition has been filed;

(5) a finalization hearing has been scheduled; and

(6) there are barriers to adoption and how those barriers might be removed.

(f) ~~At least every twelve (12) months, the court shall enter a finding regarding whether or not the responsible social services agency has made reasonable efforts to finalize the permanent plan for the child as long as the permanent plan remains adoption.~~

(g) ~~If the~~ When an adoptive placement was made more than twelve (12) months prior to the review hearing and no hearing to finalize the adoption has been scheduled, a hearing under Minnesota Statutes § 259.22, subd. 4, shall ~~must~~ be scheduled.

**Rule 42.09. Guardianship and Legal Custody to the Commissioner of Human Services Upon Consent by the Child's Parent to Adopt Under Minn. Stat. § 260C.201, subd. 11(d)**

**Subd. 1. Procedures.** ~~Without terminating parental rights, The~~ the court may award guardianship and legal custody to the Commissioner of Human Services under the following procedures ~~and conditions~~:

(a-1) Voluntary Consent and Identified Prospective Adoptive Home. When there is an identified prospective adoptive home agreed to by the responsible social services agency that has agreed to adopt the child and the court accepts the parent's voluntary consent to adopt under Minnesota Statutes § 259.24.

(b) Copies of Consent and Order to Commissioner. The court shall forward to the Commissioner of Human Services one copy of the consent to adopt, together with a certified copy of the order transferring guardianship and legal custody to the Commissioner.

**Subd. 2. (b)–When Consent is Irrevocable.** ~~except that such consent~~ Consent to adoption executed by a parent under Minnesota Statute § 260C.201, subd. 11(d)(5), is irrevocable upon acceptance by the court unless fraud is established and an order issues permitting revocation. In a matter governed by the Indian Child Welfare Act, 25 U.S.C. § 1913, a consent to adopt given by the parent of an Indian child is revocable at any time prior to finalization of the adoption;.

**Subd. 3. (2)–Ninety (90) Day Review.** ~~the~~ The matter shall be is reviewed in court at least every ninety (90) days under the requirements of Rule 42.08, subd. 5, 43-03 as if a termination of parental rights had occurred; and

~~(3)–Copies of Consent and Order to Commissioner.~~ ~~The court forwards to the Commissioner of Human Services a copy of the consent to adopt, together with a certified copy of the order transferring guardianship and legal custody to the commissioner.~~

### **Rule 42.10. Order for Guardianship and Legal Custody When Parental Rights Are Terminated or When Parent Consents to Adoption**

**Subd. 1. Procedures.** In addition to the findings and order for termination of parental rights requirements of Rule 42.08, or when the parent consents to adoption of the

child under Rule 42.09, the court shall order guardianship and legal custody according to the following requirements:

(a) **Order When Parental Rights of Both Parents Terminated.** When an order terminates the rights of the only known living parent of the child, the rights of both parents of the child, or where the rights of the other parent of the child were previously terminated, the court shall issue an order transferring guardianship and legal custody to:

- (1) the Commissioner of Human Services;
- (2) a licensed child placing agency; or
- (3) an individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

(b) **Order When Parental Rights of Both Parents Not Terminated.** When the rights of both known, living parents are not terminated at the same time, the order terminating the rights of one parent, but not both parents, shall not award guardianship and legal custody to a person or entity until and unless the rights of both parents are terminated or the child is free for adoption due to consent of a parent to adoption under Minnesota Statutes § 260C.201, subd. 11, or § 259.24. The order may continue legal custody of the child with the responsible social services agency.

(c) **Order When Parents Rights are Terminated in Separate Orders.** When the court issues separate orders terminating parental rights to a child or an order freeing a child for adoption due to consent by a parent to adoption under Minnesota Statutes § 260C.201, subd. 11(d), or § 259.24, the second order terminating parental rights or freeing the child for adoption shall reference by filing date and jurisdiction the previous order and shall award guardianship and legal custody to:

- (1) the Commissioner of Human Services;
- (2) a licensed child placing agency; or
- (3) an individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

**Subd. 2. Conditions – Limits on When Commissioner of Human Services May Become Guardian or Legal Custodian.**

**(a) Limits on Appointment of Commissioner of Human Services When no Appointment under Probate Code.** The court may transfer guardianship and legal custody to the Commissioner of Human Services if, upon petition to the juvenile court by a reputable person, including but not limited to an agency of the Commissioner of Human Services, and upon trial the court finds:

- (1) that both parents or the only known legal parent are or is deceased;
- (2) no appointment has been made or petition for appointment filed under Minnesota Statutes § 524.5- 102 to 524.5-317; and
- (3) there is no individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

**(b) Responsible Social Services Agency Has Permanency Planning Responsibility.** The court shall order transfer of guardianship and legal custody of a child to the Commissioner of Human Services only when the responsible county social services agency had legal responsibility for planning for the permanent placement of the child and the child was in foster care under the legal responsibility of the responsible county social services agency at the time the court orders guardianship and legal custody transferred to the commissioner.

**Subd. 3. Certified Copy of Orders.** The court administrator shall forward one certified copy of the findings and order terminating parental rights and awarding guardianship and legal custody to the Commissioner of Human Services, the agency to which guardianship is transferred, or the individual to whom guardianship is transferred. The court also shall issue a separate order for guardianship and legal custody and provide a certified copy to the guardian.

**Subd. 4. Copy of Order Terminating Guardianship.** If the court issues an order terminating guardianship with the Commissioner of Human Services, an agency, or

an individual by other than an order for adoption, the court administrator shall send a copy of the order terminating the guardianship to the former guardian.

### **2008 Advisory Committee Comment**

Rule 42.10, subd. 2, reflects requirements of Minnesota Statutes § 260C.325, subds. 1(b) and 3. Rule 42.10, subd. 3, requires the court to issue a separate order regarding the award of guardianship to enable the guardian to demonstrate legal decision-making authority for the child without disclosing all of the findings contained in the order terminating parental rights.

#### **(e) — Rule 42.11. Long-term Foster Care**

**Subd. 1. (1) — Requirements for Compelling Reasons Why Permanent Legal and Physical Custody and Adoption is Not in the Child’s Best Interests.** The court may ~~only~~ order long term foster care only if it approves the responsible social services agency’s compelling reasons that neither an award of permanent legal and physical custody to a relative, nor termination of parental rights, is in the child’s best interests and all of the requirements of Minnesota Statutes § 260C.201, subd. 11(d)(3), are met.

~~(2) If the court orders long term foster care, the court shall order such further in-court review as it determines appropriate or in the best interests of the child but in any event at least every twelve (12) months from the date of the permanency hearing.~~

**Subd. 2. (3) — Disruption.** Pursuant to Rule 42.15, ~~if~~ If the long-term foster care placement disrupts, the responsible social services agency shall return the matter to court within ten (10) days of the disruption for review of the ~~permanent status of the child~~ matter.

**Subd. 3 2. Long-Term Foster Care For State Wards.**

(a) **Limits on Circumstances When Long-term Foster Care Ordered.** The responsible social services agency may make a determination of compelling reasons for a child who is a ward of the Commissioner of Human Services to be in long-term foster care when the agency has made exhaustive efforts to recruit, identify, and place the child in an adoptive home, and the child continues in foster care for at least twenty-four (24) months after the court has issued the order terminating parental rights. If the court approves the agency's determination of compelling reasons, the court may order the child placed in long-term foster care.

~~(b) **Required Annual Review.** As long as the child continues in foster care, at least every twelve (12) months the court shall conduct a permanency review hearing to determine the future status of the child using the review requirements of Minnesota Statutes § 260C.201, subd. 11(g).~~

~~(b-e) **Jurisdiction through Child's Minority.** In a case where long-term foster care is the permanent disposition, the court shall retain jurisdiction through the child's minority, unless the court extends jurisdiction to age nineteen (19).~~

**Subd. 4-3. Annual Review When Child is Ordered into Long-Term Foster Care.**

(a) **Review of Appropriateness of Order for Long-term Foster Care.** When a child has been ordered into long-term foster care ~~after termination of parental rights~~, the court ~~shall~~ must review the matter in court at least every twelve (12) months to consider whether long-term foster care continues to be the best permanent plan for the child, ~~and~~

(b) **Reasonable Efforts.** The court shall also review ~~to ensure~~ the reasonable efforts of the agency to:

(1) ~~(a)~~ identify a specific long-term foster home or other legally permanent home for the child, if one has not already been identified;

(2) ~~(b)~~ support continued placement of the child in the identified home, if one has been identified;

~~(3)(e)~~ ensure appropriate services are provided to the child during the period of long-term foster care; and

~~(4)(d)~~ ——— plan for the child’s independence upon the child’s leaving long-term foster care living as required under Minnesota Statutes § 260C.212, subd. 1(c)(8).

**(c) Additional Requirements for Youth Age 16 or Older.** When the child is age sixteen (16) or older, the court shall review the agency’s reasonable efforts to implement the independent living plan required under Minnesota Statutes § 260C.212, subd. 1(c)(8), and the provision of services to the child related to the well-being of the child as the child prepares to leave foster care. The court’s review shall include the actual plans related to each item in the plan necessary to the child’s future safety and well-being when the child is no longer in foster care. The court shall make findings regarding progress toward or accomplishment of the following goals:

- (1) the child has obtained a high school diploma or its equivalent;
- (2) the child has completed a driver’s education course or has demonstrated the ability to use public transportation in the child’s community;
- (3) the child is employed or enrolled in postsecondary education;
- (4) the child has applied for and obtained postsecondary education financial aid for which the child is eligible;
- (5) the child has health care coverage and health care providers to meet the child’s physical and mental health needs;
- (6) the child has applied for and obtained disability income assistance for which the child is eligible;
- (7) the child has obtained affordable housing with necessary supports, which does not include a homeless shelter;
- (8) the child has saved sufficient funds to pay for the first month’s rent and a damage deposit;
- (9) the child has an alternative affordable housing plan, which does not include a homeless shelter, if the original housing plan is unworkable;

(10) the child, if male, has registered for the Selective Service; and

(11) the child has a permanent connection to a caring adult.

(d) **Agency Responsibility for Notice When Child is Seventeen (17).** When the child is age seventeen (17), the responsible social services agency shall establish for the court that it has given the notice required under Minnesota Administrative Rules, part 9560.0660, regarding the right to continued access to services for children in foster care past age eighteen (18), including the right to appeal a denial of social services under Minnesota Statutes § 256.045. If the agency is unable to establish that the notice, including the right to appeal a denial of social services, has been given, the court shall order the agency to give it.

~~(h)~~ **Subd. 5. Modifying an Order for Long-term Foster Care for a Child Who is Not a State Ward.**

(a-1) **Modification by Parent.** A parent may seek modification of an order for long-term foster care only upon motion and a showing by the parent of a substantial change in the parent's circumstances such that the parent could provide appropriate care for the child and that removal of the child from the child's permanent placement and the return to the parent's care would be in the best interest of the child.

(b-2) **Modification by Agency.** The responsible social services agency may ask the court to vacate an order for long-term foster care upon a prima facie showing that there is a factual basis for the court to order another permanent placement under this ~~Rule~~ rule and that ~~such an option~~ the placement is in the child's best interests. If the agency's request is to terminate parental rights, the county attorney shall file a petition under Rule 33 and the court shall proceed under Rule 34. If the agency's request is transfer of permanent legal and physical custody to a relative, the county attorney may file a motion under Rule 15 to modify the permanency order establishing long-term foster care for the child. If a party entitled to notice of the motion opposes the transfer of permanent legal and physical custody to a fit and willing relative, the responsible social services agency and county attorney shall establish:

- (1-a) that the relative is fit and willing; and
- (2-b) that the transfer is in the best interest of the child.

**Subd. 6. (3)–Order.** Upon a hearing or trial where the court determines that there is a factual basis for vacating the order for long-term foster care and that another permanent order regarding the placement of the child is in the child’s best interests, the court may vacate the order for long-term foster care and enter a different order for permanent placement that is in the child’s best interests.

**Subd. 7. (4)–Further Reasonable Efforts Not Required.** The court shall not require further reasonable efforts to reunify the child with the parent or guardian as a basis for vacating the order for long-term foster care and ordering a different permanent placement in the child’s best interests.

**Subd. 8. (5)–Jurisdiction.** The court shall retain jurisdiction through the child’s minority in a case where long-term foster care is the permanent disposition, unless the court extends jurisdiction to age nineteen (19).

~~(f)~~—**Rule 42.12. Foster Care for a Specified Period of Time**

(1)—**Subd. 1. Requirements for Compelling Reasons Why Permanent Legal and Physical Custody and Adoption is Not in the Child’s Best Interests.** The court may order foster care for a specified period of time only if it approves the responsible social services agency’s compelling reasons that neither an award of permanent legal and physical custody to a relative, nor termination of parental rights, is in the child’s best interests and all of the requirements of Minnesota Statutes § 260C.201, subd. 11(d)(4), are met.

(2)—**Subd. 2. Periodic Review.** If the court orders foster care for a specified period of time, the court shall order in-court review hearings at intervals as will serve the

child's best interests not to exceed a total of twelve (12) months after the date the order is entered for foster care for a specified period of time pursuant to subdivision 3.

~~(g)~~—**Subd. 3. Continued Reviews of ~~for Long-term Foster Care and for Foster Care for a Specified Period of Time.~~**

~~(1) Annual Review.~~ Court reviews of an order for long term foster care must be conducted at least every twelve (12) months and must review the child's case plan or out of home placement plan and make findings as to the reasonable efforts of the agency to finalize the permanent plan for the child, including the agency's efforts to:

~~(a) ensure that long term foster care continues to be the most appropriate legal arrangement for meeting the child's need for permanency and stability or, if not, to identify and attempt to finalize another permanent placement option available under Minnesota Statutes chapter 260C that would better serve the child's needs and best interests;~~

~~(b) identify a specific long term foster home for the child while out of the care of the parent, if one has not already been identified;~~

~~(c) support continued placement of the child in the identified home, if one has been identified;~~

~~(d) ensure appropriate services are provided to address the physical health, mental health, and education needs of the child during the period of long term foster care and also ensure appropriate services or assistance to maintain relationships with appropriate family members and the child's community; and~~

~~(e) plan for the child's independence upon the child's leaving long term foster care as required under Minnesota Statutes § [260C.212](#), subd. 1.~~

~~(2)~~—If it is necessary for a child who has been ordered into foster care for a specified period of time to be in foster care longer than one year, then not later than twelve (12) months after the time the child was ordered into foster care for a specified period of time the matter shall ~~must~~ be returned to court for a review of the

appropriateness of continuing the child in foster care and of the responsible social services agency's reasonable efforts to finalize a permanent plan for the child. If it is the child's best interests to continue the order for foster care for a specified period of time past a total of twelve (12) months, the court shall set objectives for the child's continuation in foster care, specify any further amount of time the child may be in foster care, and review the plan for the safe return of the child to the parent.

**Rule 42.13. Hearing for Child on Trial Home Visit at Time for Commencement of Permanency Proceedings**

**Subd. 1. Hearing.** When the child has been ordered on a trial home visit which continues at the time the court is required to commence permanent placement determination proceedings under Rule 42.01, the court shall hold a hearing to determine the continued status of the child on the trial home visit and shall review:

- (a) the child's progress during the trial home visit;
- (b) the parent's progress during the trial home visit;
- (c) the agency's reasonable efforts to finalize the child's safety and permanent return to the care of the parent.

**Subd. 2. Required Findings.** The court shall make findings regarding the reasonableness of the agency's efforts to finalize the child's return home as the permanent order in the best interests of the child and may continue the trial home visit for a period not to exceed a total of six (6) months. If the court finds that the responsible social services agency has not made reasonable efforts to finalize the child's return home as the permanent order in the best interests of the child, the court may order other or additional efforts to support the child remaining in the care of the parent.

**Subd. 3. Procedure When Child Returns to Foster Care.** If an order for a trial home visit is continued at or after a hearing under subdivision 1 and the child is subsequently returned to foster care, the court shall commence proceedings to determine

an appropriate permanent order for the child not later than thirty (30) days after the child returns to foster care.

**Rule 42.14. Terminating Jurisdiction When Child is Continued in Voluntary Foster Care for Treatment Under Minnesota Statutes Chapter 260D**

**Subd. 1. Voluntary Placement as Prerequisite to Review.** If a child has been ordered into foster care under Rules 30 or 41 and Minnesota Statutes § 260C.178 or § 260C.201, subd. 1, and the conditions that led to the court’s order have been corrected so that the child could safely return home except for the child’s need to continue in foster care for treatment due to the child’s disability, the child’s parent and the agency may enter into a voluntary foster care agreement under Minnesota Statutes § 260D.

**Subd. 2. Motion and Petition to Terminate Jurisdiction.** When the agency and the parent agree to voluntary placement of the child for treatment, the agency shall file a motion to terminate jurisdiction under Minnesota Statutes § 260C.193, subd. 6, which also terminates the order for foster care under Rules 30 or 41 and Minnesota Statutes § 260C.178 or § 260C.201, subd. 1, together with the petition required under Rule 43.04, subd. 2, and Minnesota Statutes § 260D.07(b), for permanency review and the court’s approval of the voluntary arrangement.

**Subd. 3. Timing of Motion and Petition.** The motion and petition shall be filed no later than the time the agency is required to file a petition for permanent placement under Minnesota Statutes § 260C.201, subd. 11, but may be filed as soon as the agency and the parent agree that the child should remain in foster care under a voluntary foster care agreement, because the child needs treatment and voluntary foster care is in the child’s best interest.

**Subd. 4. Service.** The court shall serve the motion and the petition filed under subdivision 2 together with a notice of hearing by U.S. mail.

**Subd. 5. Continuous Agency Authority for Foster Care.** The parent and agency may execute the voluntary foster care agreement at or before the permanency review hearing required under Rule 43.04, subd. 3, and Minnesota Statutes Chapter 260D.

**Subd. 6. Permanency Review Hearing Required Under Rule 43.04.** When the court grants the agency's motion to terminate jurisdiction under this rule, the court shall proceed on the Petition for Permanency Review regarding a Child in Voluntary Placement for Treatment and conduct the Permanency Review hearing required under Rule 43.04, subd. 3.

### **2008 Advisory Committee Comment**

Rule 42.14, subd. 5, reflects the requirement under Minnesota Statutes § 260D.09(e) that, in order for the agency to have continuous legal authority to place the child, the parent and the agency shall execute a voluntary foster care agreement for the child's continuation in foster care for treatment prior to the termination of the order for foster care under Rules 30 or 41 and Minnesota Statutes § 260C.178 or § 260C.201, subd. 1.

### **Rule 42.15. Review of Child Who Experiences Disruption of a Permanent Placement**

**Subd. 1. Review Required When Child Removed from Permanent Placement Within One (1) Year.** If a child is removed from a permanent placement disposition ordered under Rule 42 and Minnesota Statutes § 260C.201, subd. 1, within one year after the placement was made:

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

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

**Subd. 2. Further Planning for Child.** The court shall also review what further planning is appropriate to meet the child’s need for safety and stability and to address the well-being of the child, including the child’s physical and mental health and educational needs.

**2008 Advisory Committee Comment**

Rule 42.15, subd. 2, delineates what orders are to be reviewed under Minnesota Statute § 260C.212, subd. 6.

**RULE 43. REVIEW OF CHILDREN IN VOLUNTARY FOSTER CARE FOR TREATMENT—TERMINATION OF PARENTAL RIGHTS MATTERS**

**Rule 43.01. Generally**

**Subd. 1. Scope of Rule.** This rule governs review of all voluntary foster care for treatment placements made pursuant to Minnesota Statutes § 260D.01.

**Subd. 2. Jurisdiction.** The court assumes jurisdiction to review the voluntary foster care placement of a child pursuant to Minnesota Statutes § 260D.01 upon the filing of a report by the responsible social services agency pursuant to Minnesota Statutes § 260D.06.

**Subd. 3. Court File Required.** Upon the filing of a report under this rule, the court administrator shall open a voluntary foster care for treatment file.

**Rule 43.02. Report by Agency**

**Subd. 1. Content and Timing of Report.** Within 165 days of the date of the voluntary foster care agreement the responsible social services agency shall file with the court and serve upon the county attorney; the responsible social services agency; the parent; the parent’s attorney; the foster parent or foster care facility; the child, if age twelve (12) or older; the child’s attorney, if one is appointed; the child’s guardian ad

litem, if one is appointed; and the child's Indian tribe, if the child is an Indian child, a written report which shall contain or have attached:

- (a) a statement of facts that necessitate the child's foster care placement;
- (b) the child's name, date of birth, race, gender, and current address;
- (c) the name, race, date of birth, residence, and post office address of the child's parents or legal custodian;
- (d) a statement regarding the child's eligibility for membership or enrollment in an Indian tribe and the agency's compliance with applicable provisions of Minnesota Statutes §§ 260.751 – 835;
- (e) the name and address of the child's foster parents or chief administrator of the facility in which the child is placed;
- (f) a copy of the out-of-home placement plan required under subdivision 5 and Minnesota Statutes § 260C.212, subd. 1;
- (g) a written summary of the proceedings of the administrative review required under Minnesota Statutes § 260C.212, subd. 7, and § 260D.03;
- (h) a statement that the parent, representative of the foster care facility, and the child have been notified of their right to request a hearing; and
- (i) any other information the agency, parent or legal custodian, child, or foster parent or other residential facility wants the court to consider.

**Subd. 2. Additional Report Requirements for Child Who Is Emotionally Disturbed.** In the case of a child in placement due to emotional disturbance, the written report shall include, as an attachment, the child's individual treatment plan developed by the child's treatment professional, as provided in Minnesota Statutes § 245.4871, subd. 21, or the child's individual interagency intervention plan, as provided in Minnesota Statutes § 125A.023, subd. 3(c).

**Subd. 3. Additional Report Requirements for Child Who Has a Developmental Disability.** In the case of a child in placement due to developmental

disability or a related condition, the written report shall include, as an attachment, the child's individual service plan as provided in Minnesota Statutes § 256B.092, subd. 1b; the child's individual program plan as provided in Minnesota Rules 9525.0004, subpart 11; the child's waiver care plan; or the child's individual interagency intervention plan as provided in Minnesota Statutes § 125A.023, subd. 3(c).

**Subd. 4. Report Requirement to Include Information About Child's Disagreement.** If, at the time required for the report under this rule, a child age twelve (12) or older disagrees about the foster care facility or services provided under the out-of-home placement plan required under Minnesota Statutes § 260C.212, subd. 1, the agency shall include in the report information regarding the child's disagreement and, to the extent possible, the basis for the child's disagreement.

**Subd. 5. Content of Case Plan.** The out-of-home placement plan required under Minnesota Statutes § 260C.212, subd. 1, shall include a statement about whether the child and parent, legal custodian or Indian custodian participated in the preparation of the plan. The plan shall also include a statement about whether the child's guardian ad litem; the child's tribe, if the child is an Indian child; and the child's foster parent or representative of the residential facility have been consulted in the plan's preparation. The agency shall document whether the the child, if appropriate; the child's parent, legal custodian, or Indian custodian; the child's tribe, if the child is an Indian child; and the foster parents have received a copy of the plan. When a child is in foster care due solely to the child's emotional disturbance, the child's mental health treatment provider shall also be consulted in preparation of the plan and the agency shall document such consultation with the plan filed with the court.

### **Rule 43.03. Court Review and Determinations Based on Court Report**

**Subd. 1. Determinations Based on Report.** After receiving the report required under Rule 43.02 and Minnesota Statutes § 260D.06, subd. 2, the court has jurisdiction to

make the following determinations and shall do so within ten (10) days of the filing of the report, regardless of whether a hearing is requested under subdivision 2:

(a) whether the voluntary foster care arrangement is in the child's best interests;

(b) whether the parent and agency are appropriately planning for the child; and

(c) in the case of a child age twelve (12) or older who disagrees with the foster care facility or services provided under the out-of-home placement plan, whether it is appropriate to appoint counsel and a guardian ad litem for the child using standards and procedures under Minnesota Statutes § 260C.163.

**Subd. 2. Hearing.**

(a) **Hearing Not Required.** Unless requested by a parent, representative of the foster care facility, or child age twelve (12) or older, no in-court hearing is required in order for the court to make findings and issue an order under subdivision 3.

(b) **Hearing Requested.** If a hearing is requested by a parent, representative of the foster care facility, or child age twelve (12) or older, the hearing shall be promptly scheduled so that the judge may make the findings required in Rule 43.03 within ten (10) days of the date the report is filed.

**Subd. 3. Order**

(a) **Procedure When Voluntary Foster Care is in Child's Best Interests.** If the court finds that the voluntary foster care arrangement is in the child's best interests and that the agency and parent are appropriately planning for the child, the court shall issue an order containing explicit, individualized findings to support its determination. The individualized findings shall be based on the responsible social services agency's written report and other materials and information submitted to the court. The court may make this determination notwithstanding the child's disagreement, if any, reported under Rule 43.02, subd. 4.

(b) **Service.** The court shall serve a copy of the order upon the county attorney; the responsible social services agency; the parent; the parent’s attorney; the foster parent or foster care facility; the child, if age twelve (12) or older; the child’s attorney, if one is appointed; the child’s guardian ad litem, if one is appointed; and the child’s Indian tribe, if the child is an Indian child.

(c) **Required Notice of Permanency Review.** The court shall also serve the parent, the child if age twelve (12) or older, and the foster parent or representative of the foster care facility notice of the permanency review hearing required under Rule 43.04 and Minnesota Statutes § 260D.07(f).

(d) **Procedure When Voluntary Foster Care Not in Child’s Best Interests.** If the court finds that continuing the voluntary foster care for treatment arrangement is not in the child’s best interests or that the agency or the parent are not appropriately planning for the child, the court shall:

(1) notify the county attorney; the responsible social services agency; the parent; the parent’s attorney; the foster parent or foster care facility; the child, if age twelve (12) or older; the child’s attorney, if one is appointed; the child’s guardian ad litem, if one is appointed; and the child’s Indian tribe, if the child is an Indian child, of the court’s determinations and the basis for the court’s determinations; and

(2) set the matter for hearing within ten (10) days and, if a guardian ad litem has not already been appointed, appoint a guardian ad litem for the child under Minnesota Statutes § 260C.163, subd. 5.

#### **Rule 43.04. Required Permanency Review Hearing**

**Subd. 1. Required Agency Action.** When the court finds that the voluntary arrangement is in the child’s best interests and that the agency and parent are appropriately planning for the child pursuant to the report submitted under Rule 43.02 and Minnesota Statutes § 260D.06, and the child continues in voluntary foster care for treatment as defined in Minnesota Statutes § 260D.02, subd. 5, for thirteen (13) months from the date of the voluntary foster care agreement, or has been in placement for fifteen

(15) of the last twenty-two (22) months, and the agency determines there are compelling reasons to continue the voluntary foster care arrangement, the agency shall request judicial approval of its determination.

**Subd. 2. Petition.** When the agency requests the court's approval of its determination that there are compelling reasons to continue the voluntary foster care arrangement, the agency shall file a "Petition for Permanency Review Regarding a Child in Voluntary Foster Care for Treatment."

**(a) Drafted or Approved by County Attorney.** The "Petition for Permanency Review Regarding a Child in Voluntary Foster Care for Treatment" shall be drafted or approved by the county attorney.

**(b) Oath and Content.** The petition shall be under oath and include:

(1) the date of the voluntary foster care agreement;

(2) whether the voluntary foster care placement is due to the child's developmental disability or emotional disturbance;

(3) the plan for the ongoing care of the child and the parent's participation in the plan;

(4) a description of the parent's visitation and contact with the child;

(5) either:

(i) the date of the court finding that the voluntary foster care placement was in the best interests of the child, if required under Minnesota Statutes § 260D.06, or

(ii) the date the agency filed the motion under Rule 42.14 and Minnesota Statutes § 260D.09(b);

(6) the agency's reasonable efforts to finalize the permanency plan for the child, including returning the child to the care of the child's family;

(7) the length of time, including cumulated time, the child has been in foster care;

(8) a citation to Minnesota Statutes Chapter 260D as the basis for the petition; and

(9) a statement of what findings are requested from the court.

(c) **Out-of-Home Placement Plan.** An updated copy of the out-of-home placement plan required under Minnesota Statutes § 260C.212, subd. 1, shall be filed with the petition.

(d) **Manner of Service.** The court shall serve the petition together with a notice of hearing by U.S. mail upon the county attorney; the responsible social services agency; the parent; the parent's attorney; the foster parent or foster care facility; the child, if age twelve (12) or older; the child's attorney, if one is appointed; the child's guardian ad litem, if one is appointed; and the child's Indian tribe, if the child is an Indian child.

**Subd. 3. Hearing Regarding Petition for Child in Voluntary Foster Care for Treatment.**

(a) **Timing.** The court shall conduct a permanency review hearing on the petition:

(1) no later than fourteen (14) months after the date of the voluntary foster care agreement; or

(2) within thirty (30) days of the filing of the petition when the child has been in placement fifteen (15) of the last twenty-two (22) months; or

(3) within fifteen (15) days of a motion to terminate jurisdiction and to dismiss an order for foster care under Minnesota Statutes § 260C.201, subd. 1, as provided in Minnesota Statutes § 260D.09(b) and Rule 42.14.

(b) **Conduct of Hearing; Inquiries of Parents and Others.** At the permanency review hearing, the court shall:

(1) inquire of the parent whether the parent has reviewed the "Petition for Permanency Review Regarding a Child in Voluntary Foster Care for Treatment," whether the petition is accurate, and whether the parent agrees to the continued voluntary foster care arrangement as being in the child's best interests;

(2) inquire of the parent whether the parent is satisfied with the agency's reasonable efforts to finalize the permanent plan for the child, including whether there are services available and accessible to the parent that might allow the child to safely be with the child's family;

(3) inquire of the parent whether the parent consents to the court entering an order that:

(i) approves the agency's reasonable efforts to finalize the permanent plan for the child, which includes ongoing future planning for the safety, health, and best interests of the child; and

(ii) approves the agency's determination that there are compelling reasons why the continued voluntary foster care arrangement is in the child's best interests; and

(4) inquire of the child's guardian ad litem and any other party whether the guardian ad litem or the party agrees that:

(i) the court should approve the responsible agency's reasonable efforts to finalize the permanent plan for the child, which includes ongoing and future planning for the safety, health, and best interests of the child; and

(ii) the court should approve of the responsible agency's determination that there are compelling reasons why the continued voluntary foster care arrangement is in the child's best interests.

(c) **Court Actions Based on Consent of Parent.** At the permanency review hearing, the court may take the following actions based on the contents of the sworn petition and the consent of the parent:

(1) approve the agency's compelling reasons that the voluntary foster care arrangement is in the best interests of the child; and

(2) find that the agency has made reasonable efforts to finalize a plan for the permanent plan for the child.

(d) **Objection by Child.** A child age twelve (12) or older may object to the agency's request that the court approve its compelling reasons for the continued

voluntary arrangement and may be heard on the reasons for the objection. After hearing from the child, and notwithstanding the child's objection, the court may approve the agency's compelling reasons and the voluntary arrangement.

**(e) Findings and Order Approving Continued Voluntary Arrangement.**

When the court approves the responsible social services agency's compelling reasons for the child to continue in voluntary foster care for treatment, and finds that the agency has made reasonable efforts to finalize a permanent plan for the child, the court shall issue an order approving the continued voluntary foster care for treatment arrangement, and continuing the matter under the court's jurisdiction for the purpose of reviewing the child's placement every twelve (12) months while the child is in foster care.

**(f) Continued Voluntary Arrangement Not in Child's Best Interests.** If the court does not approve the voluntary arrangement after hearing from the child or the child's guardian ad litem, the court shall dismiss the petition. The agency shall either:

(1) return the child to the care of the parent; or

(2) when there is a legal basis, file a petition under Minnesota Statutes § 260C.141 requesting appropriate relief under Minnesota Statutes § 260C.201, subd. 11, or § 260C.301.

**(g) Notice of Required Annual Review.** At the Permanency Review Hearing and in the Notice of Filing of the Order from the hearing, the court shall give notice to the parent, child if age twelve (12) or older, and the foster parent or foster care facility of the continued review requirements under Rule 43.05 and Minnesota Statutes § 260D.09.

**2008 Advisory Committee Comment**

When the timing requirements in Rule 43.04, subd. 1, are met or when otherwise appropriate and the agency determines there are not compelling reasons to continue the voluntary arrangement, Minnesota Statutes § 260D.10 permits the agency to terminate the voluntary foster care agreement and return the child home or to file a petition for the termination of parental rights when there are grounds to do so.

Under Minnesota Statutes § 260D.07(1), a finding that the court approves the continued voluntary placement means that the responsible social services agency has continued legal authority to place the child while the voluntary foster care agreement remains in effect. The parent or the agency may terminate a voluntary agreement as provided in Minnesota Statutes § 260D.10. Termination of a voluntary foster care placement of an Indian child by a parent is governed by Minnesota Statutes § 260.765, subd. 4.

### **Rule 43.05. Annual Review**

#### **Subd. 1. Required Annual Review.**

(a) **Timing.** After the court conducts a permanency review hearing under Rule 43.04 and Minnesota Statutes § 260D.07, the matter shall be returned to the court for further review of the child's foster care placement at least every twelve (12) months while the child is in foster care.

(b) **Annual Report to the Court.** When the child continues in foster care, the responsible social services agency shall annually file a report that sets forth facts that address the required determinations the court shall make under subdivision 2. The agency's report shall be accompanied by proof of the agency's service of the report by U.S. Mail upon the parent, the child if age twelve (12) or older, the child's guardian ad litem, if one has been appointed, and counsel for any party and the child. The report shall be filed with the court at least thirty (30) days prior to the time required for annual review under this rule.

(c) **Timing of Hearing.** The court shall set a date for the annual review hearing not later than twelve (12) months after the Permanency Review Hearing and at least every twelve (12) months thereafter as requested in the report from the agency.

(d) **Service.** At least ten (10) days prior to the date set for the annual review hearing, the court shall give notice by U.S. Mail of the date and time of the hearing to the county attorney; the responsible social services agency; the parent; the parent's attorney;

the foster parent or foster care facility; the child, if age twelve (12) or older; the child's attorney, if one is appointed; the child's guardian ad litem, if one is appointed; and the child's Indian tribe, if the child is an Indian child.

**Subd. 2. Conduct of Hearing.**

**(a) Required Reasonable Efforts Determination.** At the annual review the court shall determine whether the agency made reasonable efforts to finalize the permanency plan for the child, which means the exercise of due diligence by the agency to:

(1) ensure that the agreement for voluntary foster care is the most appropriate legal arrangement to meet the child's safety, health, and best interests;

(2) engage and support the parent in continued involvement in planning and decision making for the needs of the child;

(3) strengthen the child's ties to the parent, relatives, and community;

(4) implement the out-of-home placement plan required under Minnesota Statutes § 260C.212, subd. 1; and

(5) ensure that the plan requires the provision of appropriate services to address the physical health, mental health, and educational needs of the child.

**(b) Review for Youth Age 16 or Older.** When a child is age sixteen (16) or older, the court shall also review the agency's reasonable efforts to implement the independent living plan required under Minnesota Statutes § 260C.212, subd. 1(c)(8), and the provision of services to the child related to the well-being of the child as the child prepares to leave foster care. The court's review shall include the findings and review required under Rule 42.11, subd. 4(c).

**Subd. 3. Order.** At the conclusion of the hearing or within five (5) days of the hearing, the court shall issue an order making the findings required under subdivision 2(a) and (b), as appropriate.

**Subd. 4. Service of Order.** The court administrator shall serve the order upon the county attorney; the responsible social services agency; the parent; the parent's attorney; the foster parent or foster care facility; the child, if age twelve (12) or older; the child's attorney, if one is appointed; the child's guardian ad litem, if one is appointed; and the child's Indian tribe, if the child is an Indian child.

**~~Rule 43.01. Birth Certificate~~**

~~Upon entry of an order terminating parental rights of any person who is identified on the original birth certificate of the child, the court shall serve upon that person at the person's last known address written notice setting forth a statement regarding:~~

~~(a) — the right of the person at any time to file with the state registrar of vital statistics a consent to disclosure, as defined in Minnesota Statutes § 144.212, subd. 11;~~

~~(b) — the right of the person at any time to file with the state registrar of vital statistics an affidavit stating that the information on the original birth certificate shall not be disclosed as provided in Minnesota Statutes § 144.1761,~~

~~(c) — the effect of failure to file either document; and~~

~~(d) — the right of the parent to file an appeal pursuant to Rule 47.~~

**~~Rule 43.02. Order for Guardianship~~**

**~~Subd. 1. Generally.~~** ~~Upon entry of an order terminating parental rights, the court shall order the guardianship and legal and physical custody of the minor child transferred to:~~

~~(a) — the Commissioner of Human Services;~~

~~(b) — a licensed child placing agency; or~~

~~(c) — an individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.~~

**~~Subd. 2. Commissioner of Human Services.~~** ~~The court administrator shall forward one certified copy of the order for guardianship and the termination of parental~~

~~rights findings of fact, conclusions of law, and order to the Commissioner of Human Services.~~

### **Rule 43.03. Further Proceedings**

~~**Subd. 1. Review When Plan is Adoption.** If the court terminates parental rights, the court shall schedule a review hearing ninety (90) days from the date the termination order is filed with the court, and every ninety (90) days thereafter, for the purpose of reviewing progress of the child towards adoption. Review under this rule is required unless the court has ordered the child into long term foster care. The court shall notify the responsible social services agency, the child's guardian ad litem, the child's attorney, and the child's foster parent or other relative who has asked for notice of the date and time of the hearing. In lieu of the court report required under Rule 38, the responsible social services agency shall submit a report which addresses the following:~~

~~(a) — where the child currently resides, the length of time the child has resided in the current placement, the number of other placements the child has experienced, and whether the current foster care provider is willing to adopt the child;~~

~~(b) — whether the responsible social services agency has made adequate efforts to identify, locate, and place the child with a relative willing to adopt the child; if the child is an Indian child, the agency's plan to meet the adoptive placement preferences of 25 U.S.C. § 1915;~~

~~(c) — if the child has siblings in out of home placement or previously placed for adoption, whether the child is placed with the siblings; if the child is not placed with siblings, whether the agency:~~

~~(1) — must make further efforts to place the child with siblings; or~~

~~(2) — obtain the consent of the Commissioner of Human Services to separate the child from siblings for adoption under Minnesota Statutes § 259.24 and Minnesota Rules 9560.0450, subp. 2; and~~

~~(3) — has developed a visitation plan for the siblings; if no visitation plan exists, the reason why;~~

~~(d) — the efforts the agency has made to identify non relative adoptive resources for the child including utilizing the State of Minnesota Adoption Registry and other strategies for identifying potential adoptive homes for the child; and~~

~~(e) — if an adoptive home has been identified whether:~~

~~(1) — placement has been made in the home;~~

~~(2) — a preadoptive placement agreement has been signed;~~

~~(3) — the child qualifies for adoption assistance payments, and if so, what the status of the adoption assistance agreement is;~~

~~(4) — an adoption petition has been filed;~~

~~(5) — a finalization hearing has been scheduled; and~~

~~(6) — there are barriers to adoption and how those barriers might be removed.~~

~~At least every twelve (12) months, the court shall enter a finding regarding whether or not the responsible social services agency has made reasonable efforts to finalize the permanent plan for the child as long as the permanent plan remains adoption.~~

~~If the adoptive placement was made more than twelve (12) months prior to the review hearing and no hearing to finalize the adoption has been scheduled, a hearing under Minnesota Statutes § 259.22, subd. 4, must be scheduled.~~

## **~~Subd. 2. Long Term Foster Care For State Wards.~~**

~~(a) — **Limits on Circumstances When Long-term Foster Care Ordered.** The responsible social services agency may make a determination of compelling reasons for a child to be in long term foster care when the agency has made exhaustive efforts to recruit, identify, and place the child in an adoptive home, and the child continues in foster care for at least twenty four (24) months after the court has issued the order terminating parental rights. If the court approves the agency's determination of compelling reasons, the court may order the child placed in long term foster care.~~

~~(b) — **Required Annual Review.** As long as the child continues in foster care, at least every twelve (12) months the court shall conduct a permanency review hearing to~~

determine the future status of the child using the review requirements of Minnesota Statutes § 260C.201, subd. 11(g).

~~(c) — **Jurisdiction Through Child's Minority.** In a case where long term foster care is the permanent disposition, the court shall retain jurisdiction through the child's minority, unless the court extends jurisdiction to age nineteen (19).~~

~~**Subd. 3. Review When Child is Ordered into Long-term Foster Care.** When a child has been ordered into long term foster care after termination of parental rights, the court must review the matter in court at least every twelve (12) months to consider whether long term foster care continues to be the best permanent plan for the child and to ensure the reasonable efforts of the agency to:~~

~~(a) — identify a specific long term foster home for the child, if one has not already been identified;~~

~~(b) — support continued placement of the child in the identified home, if one has been identified;~~

~~(c) — ensure appropriate services are provided to the child during the period of long term foster care; and~~

~~(d) — plan for the child's independence upon the child's leaving long term foster care living as required under Minnesota Statutes § 260C.212, subd. 1.~~

#### ~~**Rule 43.04. Voluntary Termination of Parental Rights Matters**~~

~~The court shall conduct a hearing when a parent voluntarily consents to the termination of his or her parental rights. At the hearing, petitioner shall make a prima facie showing that there is good cause for termination of parental rights and that it is in the best interests of the child to terminate parental rights.~~

~~If the parent is present in court, the court shall advise the parent of the right to trial, the right to representation by counsel, and shall determine whether the parent fully understands the consequences of termination of parental rights and the alternatives to termination.~~

~~If the parent is not present in court but has signed a voluntary consent to termination of parental rights, the court shall determine whether there has been compliance with all statutory requirements regarding a written consent to termination of parental rights and whether the parent was thoroughly advised of and understood the right to trial, the right to representation by counsel, the consequences of termination of parental rights, and the alternatives to termination.~~

~~If the child is an Indian child, the consent of the parent or Indian custodian shall not be valid unless:~~

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

## **RULE 44. REVIEW OF VOLUNTARY PLACEMENT MATTERS**

### **Rule 44.01. Generally**

**Subd. 1. Scope of Review.** This rule governs review of all voluntary foster care placements made pursuant to Minnesota Statutes § 260C.212, subds. 8 ~~or 9~~.

**Subd. 2. Jurisdiction.** The court assumes jurisdiction to review a voluntary foster care placement of a child pursuant to Minnesota Statutes § 260C.212, subd. 8 (~~child in voluntary placement~~), upon the filing of a petition pursuant to Minnesota Statutes § 260C.141, subd. 2. ~~The court assumes jurisdiction to review voluntary foster care placement of a child pursuant to Minnesota Statutes § 260C.212, subd. 9 (child in voluntary placement due solely to developmental disability or emotional disturbance),~~

~~upon the filing of a report or petition pursuant to the requirements of Minnesota Statutes § 260C.141, subd. 2a.~~

**Subd. 3. Court File Required.** Upon the filing of a ~~report or~~ petition under this Rule, the court administrator shall open a juvenile protection file which is part of the juvenile protection case record related to the matter. If a child in need of protection or services file regarding this child already exists, the ~~voluntary placement report or~~ petition shall be filed in that file.

## **Rule 44.02. Petition and Hearing**

~~**Subd. 1. Child in Placement Due to Developmental Disability or Emotional Disturbance.**~~

~~(a) — **Court Report, Hearing, and Judicial Determinations.**~~

~~(1) — **Court Report.** In the case of a child in voluntary foster care placement pursuant to Minnesota Statutes § 260C.212, subd. 9, and due solely to the child's disability as defined in Minnesota Statutes § 260C.007, subd. 12 or 16, a written report shall be filed with the court within 165 days of the date of the voluntary placement agreement. A written report under this rule is in lieu of a report under Rule 38 and shall contain:~~

~~(i) — a statement of facts that necessitate the child's foster care placement;~~

~~(ii) — the child's name, date of birth, race, gender, and current address;~~

~~(iii) — the names, race, date of birth, residence, and post office addresses of the child's parents or legal custodian;~~

~~(iv) — a statement regarding the child's eligibility for membership or enrollment in an Indian tribe and the agency's compliance with applicable provisions of Minnesota Statutes §§ 260.751 to 260.835;~~

~~(v) — the names and addresses of the foster parents or chief administrator of the facility in which the child is placed, if the child is not in a family foster home or group home;~~

~~(vi) — a copy of the out of home placement plan required under Minnesota Statutes § 260C.212, subd. 1;~~

~~(vii) — a written summary of the proceedings of any administrative review required under Minnesota Statutes § 260C.212, subd. 7; and~~

~~(viii) — any other information the responsible social services agency, parent or legal custodian, the child or the foster parent or other residential facility wants the court to consider.~~

~~In the case of a child in placement due solely to an emotional disturbance, the written report shall include as an attachment the child's individual treatment plan developed by the child's treatment professional, as provided in Minnesota Statutes § 245.4871, subd. 21, or the child's individual interagency intervention plan, as provided in Minnesota Statutes § 125A.023, subd. 3(c).~~

~~In the case of a child in placement due solely to a developmental disability, the written report shall include as an attachment the child's individual service plan, as provided in Minnesota Statutes § 256B.092, subd. 1b, the child's individual program plan, as provided in Minnesota Rules part 9525.0004, subp. 11, the child's waiver care plan, or the child's individual interagency intervention plan, as provided in Minnesota Statutes § 125A.023, subd. 3(c).~~

~~(2) — **Additional Requirements for Court Report.** In addition to filing the report with the court, the responsible social services agency must provide to the child, parent or legal custodian, and foster parent or representative of the residential facility a statement regarding the agency's advice or notice of the following:~~

~~(i) — that they have been advised of the requirements of this rule and that they have a right to submit information to the court;~~

~~(ii) — that they have a right to submit information to the court or to be heard in person by the court;~~

~~(iii) — that they have received the date the court report will be filed with the court and the identifying information necessary for the court administrator to accept information from the child, parent or legal custodian, the foster parent, or representative of the residential facility in the event they wish to submit any information to the court; and~~

~~(iv) — that no hearing will be held unless the child, parent or legal custodian, or foster parent or representative of the residential facility requests a hearing.~~

~~(3) — **Required Hearing if Requested by Parent or Child.** If the parent or legal custodian, foster parent or representative of the residential facility, or the child states that they wish to be heard in person by the court, the county attorney must notify the court administrator of the request. The court administrator shall set a hearing before the court and send notice to the parent or legal custodian, the child, the responsible social services agency, and the foster parent or representative of the residential facility.~~

~~(4) — **Judicial Determinations After Report or Hearing Without Petition.**~~

~~(i) — After receiving the required report or after conducting a hearing under paragraph (a)(3) of this rule, the court has jurisdiction to make the following determinations and must do so within ten days of receiving the forwarded report:~~

~~(A) — whether the placement of the child in foster care is in the child's best interests; and~~

~~(B) — whether the parent and agency are appropriately planning for the child. Unless requested by a parent or legal custodian, foster parent or representative of the residential facility, or child, an in court hearing need not be held in order for the court to make findings and issue an order under this paragraph.~~

~~(ii) — If the court finds the placement of the child in foster care is in the child's best interests and that the agency and parent are appropriately planning for the~~

~~child, the court shall issue an order containing explicit, individualized findings to support its determination. The court shall send a copy of the order to the county attorney, the responsible social services agency, the parent or legal custodian, the child, and the foster parents. The court shall also send the parent or legal custodian, the child, and the foster parent notice of the hearing required under subdivision 1(b).~~

~~(iii) If the court finds continuing the placement of the child in foster care not to be in the child's best interests or that the agency or the parent or legal custodian is not appropriately planning for the child, the court shall notify the county attorney, the responsible social services agency, the parent or legal custodian, the foster parent, the child, and the county attorney of the court's determinations and the basis for the court's determinations.~~

~~(b) — **Permanency Hearing.**~~

~~(1) — **Required Permanency Hearing When Child in Placement 13 Months.** In the case of a voluntary foster care placement agreement pursuant to Minnesota Statutes § 260C.212, subd. 9, where the child is in foster care due solely to the child's disability as defined in Minnesota Statutes § 260C.007, subd. 12 or 16, the provisions of Minnesota Statutes § 260C.201, subd. 11, and Rule 42 do not apply. When a child is in foster care due solely to the child's developmental disability or emotional disturbance and the child continues in foster care for thirteen (13) consecutive months from the date of the voluntary placement, a petition alleging the child to be in need of protection or services, for termination of parental rights, or for permanent placement of the child away from the parent under Minnesota Statutes § 260C.201 shall be filed. The court shall conduct a permanency hearing on the petition no later than fourteen (14) months after the date of the voluntary placement in foster care.~~

~~(2) — **Conduct of Permanency Hearing.** At the permanency hearing, the court, upon review of the petition and after inquiring of the parties, shall determine:~~

~~(i) — the need for an order permanently placing the child away from the parent; and~~

~~(ii) — whether there are compelling reasons that continued voluntary placement is in the child’s best interests; and~~

~~(iii) — whether the responsible social services agency has made reasonable efforts to finalize a permanent plan for the child.~~

~~(c) — **Petition Alleging Child is in Need of Protection or Service; Hearing; Adjudication Prohibited.**~~

~~(1) — **Petition or Motion.** — A petition alleging the child to be in need of protection or services filed under (b)(1) shall state the date of the voluntary placement agreement, the nature of the child’s developmental disability or emotional disturbance, the plan for the ongoing care of the child, the parents’ participation in the plan, and the statutory basis for the petition. A motion by the responsible social services agency under Rule 42.06 may also be filed in the juvenile protection file when the matter was commenced by a petition alleging the child to be in need of protection or services due to conditions in the home of the parent or legal custodian which led to the foster care placement of the child and those conditions have been corrected such that the child could safely return home except for the continued need for foster care placement due solely to the child’s emotional disturbance or developmental disability.~~

~~(2) — **Hearing.** — If a petition alleging the child to be in need of protection or services is filed under this paragraph, based on the contents of the sworn petition, and the agreement of all parties, including the child, where appropriate, and without requiring any party to admit or deny the petition or respond to the motion by the responsible social services agency, the court may:~~

~~(i) — find that there are compelling reasons that the voluntary foster care arrangement is in the best interests of the child;~~

~~(ii) — approve continued voluntary placement in foster care;~~

~~(iii) — find that the responsible social services agency has made reasonable efforts to finalize a permanent plan for the child; and~~

~~(iv) — continue the matter under the court’s jurisdiction for the purpose of reviewing the child’s placement in foster care as a continued voluntary arrangement every 12 months as long as the child remains in foster care.~~

~~(3) — **Disagreements with Voluntary Placement.** If any party, including the child, disagrees with the voluntary arrangement, the court shall proceed under Rule 30 or 34, whichever is applicable, and Minnesota Statutes § 260C.163.~~

~~(4) — **Adjudication and Transfer of Custody Prohibited.** — No adjudication that the child is in need of protection or services shall be made or be entered and no transfer of legal custody under Minnesota Statutes § 260C.201, subd. 1, shall be ordered as a result of permanency hearings conducted under this rule. If a motion by the responsible social services agency under Rule 42.06 is granted for compelling reasons and the court finds that continued foster care is necessary due solely to the child’s emotional disturbance or developmental disability, the court shall vacate the adjudication and the order transferring legal custody to the responsible social services agency.~~

~~(d) — **Continued Review Required.** The matter must be returned to the court for further review every twelve (12) months from the date of the permanency hearing as long as the child remains in foster care. The court shall give notice to the parent or legal custodian of this continued review requirement by registered mail or on the record at the time of the permanency hearing. At the time of the continued reviews, the court shall determine whether the continued voluntary arrangement is in the best interests of the child and the reasonable efforts of the agency to:~~

~~(1) — identify a specific long term foster home or residential facility for the child, if one has not already been identified;~~

~~(2) — support continued placement of the child in the identified home or residential facility, if one has been identified;~~

~~(3) — ensure appropriate services are being provided to the child;~~

~~(4) — upon the child becoming age sixteen (16), plan for the child’s transition to an appropriate living arrangement and for appropriate services once the child reaches age eighteen (18).~~

~~(e) — **Permanent Placement Away from the Parent by Court Order Prohibited When Court Approves Voluntary Arrangement.** When the court finds compelling reasons and approves the continued voluntary arrangement for placement of a child in foster care due solely to the child’s developmental disability or emotional disturbance, the court must not order permanent placement for the child under Minnesota Statutes § 260C.201, subd. 11, and Rule 42.~~

**Subd. 1-2. Timing of Petition Other Voluntary Placements.**

~~(a) — **Petition.** In the case of a child in voluntary foster care placement pursuant to Minnesota Statutes § 260C.212, subd. 8, When the responsible social services agency expects the child’s need for voluntary foster care placement will not exceed a total of 180 days and the child’s safety, health, and best interests do not require the court to order the child in foster care, a petition shall be filed within ninety (90) days of the date of the voluntary placement agreement and shall state the reasons why the child is in placement, the progress on the out-of-home placement ease-plan required pursuant to Minnesota Statutes § 260C.212, subd. 1, and the statutory basis for the petition pursuant to Minnesota Statutes § 260C.007, subd. 6; § 260C.201, subd. 11; or § 260C.301. A copy of the out-of-home placement plan shall be filed with the petition.~~

**Subd. 2. Service of Petition.** Upon the filing of the petition, the court administrator shall serve the petition, together with out-of-home placement plan, upon the parties by U.S. Mail and shall schedule a hearing pursuant to subdivision 3.

~~(b) — **Subd. 3. Timing of Hearing.** When a petition is filed under subdivision 1, ~~The~~ the matter shall be set for hearing within twenty (20) days of service of the petition.~~

**Subd. 4. Initial Hearing.**

~~(a) **Agreement to Continue.** At the initial hearing following the filing of a petition under subdivision 1, if all parties agree to the findings under paragraph (b) of this~~

subdivision, the matter may be continued without the requirement of the parent or legal custodian entering an admission or denial to the petition. The matter may be continued for up to a total of ninety (90) more days during which time the child may continue in foster care on a voluntary basis.

(b-e) Findings. If When all parties agree and the court finds that it is in the best interests of the child, the court may find the petition states a prima facie case that:

- (1) the child's needs are being met;
- (2) the placement of the child in foster care is in the best interests of the child;
- (3) reasonable efforts to reunify the child and the parent or legal custodian are being made; and
- (4) the child will be returned home in the next ninety (90) days.

(c-d) Approval of Placement. If the court makes the findings required pursuant paragraph (b) to subdivision 2(e), the court shall approve the voluntary placement arrangement without requiring any party to admit or deny the petition and continue the matter for up to ninety (90) days to ensure assure the child returns to the parent's home or that the matter is returned to court as required under subdivision 5(b).

~~(e)~~ **Subd. 5. Further Proceedings.**

(a-1) Agency Report to Court Upon Child's Return Home. The responsible social services agency shall report to the court when the child returns home and the progress made by the parent on the case plan required pursuant to Minnesota Statutes § 260C.212, subd. 1. Upon receiving the report that the child has returned home, the court shall dismiss the petition.

(b) Return to Court When Child Not Home. If the child does not return home within the ninety (90) days approved by the court,;

- (1) the matter shall be returned to court for:

(i) an emergency protective care hearing pursuant to Rule 30 if the petition filed under item (2) of this paragraph asks the court to order protective care, or

(ii) for an admit/deny hearing pursuant to Rule 34 if the petition does not ask the court to order protective care; and

(2) the responsible social services agency shall file a new petition alleging the child's need for protection or services and explaining why the child's foster care placement shall exceed the 180-day statutory maximum permitted for voluntary placements under Minnesota Statutes § 260C.212, subd. 8. The petition shall:

(i) state a prima facie basis for the court to order the child to continue in foster care under Rule 30 and Minnesota Statute § 260C.178; or

(ii) have sufficient facts to support a disposition of legal custody to the agency for continued foster care under Rule 41.

(c) **Trial.** If the petition is not admitted at the hearing scheduled under subdivision 4(a), the matter shall be set for trial.

~~(2) — **Subd. 6. Disagreement with Voluntary Placement.** If the court or any party including or the child, disagrees with the voluntary placement or the sufficiency of the services offered by the responsible social services agency at the time of the initial hearing, or if the court finds that the placement or case plan is not in the best interests of the child, the court shall direct the parties to admit or deny the petition and set the matter for further proceedings pursuant to Rule 36 or 39 schedule a trial to determine what is in the best interests of the child. If the court makes required findings pursuant to Rule 30, the court may order the child in protective care.~~

~~(f) — **Subd. 7. Calculating Time Period.** When a child is placed in foster care pursuant to a voluntary placement agreement pursuant to Minnesota Statutes § 260C.212, subd. 8, the time period the child is considered to be in foster care for purposes of determining whether to proceed pursuant to Minnesota Statutes § 260C.201, subd. 11, is~~

sixty (60) days after the voluntary placement agreement is signed, or the date the court orders the child in protective care, whichever is earlier.

**~~Subd. 3. Child Determined to be in Need of Protection or Services.~~**

~~(a) — Further Proceedings After Adjudication. Pursuant to subdivision 1(e)(2) or 2(e), after the parties admit the petition or the petition is proven at trial, the court may determine that the child is in need of protection or services or withhold adjudication pursuant to Rule 40.~~

~~(b) — When the court determines the child is in need of protection or services, the court may make orders pursuant to Minnesota Statutes § 260C.201 or § 260C.205.~~

~~(c) — When the court determines the child is in need of protection or services or withholds such a determination, further proceedings shall be pursuant to Rule 41.~~

**2008 Advisory Committee Comment**

Rule 44.02, subs. 5(a) and (b), deal with the child's return home. A child may not continue in foster care on a voluntary basis longer than 180 days unless the child is in foster care treatment under Minnesota Statutes Chapter 260D. See Minnesota Statutes § 260C.212, subd. 8. The parent may agree that the child needs to continue in foster care longer than 180 days, in which case the parent may admit a petition alleging the child in need of protection or services which states the basis for the child's need to continue in foster care. Under these circumstances the court has a legal basis to order the child to continue in foster care. If the parent does not agree, the agency shall return the child to the care of the parent unless there is a basis for an order for emergency protective care under Rule 30 and Minnesota Statutes § 260C.178.

**Rule 44.03. Procedures When Court-Ordered Foster Care, Permanent Placement, or Termination of Parental Rights Sought**

**Subd. 1. Applicable Rules When Other than Voluntary Review is Sought.**

When a child enters foster care pursuant to a voluntary placement agreement under Minnesota Statutes § 260C.212, subd. 8, and there is a sufficient evidentiary basis, the responsible social services agency may file a petition for termination of parental rights, a petition for permanent placement of the child away from the parent, or a petition alleging the child to be in need of protection or services stating sufficient facts to meet any definition of Minnesota Statutes § 260C.007(6). The matter shall proceed under:

- (a) Rule 30 if the petition requests an order for protective care under Rule 30.10 and Minnesota Statutes § 260C.178; or
- (b) Rule 34 if an order for protective care is not requested.

**Subd. 2. Timing of Hearing.** When a petition is filed under subdivision 1, timing of the required hearing shall be pursuant to:

- (a) Rule 30.01 if the petition requests an order for protective care under Rule 30.10 and Minnesota Statutes § 260C.178; or
- (b) Rule 34.02 if an order for protective care is not requested.

**RULE 45. POST-TRIAL MOTIONS**

**Rule 45.01. Procedure and Timing**

**Subd. 1. Timing.** All post-trial motions shall comply with Rule 15 and shall be filed with the court and served upon the parties within ten (10) ~~fifteen (15)~~ days of the service of notice by the court administrator of the filing of the court's order finding that the statutory grounds set forth in the petition are or are not proved. Any response to a post-trial motion shall comply with Rule 15 and shall be filed with the court and served upon the parties within five (5) days of service of the post-trial motion.

\* \* \* \* \*

**Subd. 3. Time for Serving Affidavits.** When a post-trial motion is based upon affidavits, such affidavits shall be served with the notice of motion. The parties and the county attorney shall have five (5) ten (10) days after such service in which to serve opposing affidavits pursuant to Rule 15. ~~The period may be extended by the court upon an order extending the time for hearing under this rule.~~ The court may permit reply affidavits so long as the time for issuing a decision is not extended beyond the time permitted in Rule 45.05.

**Subd. 4. Hearing.** If the trial court grants a hearing on a post-trial motion, the hearing shall take place within ten (10) days of the date the post-trial motion is filed.

\* \* \* \* \*

#### **Rule 45.05. Decision**

The court shall rule on all post-trial motions within ten (10) fifteen (15) days of the conclusion of the hearing, which shall include the time for filing written arguments, if any submission. ~~For good cause shown, the court may extend this period for not more than an additional fifteen (15) days.~~ All findings shall be stated orally on the record or in writing. The findings and order shall be filed with the court administrator, who shall proceed pursuant to Rule 10.

### **RULE 46. RELIEF FROM ORDER**

\* \* \* \* \*

#### **Rule 46.03. Invalidation of Action Under ICWA ~~Petition to Invalidate Under ICWA~~**

**Subd. 1. ~~Petition.~~** ~~Any Indian child who is the subject of any action for foster care placement or termination of parental rights under state law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may file with the court and serve upon the parties a notice of motion and motion petition to~~

~~invalidate such action upon a showing that such action violates the Indian Child Welfare Act, 25 U.S.C. §§ 1911-1913-1914. The form and content of the petition shall be in writing and shall be governed by Rule 33. A petition or motion to invalidate made pursuant to 25 U.S.C. § 1914 shall be processed by the Court as a motion. Upon the Court's receipt of a petition or motion to invalidate a proceeding that has been closed, court administration shall re-open the original file. The matter shall be assigned and scheduled for a hearing consistent with Rule 15.~~

~~**Subd. 2. Evidentiary Hearing.** Upon the filing of a petition to invalidate, the court shall schedule an evidentiary hearing.~~

~~**Subd. 3. Findings and Order.** At the conclusion of the evidentiary hearing, the court shall issue findings of fact, conclusions of law, and an order regarding the petition to invalidate.~~

**Subd. 1. Petition or Motion.** Pursuant to 25 U.S.C. § 1914, any Indian child who is the subject of any action for foster care placement or termination of parental rights, any parent or Indian custodian from whose custody an Indian child was removed, or the Indian child's tribe may seek to invalidate the action upon a showing that such action violates the Indian Child Welfare Act, 25 U.S.C. §§ 1911 – 1913.

(a) **Motion.** A motion to invalidate may be brought regarding a pending juvenile protection matter.

(b) **Petition.** A petition to invalidate may be brought regarding a juvenile protection matter in which juvenile court jurisdiction has been terminated.

**Subd. 2. Form and Service.** A motion or petition to invalidate shall be in writing pursuant to Rule 15.01 and shall be filed and served pursuant to Rule 15.02. Both a motion and a petition to invalidate shall be processed by the court as a motion. Upon receipt of a petition to invalidate a proceeding in which juvenile court jurisdiction has

been terminated, the court administrator shall re-open the original juvenile protection file related to the petition.

**Subd. 3. Hearing.** Within thirty (30) days of the filing of a motion or petition to invalidate, the court shall hold an evidentiary hearing of sufficient length to address the issue raised in the motion or petition. A motion filed thirty (30) or more days prior to trial shall be heard prior to trial and the decision shall be issued prior to trial. A motion filed less than thirty (30) days prior to trial shall not delay commencement of the trial and the decision shall be issued as part of the trial decision.

**Subd. 4. Findings and Order.** Within fifteen (15) days of the conclusion of the evidentiary hearing on the motion or petition to invalidate, the court shall issue findings of fact, conclusions of law, and an order regarding the petition or motion to invalidate.

#### **2008 Advisory Committee Comment**

*Grounds for Petition to Invalidate.* Rule 46.03 establishes a procedure for filing a petition or motion to invalidate an action under the Indian Child Welfare Act (ICWA). 25 U.S.C. § 1914. Section 1914 of the ICWA permits an Indian child, the Indian child's parent or Indian custodian, or the Indian child's tribe to petition the court to invalidate any action for foster care placement or termination of parental rights upon a showing that the action violated the ICWA § 1911 (dealing with exclusive jurisdiction and transfer to tribal court), § 1912 (dealing with notice to the Indian child's tribe regarding the district court proceedings, appointment of counsel, examination of reports, and testimony of a qualified expert witness), or § 1913 (dealing with voluntary consent to foster care placement and termination of parental rights). Section 14 of the ICWA is silent about the time for bringing a petition to invalidate, the relief available, and whether relief is available even if there was no objection below.

*Time Limit for Filing Petition to Invalidate.* Although there is no time limit for bringing a petition to invalidate contained in section 1914 of the ICWA, the Alaska Supreme Court has held that a challenge to an adoption under section 1914 shall be brought within a year. *In re Adoption of Erin G.*, 140 P.3d 886, 891 (Alaska 2006). In a slightly later case, the Alaska Supreme Court suggested that the time limit in an ICWA challenge brought under 42 U.S.C. § 1983 would be two years. *Dept. of Health & Soc. Servs. v. Native Village of Curyung*, 151 P.3d 388, 411 (Alaska 2006). The authors of *A Practical Guide to the Indian Child Welfare Act* do not cite any other cases, but they disagree that there should be time limits which vary from state to state. Native American Rights Fund, *A Practical Guide to the Indian Child Welfare Act* 161 (2007). The authors of *The Indian Child Welfare Act Handbook* recommend using the two-year time limit contained in § 1913(d). B.J. Jones, M. Tilden & K. Gaines-Stoner, *The Indian Child Welfare Act Handbook: A Legal Guide to the Custody and Adoption of Native American Children* 156 (2d ed. 2008).

*Reach of Relief Available.* There are a number of cases which hold that section 1914 of the ICWA is not available to attack an ICWA violation occurring during the foster care placement proceeding (i.e., child in need of protection or services (CHIPS)) as part of the termination of parental rights proceeding. *In Re Welfare of the Children of S.W., et.al., Parents*, 727 N.W.2d 144 (Minn. Ct. App. 2007); *Interest of J.D.B.*, 584 N.W.2d 577 (Iowa Ct. App. 1998); *Interest of J.W.*, 528 N.W.2d 657, 661 (Iowa Ct. App. 1995); *D.E.D. v. State*, 704 P.2d 774, 782 (Alaska 1985); *In Re M.E.M.*, 679 P.2d 1241, 1243-44 (Mont. 1984). Although these courts have rejected this sort of collateral attack, there is some suggestion in all four of these cases that a different decision might have resulted if the termination

of parental rights judge had made extensive use of the evidence introduced in the foster care placement proceeding in which the violations occurred. The North Dakota Supreme Court appears to agree. *See B.R.T. v. Social Serv. Bd.*, 391 N.W.2d 594, 600 n.10 (N.D. 1986).

The Native American Rights Fund cites three cases that, it says, compel vacation of the adjudication for specific ICWA violations: *Interest of H.D.*, 729 P.2d 1234, 1240-41 (Kansas Ct. App. 1986); *In Re L.A.M.*, 727 P.2d 1057, 1060 (Alaska 1986); and *Morgan v. Morgan et al.*, 364 N.W.2d 754, 758 (Mich. Ct. App. 1985). Native American Rights Fund, *A Practical Guide to the Indian Child Welfare Act* 162 (2007). But none of these three cases invalidates a subsequent termination of parental rights because of ICWA violations occurring during the foster care placement proceeding.

In an American Bar Association treatise on the subject, the authors argue a broader role for section 1914, including collateral attack in federal court. *See* B.J. Jones, M. Tilden & K. Gaines-Stoner, *The Indian Child Welfare Act Handbook: A Legal Guide to the Custody and Adoption of Native American Children*, pp. 153-56 (2d ed. 2008).

*Necessity of Objection During Trial Court Proceeding.* Although it is not a section 1914 case, *Matter of L.A.M.*, 727 P.2d 1057, 1059 (Alaska 1986), specifically holds that objection during the trial court proceeding is not required to preserve an objection on appeal to a section 1912 violation. The Native American Rights Fund lists two cases which hold that an objection below is not necessary to seek relief under section 1914: *In re S.R.M.*, 153 P.3d 438 (Colo. Ct. App. 2006); and *In re S.M.H.*, 103 P.3d

976, 982 (Kan. Ct. App. 2005). *Native American Rights Fund, A Practical Guide to the Indian Child Welfare Act 161 (2007).*

## RULE 47. APPEAL

\* \* \* \* \*

### Rule 47.02. Procedure

**Subd. 1. Appealable Order.** An appeal may be taken by the aggrieved person from a final order of the juvenile court affecting a substantial right of the aggrieved person, including but not limited to an order ~~adjudicating~~ adjudging a child to be in need of protection or services, neglected and in foster care.

**Subd. 2. Timing of Filing Notice of Appeal.** Any appeal shall be taken within twenty (20) ~~thirty (30)~~ days of the service of notice by the court administrator of the filing of the court's order. In the event of the filing and service of a timely and proper post-trial motion under Rule 45, or motion for relief under Rule 46 if the motion is filed within the time specified in Rule 45.01, subd. 1, the provisions of Minnesota Rules of Civil Appellate Procedure Rule 104.01, subd. 2 and 3, apply, except that the time for appeal runs for all parties from the service of notice by the court administrator of the filing of the order disposing of the last post-trial motion.

### **2004 Advisory Committee Comment—2006 Amendment**

Minnesota Statutes § 260C.415 provides that an appeal shall be taken within 30 days of the filing of the appealable order and “as in other civil cases” under the Rules of Civil Appellate Procedure. The Committee recognizes that the timing provision of Rule 47.02, subd. 2, which provides that the appeal time begins to run from the court administrator's service of notice of the filing of the order, is a departure from the Rules of Civil Appellate Procedure. This departure is intended to expedite the appellate

process, which the Committee deems to be in the best interests of the child. The appeal time and procedures are governed by these rules, specifically established for juvenile protection proceedings, and not by the more general provisions of the appellate rules. *See In re Welfare of J.R., Jr.*, 655 N.W.2d 1 (Minn. 2003).

**Subd. 3. Service and Filing of Notice of Appeal.** Within the time allowed for an appeal, as provided in subdivision 2, the party appealing shall:

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

(b) file with the clerk of appellate courts a notice of appeal, together with proof of service upon all parties, including notice of the correct case caption pursuant to Rule 8.08.

A notice of appeal shall be accompanied by a copy of the request for transcript required by subdivision 5.

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

**Subd. 5. Request for Transcript.** At or before the time for serving the notice of appeal, the appellant shall serve on the court reporter a written request for a transcript. At the same time, the appellant shall also provide the court reporter with a signed Certificate as to Transcript, which the court reporter shall sign and file with the clerk of appellate courts, with a copy to the trial court, unrepresented parties, and counsel of record, within ten (10) days of the date the transcript was ordered.

**Subd. 6-5. 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. 7-6. 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.

**Subd. 8. Timing of Briefs.** Rule 131.01 of the Rules of Civil Appellate Procedure applies to the timing of briefs in juvenile protection matters, except that the respondent shall serve and file a brief and any appendix within twenty (20) days after service of the brief of the appellant; within twenty (20) days after service of the last appellant's brief, if there are multiple appellants; or within twenty (20) days after delivery of a transcript ordered by respondent pursuant to Civil Appellate Procedure Rule 110.02, subd. 1, whichever is later.

\* \* \* \* \*

**Rule 47.05. Transcript of Proceedings**

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

**Rule 47.06. Time for Rendering Decisions by Minnesota Court of Appeals**

All decisions regarding juvenile protection matters shall be issued by the appellate court within forty-five (45) ~~sixty (60)~~ days of the date the case is deemed submitted pursuant to the Rules of Civil Appellate Procedure.

**Rule 47.07. Petition in Supreme Court for Review of Decisions of the Court of Appeals**

Rule 117 of the Rules of Civil Appellate Procedure applies to petitions for review of decisions of the court of appeals in juvenile protection matters, except that any petition for further review shall be filed with the clerk of the appellate courts and served upon the parties within fifteen (15) days of the filing of the court of appeals' decision, and any response to such petition shall be filed with the clerk of appellate courts and served upon the parties within ten (10) days of service of the petition.

**RULE 48. TRANSFER TO CHILD'S OF JURISDICTION TO TRIBE**

**Rule 48.01. Transfer of Juvenile Protection Matter to the Tribe**

**Subd. 1. Motion or Request to Transfer.** An Indian child's parent, Indian custodian, or tribe may request transfer of the juvenile protection matter to the Indian child's tribe by:

(a) filing with the court and serving a motion or any other written document pursuant to Rule 15; or

(b) making an on-the-record request which shall be reflected in the court's findings.

**Subd. 2. Service and Filing Requirements for Motion, Request, or Objection to Transfer Matter to Tribe.**

(a) When a motion or other written document is filed pursuant to subdivision 1(a), the service and notice provisions of Rule 15.02, subd. 1, apply.

(b) When an on-the-record request is made pursuant to subdivision 1(b), the objection and continuance provisions of Rule 15.01, subd. 3, apply.

**Subd. 3. Transfer Required Absent Objection by Parent or Good Cause Finding.** Upon motion or request of an Indian child's parent, Indian custodian, or tribe pursuant to subdivision 1, the court shall issue an order transferring the juvenile

protection matter to the Indian child's tribe absent objection by either parent pursuant to subdivision 4 or a finding of good cause to deny transfer pursuant to subdivision 6(b), and shall proceed pursuant to Rule 48.02. The order transferring the juvenile protection matter to the Indian child's tribe shall order jurisdiction of the matter retained pursuant to subdivision 7 until the Indian child's tribe exercises jurisdiction over the matter.

**Subd. 4. Objection to Transfer by Parent.** A parent of an Indian child may object to transfer of a juvenile protection matter to the Indian child's tribe.

(a) **Form of Objection.** The parent's objection shall be in writing or stated on the record. The writing may be in any form sufficient for the court to determine that the parent objects to the request to transfer the matter to the Indian child's tribe.

(b) **Timing of Filing and Service.** Any written objection shall be filed with the court and served upon those who are served with the motion pursuant to Rule 15.02, subd. 1, either:

(1) within fifteen (15) days of service of the motion, written request, or on-the-record request to transfer the juvenile protection matter to the Indian child's tribe under subdivision 1; or

(2) at or before the time scheduled for hearing on a motion to deny transfer for good cause, if any, under subdivision 6.

(c) **Method of Filing and Service.** Service of any notice of objection shall be by U.S. Mail, facsimile, or personal service and shall be accomplished by the parent's attorney or by the court administrator when the parent is not represented by counsel. The court shall include a parent's on-the-record objection to the transfer as a finding in its order denying the motion to transfer.

(d) **No Hearing Required.** A hearing on an objection to transfer by parent is not required.

(e) **Decision and Order.** Upon objection by a parent, the court shall deny the request to transfer the juvenile protection matter to the Indian child's tribe and issue its findings and order pursuant to Rule 10.01.

**Subd. 5. Request to Deny Transfer by Child or Party Who is Not a Parent.**

(a) **Child.** A child age twelve (12) or older, regardless of party status, may request that the juvenile protection matter not be transferred to the Indian child's tribe by filing with the court, within fifteen (15) days of receiving the request to transfer the matter to the tribe, a written document stating the child's request to deny transfer. The writing may be in any form. If the child is represented by an attorney, the attorney shall serve the written document and the notice of hearing. If the child is not represented by an attorney, the court administrator shall serve the written request and notice of hearing. Service of the written document and the notice of hearing by either the child's attorney or the court administrator shall be pursuant to Rule 15.02, subd. 1.

(b) **Party Who is Not a Parent.** A party who is not a parent may request that the juvenile protection matter not be transferred to the Indian child's tribe by filing with the court and serving a notice of motion and motion pursuant to subdivision 1(a) and Rule 15 within fifteen (15) days of receiving the request to transfer the matter to the tribe. The party opposing transfer shall provide a written explanation of the reason for the opposition.

(c) **Establishment of Good Cause.** The child or party opposing transfer of the juvenile protection matter has the burden of establishing good cause not to transfer. The request to deny transfer shall be scheduled for hearing pursuant to subdivision 6.

**Subd. 6. Hearing on Request to Deny Transfer to Tribal Court.**

(a) **Hearing.** Within fifteen (15) days of the filing of a written request to deny transfer of the juvenile protection matter to the Indian child's tribe, the court shall conduct a hearing to determine whether good cause exists to deny the transfer to the tribe pursuant to 25 U.S.C. § 1911(b).

(b) **Decision.** The court shall make findings regarding the existence of good cause to deny transfer. If good cause to deny transfer is not found, the court shall order the matter transferred to tribal court and shall proceed pursuant to Rule 48.02. If good

cause to deny transfer is found, the court may either deny the request to transfer or order the matter transferred to tribal court.

(c) **Order.** The court shall issue its findings and order pursuant to Rule 10.01.

**Subd. 7. Retention of District Court Jurisdiction until Notice from the Indian Child's Tribe.**

(a) **District Court Jurisdiction.** The district court shall retain jurisdiction over the juvenile protection matter by written order until the district court judge receives information from the tribal court that the tribe has exercised jurisdiction over the matter. Pending exercise of jurisdiction by the Indian child's tribe, the district court has continued authority to:

(1) approve or modify services to be provided to the child and the child's family pursuant to Rule 30.10; or

(2) approve or modify the case plan pursuant to Rules 41.05 and 41.06;  
and

(3) make other orders that ensure a smooth transition of the matter to the tribe.

(b) **Hearings in District Court Pending Dismissal.** The district court may conduct hearings as required by Minnesota Statutes Chapter 260C and these Rules and shall conduct a review hearing at least every ninety (90) days until the Indian child's tribe exercises jurisdiction over the juvenile protection matter or the tribal court declines the transfer in response to the district court's order to transfer the matter to the tribe. Such hearings shall be for the purpose of reviewing the provision of services under the case plan or the provision of services to the child and family and to update the court regarding exercise of jurisdiction over the matter by the Indian child's tribe.

(c) **Exercise of Jurisdiction by Indian Child's Tribe.** The district court may accept and rely on any reasonable form of communication indicating the tribe has exercised jurisdiction over the juvenile protection matter. The district court shall acknowledge receipt of the communication and the exercise of jurisdiction over the

matter by the tribe by forwarding to the tribal court of, or designated by, the Indian child's tribe an order terminating the district court's jurisdiction over the matter under paragraph (e).

(d) **Declination of Transfer by Tribal Court.** Upon declination of the exercise of jurisdiction over the juvenile protection matter by a tribal court, the district court shall proceed as if the matter was not transferred to tribal court.

(e) **Order Terminating District Court Jurisdiction.** After issuing the order transferring the juvenile protection matter to the Indian child's tribe pursuant to subdivision 6(b), and once the district court judge receives information that the tribe has exercised jurisdiction over the matter pursuant to paragraph (a), the district court judge shall issue an order terminating jurisdiction over the matter which shall include provisions:

(1) stating the factual basis for the judge's determination that the Indian child's tribe has exercised jurisdiction;

(2) terminating jurisdiction over all parties, the Indian child's parent or Indian custodian, and the Indian child;

(3) terminating the responsible social services agency's legal responsibility for the Indian child's placement when the district court has ordered the child into protective care under Rule 30.10 and Minnesota Statute § 260C.178;

(4) terminating the responsible social services agency's legal custody of the child when the court has transferred legal custody to the responsible social services agency under Rule 41.05 and Minnesota Statute § 260C.201, subdivision 1;

(5) discharging the Commissioner of Human Services as guardian and terminating the order for legal custody to the commissioner when the court has ordered guardianship and legal custody to the commissioner; and

(6) discharging court appointed attorneys and the guardian ad litem for the child and for the parent, if any.

### **2008 Advisory Committee Comment**

“Tribe,” “Tribal Court,” and “Tribal Social Services.” Throughout the Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901-1963, the phrases “tribe,” “tribal court,” and “tribal social services” are used. In an effort to remain consistent with the ICWA, Rule 48 mirrors the use of those phrases.

*Tribe’s Method of Communicating Exercise of Jurisdiction.* Rule 48.01, subd. 7(c), provides “The district court may accept and rely on any reasonable form of communication indicating the tribe has exercised jurisdiction over the juvenile protection matter.” The information received may be in a written order or letter, a telephone call, a faxed or emailed message, a copy of a hearing notice setting the matter for hearing in tribal court, or any other form of communication between the tribe and the district court judge regarding the tribe’s action in regard to the district court order transferring the matter to the Indian child’s tribe.

*Transfer of Juvenile Protection Matter After Termination of Parental Rights.* The Indian Child Welfare Act (ICWA) does not preclude the transfer of matters to tribal court following termination of parental rights. Rule 48.04, subd. 7(e)(5), recognizes the practice of transferring cases to the tribe after termination of parental rights and requires certain orders when such a transfer is made, *inter alia*, discharging the Commissioner of Human Services as the guardian for the child.

*Transfer to Tribe Other Than Indian Child’s Tribe.* The Indian Child Welfare Act (ICWA) provides for the transfer of jurisdiction from State court to the “the Indian child’s tribe.” 25 U.S.C. § 1911. Rule 48.01, subd. 7(c), recognizes that some Indian tribes are exercising jurisdiction

over child custody proceedings by designating other tribes to act on their behalf to receive the transferred case.

“Good Cause” to Deny Transfer. Consistent with the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1911(b), Rule 48.01, subd. 3, mandates that transfer to the Indian child’s tribe must occur upon motion absent objection by a parent or a finding of “good cause to deny transfer.” “Good cause” is not defined in the ICWA. Good cause not to transfer a proceeding may exist if a child age twelve (12) or older objects to the transfer. Bureau of Indian Affairs Guidelines for State Courts: Indian Child Custody Proceedings, 44 Fed Reg. 67584, 67590 at C3(b)(i) (Nov. 26, 1979) [hereinafter “BIA Guidelines”]. “Good cause” is discussed in the BIA Guidelines. 44 Fed Reg. at 67583, 67590 at C.3 Commentary (Nov. 26, 1979). See also In Re the Welfare of the Child of: T.T.B. & G.W., 724 NW2d 300 (Minn. 2006), and In Re the Welfare of the Children of R.M.B. & R.E.R., 735 NW2d 348 (Minn. Ct. App. 2007) *rev. denied* (Minn. Sept. 26, 2007). See BIA Guidelines, 44 Fed. Reg. 67,584, 67,591 at C.3(b)(i)-(iv), (c), (d) (Nov. 26, 1979) (as modified).

## **Rule 48.02. Communication Between District Court and Tribal Court Judges**

### **Subd. 1. Child Ward of Tribal Court.**

(a) When the child is a ward of tribal court, prior to directing the return of the child to tribal court the district court judge shall communicate with a tribal court judge pursuant to subdivision 4 to:

(1) inform the tribal court judge that the district court has ordered the emergency removal of the ward; and

(2) inquire of the tribal court judge about any orders regarding the safe transition of the ward so that such orders can be enforced by the district court pursuant to

the full faith and credit provisions of 25 U.S.C. § 1911(d) and Minnesota General Rules of Practice for the District Courts Rule 10.

(b) The district court judge may order the responsible social services agency and attorney for the parties to communicate with their respective tribal counterparts or to take any other reasonable steps to ensure that the ward's tribe is timely aware of the district court's order for emergency removal of the ward.

(c) Communication permitted under this rule shall facilitate expeditious return of the ward to the jurisdiction of the Indian child's tribe and consultation regarding the safe transition of the child.

**Subd. 2. Child Domiciled or Residing on a Reservation.**

(a) When the child resides or is domiciled on a reservation, prior to ordering transfer of the juvenile protection matter to tribal court, the district court judge shall communicate with a tribal court judge pursuant to subdivision 4 to:

(1) inform the tribal court judge that the district court has ordered the emergency removal of an Indian child; and

(2) inquire of the tribal court judge about any requirements or conditions that should be put in place regarding the safe transition of the child to the jurisdiction of the child's tribe.

(b) The district court judge may order the responsible social services agency and attorneys for the parties to communicate with their respective tribal counterparts or to take any other reasonable steps to ensure that the Indian child's tribe is timely aware of the request to transfer the matter to the tribe.

(c) Communication permitted under this rule shall facilitate timely transfer of the matter to tribal court or return of the Indian child to the child's parent or Indian custodian.

**Subd. 3. Child Not a Ward of Tribal Court, Not a Resident or Domiciliary of the Reservation.**

(a) When a child is not a ward of tribal court, or does not reside on or is not domiciled on the reservation, prior to ordering transfer of the juvenile protection matter to tribal court the district court judge shall communicate with a tribal court judge pursuant to subdivision 4 to:

(1) inquire whether the tribal court will accept the transfer and, if so, order the transfer absent objection by either parent pursuant to Rule 48.01, subd. 4, or a finding of good cause to deny the transfer pursuant to Rule 48.01, subd. 6(b), and proceed pursuant to Rule 48.01, subd. 7; and

(2) inquire of the child's tribe what district court orders should be made regarding the child's safe transition to the jurisdiction of the Indian child's tribe when 25 U.S.C. § 1911(b) applies.

(b) The district court judge may order the responsible social services agency and counsel for the parties to communicate with their respective tribal counterparts or to take any other reasonable steps to ensure that the Indian child's tribe is timely aware of the request to transfer the matter to the tribe.

(c) Communication permitted under this rule shall facilitate timely transfer of the matter to tribal court.

**Subd. 4. Method of Communication; Inclusion of Parties; Recording**

(a) **Method of Communication.** Communication between the district court judge and the tribal court judge may be in writing, by telephone, or by electronic means.

(b) **Inclusion of Parties.** The district court judge may allow the parties to participate in the communication with the tribal court judge. Participation may be in any form, including a hearing on-the-record or a telephonic communication.

(c) **Record of Communication.** Except as otherwise provided in paragraph (d), a record shall be made of a communication under this rule. If the parties or any party did not participate in the communication, the court shall promptly inform the parties of

the communication and grant access to the record. The record may be a written or on-the-record summary of any telephone or verbal communication or a copy of any electronic communication.

(d) **Administrative Communication.** Communication between courts on administrative matters may occur without informing the parties and a record need not be made.

### **2008 Advisory Committee Comment**

Rule 48.02, subd. 4, regarding communication between courts includes language similar to certain provisions in the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Minn. Stat. § 518D.110. Not all provisions in the “communication between courts” provisions of the UCCJEA are included in this Rule because the UCCJEA is not applicable when the case is governed by the ICWA. See Minn. Stat. § 518D.104(a). The purpose of requiring court-to-court communication is to facilitate expeditious return or transfer by timely and direct contact between judges. Nothing in this rule shall be construed to delay return or transfer of the matter to tribal court. Administrative matters may include schedules, calendars, court records, and similar matters. Communication may include receipt of a tribal court order.

### **Rule 48.03. Court Administrator’s Duties**

Upon receiving an order transferring a juvenile protection matter to tribal court, the court administrator shall file the order and serve it on all parties, participants, the Indian child’s parents, and the Indian child as directed by the court according to the requirements of Rule 10. The court administrator shall forward a certified copy of the complete court file by U.S. Mail, courier, hand-delivery, or any other means calculated to ensure timely receipt of the file by the tribal court.

**RULE 49. QUALIFIED EXPERT WITNESS REQUIREMENT UNDER THE  
INDIAN CHILD WELFARE ACT**

**Rule 49.01. Timing – Temporary Emergency Custody**

Absent extraordinary circumstances, temporary emergency custody of an Indian child shall not be continued for more than ninety (90) days without a determination by the court, supported by the testimony of at least one qualified expert witness that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

**Rule 49.02. Foster Care Placement**

In the case of an Indian child, foster care placement shall not be ordered in the absence of testimony of at least one qualified expert witness, as defined in Rule 2.01(21), that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

**Rule 49.03. Termination of Parental Rights**

In the case of an Indian child, termination of parental rights shall not be ordered in the absence of testimony of at least one qualified expert witness that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

**2008 Advisory Committee Comment**

*Voluntary Versus Involuntary Termination of Parental Rights.*  
Minnesota law distinguishes between voluntary and involuntary termination of parental rights. The Indian Child Welfare Act (ICWA) does not distinguish between voluntary and involuntary termination of parental rights and, for that reason, Rule 49 simply restates the ICWA.

Qualified Expert Witness. Rule 49 recognizes the unique requirements for and qualifications of the qualified expert witness whose testimony must be presented to the court before the court may order foster care placement or termination of parental rights under the ICWA. Rule 49.03 is a restatement of the *Bureau of Indian Affairs Guidelines for State Courts; Indian Child Custody Proceedings* (hereinafter *BIA Guidelines*) regarding the timing of qualified expert testimony when there is an emergency removal of an Indian child. See BIA Guidelines, 44 Fed. Reg. 67,584, 67,589-90 at B.7(d) (Nov. 26, 1979). Compliance with the requirement for a qualified expert witness is best achieved by timely notice to the child's tribe, ensuring that the county agency works with the child's tribe to discuss the need for placement, identifying extended family who can serve as placement resources and support for the family, ensuring that culturally appropriate services are delivered to the family, and requesting qualified expert witness testimony from the tribe or elsewhere. When the court has determined that the ICWA applies, but the child's tribe has not participated in planning for the child, or when the child's tribe does not support placement of the child in foster care or termination or parental rights, the requirements of this rule may be met by a person who meets the criteria of Rule 2.01(21)(b) or (c).

**AMENDMENTS TO THE RULES OF ADOPTION PROCEDURE**  
**EFFECTIVE AUGUSTS 1, 2009**

*Note to publishers: Deletions are indicated by a line drawn through the words;  
additions are underlined.*

**RULE 6. REFEREES AND JUDGES**

\* \* \* \* \*

**Rule 6.06. Order of the Court**

When no review is requested, or when the right to review is waived, the findings and recommended order of the referee become the order of the court when confirmed by the judge as written or when modified by the judge sua sponte. The order shall be confirmed or modified by the court within three (3) ~~ten (10)~~ days of the transmittal of the findings and proposed order.

**RULE 10. ORDERS**

**Rule 10.01. Written or Oral Orders**

Court orders may be written or stated on the record. An order stated on the record shall also be reduced to writing by the court. Except for orders issued following a trial pursuant to Rule 44.06, all orders shall be filed with the court administrator within fifteen (15) days of the conclusion of the hearing. An order shall remain in full force and effect 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.

\* \* \* \* \*

**Rule 10.03. Delivery; Mailing**

\* \* \* \* \*

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

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

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

## **RULE 29. DIRECT PLACEMENT ADOPTION**

\* \* \* \* \*

### **Rule 29.04. Decision and Order**

**Subd. 1. Non-Emergency Direct Placement.** In a non-emergency situation, the court shall decide a motion for a preadoptive custody order within fifteen (15) ~~thirty (30)~~ days of the filing of the motion or by the anticipated placement date stated in the motion, whichever is earlier.

## **RULE 33. CONSENT TO ADOPTION**

### **Rule 33.01. 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, and the child's consent must be consent to adoption by a particular person;
- (b) the adult to be adopted, whose consent shall be the only consent required;
- (c) a registered putative father, if pursuant to Rule 32 he has:
  - (1) been notified under the Minnesota Fathers' Adoption Registry;
  - (2) timely filed an intent to claim parental rights form; and
  - (3) timely filed a paternity action;
- (d) the child's parents or legal guardian, except:
  - (1) a parent not entitled to notice of the proceedings;
  - (2) a parent who has abandoned the child or a parent who has lost custody of the child through a divorce decree or a decree of dissolution and upon whom notice has been served as required under Rule 31; and
  - (3) a parent whose parental rights to the child have been terminated by a juvenile court order or through a decree in a prior adoption matter;
- (e) if there is no parent or legal guardian qualified to consent to the adoption, the consent shall be given by the Commissioner of Human Services;
- (f) the agency having authority to place the child for adoption, which shall have the exclusive right to consent to the adoption of such child; and

(g) the Commissioner of Human Services when the Commissioner is the legal guardian or legal custodian of the child, who shall have the exclusive right to consent to the adoption of such child.

## **RULE 34. COMMUNICATION OR CONTACT AGREEMENT**

\* \* \* \* \*

### **Rule 34.04. Timing**

A communication or contact agreement order shall be issued by the court within fifteen (15) ~~thirty (30)~~ days of being submitted to the court or by the date the adoption decree is issued, whichever is earlier.

## **RULE 37. ADOPTION STUDY AND BACKGROUND STUDY**

### **Rule 37.01. Adoption Study and Background Study Required; Exception**

~~A written adoption study report shall be completed by an agency and filed with the court in all adoptions as provided in Minnesota Statutes § 259.41. An approved adoption study, completed background study as required under Minnesota Statutes § 245C.33, and written adoption study report must be completed before the child is placed in a prospective adoptive home, except as allowed by Minnesota Statutes § 259.47, subd. 6. An approved adoption study, which includes the background study, shall be completed by a licensed child-placing agency and must be thorough and comprehensive. The study shall be paid for by the prospective adoptive parent, except as otherwise required under Minnesota Statutes § 259.67 or 259.73. A placement for adoption with an individual who is related to the child, as defined by Minnesota Statutes § 245A.02, subd. 13, is not subject to this rule except as required by Minnesota Statutes § 245C.33 and § 259.53, subd. 2(c). In the case of a licensed foster parent seeking to adopt a child who is in the foster parent's care, any portions of the foster care licensing process that duplicate requirements of the adoption study may be submitted in satisfaction of the relevant requirements of this rule.~~

## **Rule 37.02. Adoption Study Report**

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

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

(i) an assessment of the data and information required in Minnesota Statutes § 245C.33, subd. 4, to determine if the prospective adoptive parent and any other person over the age of 13 living in the home has a felony conviction consistent with subdivision 3 and section 471(a)(2) of the Social Security Act; and

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

~~(b) an 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;~~

~~(b-d)~~ an assessment ~~evaluation~~ of medical and social history;

~~(c-e)~~ an assessment of current health;

~~(d-f)~~ an assessment of potential parenting skills; ~~and~~

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

~~(f-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; and

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

**Rule 37.03. Direct Placement Adoption; Background Study ~~Check~~-Incomplete**

Unless otherwise ordered by the court, in a direct placement adoption the child may be placed in the preadoptive home prior to completion of the background study ~~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.”

**Rule 37.04. Background Study ~~Check~~; Timing**

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

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

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

## **RULE 38. POST-PLACEMENT ASSESSMENT REPORT**

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### **Rule 38.03. Background Study-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 study-check meeting the requirements of Minnesota Statutes § 259.41, subd. 3(b).

### **Rule 38.04. Waiver by Court**

**Subdivision 1. Post-Placement Assessment Waiver Permitted.** The post-placement assessment report ~~and the background check~~ may be waived by the court pursuant to Minnesota Statutes § 259.53. A request to waive a post-placement assessment report shall be in writing and shall be filed and served with the petition pursuant to Rule 35.05. A request to waive a post-placement assessment report shall be decided by the court within fifteen (15) ~~ten (10)~~ days of filing, unless a written objection to the waiver is filed, in which case a hearing must be conducted as soon as practicable.

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

## **RULE 43. PRETRIAL CONFERENCE IN CONTESTED MATTERS**

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### **Rule 43.03. Pretrial Order**

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

## **RULE 44. TRIAL IN CONTESTED MATTERS**

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

**Subd. 1. Generally.** Within fifteen (15) days of the conclusion of the trial in a contested matter, the court shall issue findings of fact, conclusions of law, an order for judgment, and an adoption decree pursuant to Rule 45. If written argument is to be submitted, such argument must be submitted within fifteen (15) days of the conclusion of testimony. For good cause, the court may extend this period for an additional fifteen (15) thirty (30)-days. The trial is not considered completed until written arguments, if any, are submitted or the time for submission of written arguments has expired.

**Subd. 2. Delay of Issuance of Order if Adoption Assistance Not Yet Acted Upon.** For adoption matters involving a child who is a ward of the Commissioner of Human Services, if there has been no opportunity for the adopting parent to apply for adoption assistance, the court shall delay issuing its findings of fact, conclusions of law, order for judgment, and adoption decree pursuant to Rule 45 until such time as the responsible social services agency documents for the court that either the Commissioner has acted upon an adoption assistance application made on behalf of the adopting parent and child or the adopting parent has declined in writing to apply for adoption assistance. “Acted upon” means the commissioner or commissioner’s delegate has signed an

adoption assistance agreement or denied adoption assistance eligibility pursuant to a completed application submitted to the Department of Human Services. Nothing in this rule grants jurisdiction over the commissioner in regard to procedures or substantive decisions regarding the award or denial of adoption assistance.

### **2008 Advisory Committee Comment**

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

## **RULE 47. RELIEF FROM ORDER**

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

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

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

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