

**RULES OF JUVENILE PROTECTION PROCEDURE
WITH AMENDMENTS EFFECTIVE THROUGH JULY 1, 2007**

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A. SCOPE and PURPOSE

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(k).

Rule 1.02. Purpose

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

- (a) secure for each child under the jurisdiction of the court a home that is safe and permanent;
- (b) secure for each child under the jurisdiction of the court the care and guidance, preferably in the child's own home, that will best serve the physical, emotional, spiritual, and mental welfare of the child;
- (c) provide judicial procedures which protect and promote the safety and welfare of the child;
- (d) whenever possible and in the best interests of the child, preserve and strengthen the child's family ties, removing the child from the custody of the child's parent or legal custodian only when the child's safety and welfare cannot otherwise be adequately safeguarded;
- (e) secure for the child such custody, care, and discipline, as nearly as possible equivalent to that which should have been given by the child's parent or legal custodian, when removal from the child's parent or legal custodian is necessary and in the child's best interests;
- (f) provide a just, thorough, speedy, and efficient determination of each juvenile protection matter before the court and ensure due process for all persons involved in the proceedings;
- (g) establish a uniform system for judicial oversight of case planning and reasonable efforts, or active efforts in the case of an Indian child, aimed at preventing or eliminating the need for removal of the child from the care of the child's parent or legal custodian;
- (h) ensure a coordinated decision-making process;
- (i) reduce unnecessary delays in court proceedings; and
- (j) encourage the involvement of parents and children in the proceedings.

1999 Advisory Committee Comment

The purpose statement is not intended to be a rule of construction. Rather, it is intended as a guide for judges, attorneys, social services personnel, families, and other judicial system stakeholders to articulate that the overall objective of juvenile court is to move expeditiously toward a

resolution of the matter in such a way as to secure that which is in the best interests of the child while ensuring due process for all of the parties.

The purpose statement reflects the policy set forth in the federal Adoption and Safe Families Act of 1997, 42 U.S.C. § § 601, 603, 622, 629, 653, 675, 670-679, and 1320, which emphasizes that the overriding objective in any juvenile protection matter is to timely provide a safe, permanent home for the child. The purpose statement also reflects the policy set forth in Minnesota Statutes § 260C.001, subd. 2, which provides, in pertinent part, as follows:

The paramount consideration in all proceedings concerning a child alleged or found to be in need of protection or services is the health, safety, and best interests of the child. . . . The purpose of the laws relating to juvenile courts is to secure for each child alleged or adjudicated in need of protection or services and under the jurisdiction of the court, the care and guidance, preferably in the child's own home, as will best serve the spiritual, emotional, mental, and physical welfare of the child; to provide judicial procedures which protect the welfare of the child; to preserve and strengthen the child's family ties whenever possible and in the child's best interests, removing the child from the custody of parents only when the child's welfare or safety cannot be adequately safeguarded without removal; and, when removal from the child's own family is necessary and in the child's best interests, to secure for the child custody, care and discipline as nearly as possible equivalent to that which should have been given by the parents.

Rule 1.02(h) calls for coordinated decision-making in those cases where one family is involved in simultaneous juvenile, criminal, and family court matters. The parties and the court should coordinate the separate proceedings to assure a consistent outcome that is in the best interests of the child.

RULE 2. DEFINITIONS

Rule 2.01. Definitions

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

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

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

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

(d) **“Emergency protective care”** means the placement status of a child when:
(1) taken into custody by a peace officer pursuant to Minnesota Statutes § 260C.151, subd. 6; § 260C.154; or § 260C.175; or
(2) returned home before an emergency protective care hearing pursuant to Rule 30 with court ordered conditions of release.

(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.

(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).

(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 (1) a member of an Indian tribe or (2) is eligible for membership in an Indian tribe.

(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.

(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.

(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, all records maintained by the court, and all reporter’s notes and tapes, electronic recordings, and transcripts of hearings and trials. See also “records” defined in subdivision (t).

(k) **“Juvenile protection matter”** means any of the following types of matters:
(1) child in need of protection or services matters as defined in Minnesota Statutes § 260C.007, subd. 6, including habitual truant and runaway matters;
(2) neglected and in foster care matters as defined in Minnesota Statutes § 260C.007, subd. 24;
(3) review of foster care matters as defined in Minnesota Statutes § 260C.141, subd. 2;
(4) review of out-of-home placement matters as defined in Minnesota Statutes § 260C.212;

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

(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 and long-term foster care matters.

(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.

(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, 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 it does not include an unmarried father whose paternity has not been acknowledged or established.

(n) **“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.

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

(p) **“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.

(q) **“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.

(r) **“Reasonable efforts to prevent placement”** as defined in Minnesota Statutes § 260.012(d) means: (1) the agency has made reasonable efforts to prevent the placement of the child in foster care; or (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.

(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: (1) to reunify the child with the parent or guardian from whom the child was removed; (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; (3) to conduct a relative search as required under Minnesota Statutes § 260C.212,

subd. 5; and (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, 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.

(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 (j).

(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.

(v) **“Removed from 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.

(w) **“Shelter care facility”** as adapted from Minnesota Statutes § 260C.007, subd. 30, means a physically 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.

(x) **“Trial 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.

RULE 3. APPLICABILITY OF OTHER RULES AND STATUTES

Rule 3.01. Rules of Civil Procedure

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

Rule 3.02. Rules of Evidence

Subd. 1. Generally. Except as otherwise provided by statute or these rules, in a juvenile protection matter the court shall only admit evidence that would be admissible in a civil trial pursuant to the Minnesota Rules of Evidence.

Subd. 2. Certain Out-of-Court Statements Admissible. An out-of-court statement not otherwise admissible by statute or rule of evidence is admissible as evidence in a juvenile protection matter if:

(a) the statement was made by a child under ten (10) years of age or by a child ten (10) years of age or older who is mentally impaired as defined in Minnesota Statutes § 609.341, subd. 6;

(b) the statement alleges, explains, denies, or describes:

(1) any act of sexual penetration or contact performed with or on the child;

(2) any act of sexual penetration or contact with or on another child observed by the child making the statement;

(3) any act of physical abuse or neglect of the child by another; or

(4) any act of physical abuse or neglect of another child observed by the child making the statement;

(c) the court finds that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability; and

(d) the proponent of the statement notifies all other parties of the particulars of the statement and the intent to offer the statement sufficiently in advance of the proceeding at which the proponent intends to offer the statement into evidence to provide the parties with a fair opportunity to respond to the statement.

For purposes of this subdivision, an out-of-court statement includes a video, audio, or other recorded statement.

Subd. 3. Judicial Notice. In addition to the judicial notice permitted under the Rules of Evidence, the court, upon its own motion or the motion of any party or the county attorney, may take judicial notice only of findings of fact and court orders in the juvenile protection court file and in any other proceeding in any other court file involving the child or the child's parent or legal custodian.

Rule 3.03. Indian Child Welfare Act

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

Rule 3.04. Rules of Guardian Ad Litem Procedure

The Rules of Guardian Ad Litem Procedure apply to juvenile protection matters.

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

The statutes, court rules, and court policies regarding appointment of court interpreters apply to juvenile protection matters. The court may appoint an interpreter of

its own selection and may fix reasonable compensation pursuant to such statutes, court rules and court policies.

B. GENERAL OPERATING RULES

RULE 4. TIME; TIMELINE

Rule 4.01. Computation of Time

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

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

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

Rule 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 30.01, the court shall hold an emergency protective care hearing within seventy-two (72) hours of the child's removal.

(b) **Admit/Deny Hearing.** Pursuant to Rule 34.02, subd. 1, 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, when the child is not removed from home by court order, an admit/deny hearing shall be held no sooner than five (5) days, and no later than twenty (20) days after the parties have been served with the 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.

(c) **Pretrial Conference.** Pursuant to Rule 36.01, 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.

(d) **Trial.** Pursuant to Rule 39.02, when the statutory grounds set forth in the petition are denied, a trial shall be commenced within sixty (60) days of the emergency protective care hearing or the admit/deny hearing, whichever is earlier.

(e) **Findings/Adjudication.** Pursuant to Rule 39.05, subd. 2, 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.

(f) **Disposition.** Pursuant to Rule 41.02, when practicable, the court 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 disposition hearing which shall take place no later than ten (10) days from the date the court issues its adjudication order.

(g) **Review of Legal Custody.** Pursuant to Rule 41.06, when the disposition is an award of legal custody to the responsible social services agency, the court shall review the disposition in court at least every ninety (90) days. Any party or the county attorney may request a review hearing before ninety (90) days.

(h) **Review of Protective Supervision.** Pursuant to Rule 41.06, when the disposition is protective supervision, 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. In the case of a child who has been adjudicated in need of protection or services, the court in its first order shall set the date or deadline for the permanent placement determination 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. Not later than when the court sets the date or deadline for the permanent placement determination 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 child in need of protection or services petition is filed concerning the child, 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.

(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, the court shall conduct a permanent placement determination 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. Termination of Parental Rights Matters.

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

(b) **Pretrial Conference.** Pursuant to Rule 36.01, a pretrial conference may be held any time after the date of 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, a trial shall be commenced within ninety (90) days of the filing of the petition.

(d) **Findings/Adjudication.** Pursuant to Rule 39.05, 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) **Review.** Pursuant to Rule 43.03, when the court orders termination of parental rights and adoption as the permanency plan, the court shall conduct a hearing to review progress toward adoptive placement at least every ninety (90) days.

1999 Advisory Committee Comment (amended 2003)

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:

Day	Event
1	Child removed from home
3	Emergency Protective Care Hearing
3-13	Admit/Deny Hearing
14-53	Pretrial Conference
63	Trial
79	Findings/Adjudication
79-88	Disposition Hearing
168-178	Review Hearing

258-268	Review Hearing
348-358	Review Hearing
365	Permanent Placement Determination Hearing

Rule 4.04. Sanctions for Violation

The court may impose sanctions upon any county attorney, party, or counsel for a party who willfully fails to follow the timelines set forth in these rules.

Rule 4.05. Application of Timing Provisions

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

RULE 5. CONTINUANCES

Rule 5.01. Findings

Subd. 1. Generally. Upon its own motion or motion of a party or the county attorney the court may continue a scheduled hearing or trial to a later date so long as the timelines for achieving permanency as set forth in these rules are not delayed. To grant a continuance, the court must make written findings or oral findings on the record that the 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.

Subd. 2. Trials. Trials 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.

1999 Advisory Committee Comment

Although the court may grant a continuance in appropriate circumstances, the court should not grant a continuance that would defeat the federal and state statutory time requirements for permanency determinations.

Rule 5.02. Notice of Continuance

The court shall, either in writing or orally on the record, provide notice to the parties and the county attorney of the date and time of the continued hearing or trial.

Rule 5.03. Existing Orders; Interim Orders

Unless otherwise ordered, existing orders shall remain in full force and effect during a continuance. When a continuance is ordered, the court may make any interim orders it deems to be in the best interests of the child in accordance with the provisions of Minnesota Statutes § 260C.001 to § 260C.451.

RULE 6. SCHEDULING ORDER

Rule 6.01. Purpose

The purpose of this rule is to provide a uniform system for scheduling matters for trial and disposition and for achieving permanency within the timelines set forth in these rules.

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 five (5) days of the admit/deny hearing.

Subd. 2. Contents of Order. The scheduling order shall establish a deadline or specific date for:

- (a) completion of discovery and other pretrial preparation;
- (b) serving, filing, or hearing motions;
- (c) submission of the proposed case plan;
- (d) the pretrial conference;
- (e) the trial;
- (f) the disposition hearing;
- (g) the permanency placement determination hearing; and
- (h) any other events deemed necessary or appropriate.

1999 Advisory Committee Comment

Rule 6.02 does not require the court to actually calendar time for any of the events described in the order. Rather, the court may simply set deadlines without establishing a date certain. For example, without setting a specific date the court may order that discovery must be completed at least ten days prior to trial.

Rule 6.03. Amendment

The court may amend a scheduling order as necessary, so long as the permanency timelines set forth in these rules are not delayed.

RULE 7. REFEREES AND JUDGES

Rule 7.01. Referee Authorization to Hear Matter

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

Rule 7.02. Objection to Referee Presiding Over Matter

A party or the county attorney may object to having a referee preside over a matter. The right to object shall be deemed waived unless the objection is in writing, filed with the court, and served upon all other parties and the county attorney within three (3) days after being informed that the matter is to be heard by a referee. Upon the

filing of an objection, a judge shall hear any motion and shall preside at all further motions and proceedings involving the matter.

Rule 7.03. Removal of Particular Referee

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

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

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

Subd. 4. Termination of Parental Rights Matters and Permanent Placement Matters. When a termination of parental rights matter or a permanent placement matter is filed in connection with a child who is the subject of a pending child in need of protection or services matter, the termination or permanency matter shall be considered a continuation of the protection matter. If the referee assigned to the protection matter is assigned to hear the termination or permanency matter, the parties and the county attorney shall not have the right to disqualify the assigned referee as a matter of right.

1999 Advisory Committee Comment

A party may not remove a particular referee and then object to having the case heard by any referee. If a judge is assigned to hear a matter after a party has objected to a particular referee hearing the matter, the party may not seek removal of the judge as a matter of right but may only seek removal of a subsequent judge for cause.

Rule 7.04. Transmittal of Referee's Findings and Recommended Order

Subd. 1. Transmittal. Upon the conclusion of a hearing, the referee shall transmit to a judge the written findings and recommended order. Notice of the findings

and recommended order, along with notice of the right to review by a judge, shall be given either orally on the record or in writing to all parties, the county attorney, and to any other person as directed by the court.

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

Rule 7.05. Review of Referee's Findings and Recommended Order

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

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

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

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

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

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

1999 Advisory Committee Comment

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

Rule 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 ten (10) days of the transmittal of the findings and proposed order.

Rule 7.07. Removal of Judge

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

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

Subd. 3. Notice to Remove.

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

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

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

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

qualified, the chief judge shall immediately notify the Chief Justice of the Minnesota Supreme Court.

Subd. 4. Termination of Parental Rights Matters and Permanent Placement Matters. When a termination of parental rights matter or a permanent placement matter is filed in connection with a child who is the subject of a pending child in need of protection or services matter, the termination or permanency matter shall be considered a continuation of the protection matter. If the judge assigned to the protection matter is assigned to hear the termination or permanency matter, the parties and the county attorney shall not have the right to disqualify the assigned judge as a matter of right.

2003 Advisory Committee Comment

While there was consensus that the one-judge one-family concept should be an aspirational goal of all juvenile courts, there was also consensus that a rule mandating implementation of the one-judge one-family concept may not be practical or enforceable in all situations. Instead, the Committee recommends that courts implement the one-judge one-family concept to the greatest extent possible.

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. 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.

2001 Advisory Committee Comment (amended 2003)

Rule 8.01 establishes a presumption of public access to juvenile protection case records, and exceptions to this presumption are set forth in the remaining provisions of Rule 8. Rule 8.01 does not apply to any case records relating to adoption proceedings, which remain inaccessible to the public.

Rule 8.02. Effective Date

Subd. 1. Open Hearings Pilot Project Counties. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any of the twelve open hearings pilot project counties on or after June 28, 1998, shall be accessible to the public for inspection, copying, or release. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any of the twelve open hearings pilot project counties before June 28, 1998, shall not be accessible to the public for inspection, copying, or release.

Subd. 2. Non-Open Hearings Pilot Project Counties. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any non-open hearings pilot project county on or after July 1, 2002, shall be accessible to the public for inspection, copying, or release. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any non-open hearings pilot project county before to July 1, 2002, shall not be accessible to the public for inspection, copying, or release.

2001 Advisory Committee Comment

Rule 8.02 identifies different effective dates for the pilot project counties (June 1998) and non-pilot project counties (July 2002) because the twelve pilot counties already permit public access to hearings and records under the open hearings pilot project. Twelve counties participated in the open hearings pilot project from June 28, 1998, through June 30, 2002: Goodhue and LeSueur (First Judicial District); Houston (Third Judicial District); Hennepin (Fourth Judicial District); Watonwan (Fifth Judicial District); St. Louis–Virginia (Sixth Judicial District); Clay (Seventh Judicial District); Stevens (Eighth Judicial District); Marshall, Pennington, and Red Lake (Ninth Judicial District); and Chisago (Tenth Judicial District).

Rule 8.03. Applicability of Rules of Public Access to Records of the Judicial Branch

Except where inconsistent with this rule, the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court shall apply to juvenile protection case records relating to juvenile protection matters. Subdivisions 1(a) and 1(c) of Rule 4 of the Rules of Public Access to Records of the Judicial Branch, which prohibit public access to domestic abuse restraining orders and judicial work products and drafts, are not inconsistent with this rule.

2001 Advisory Committee Comment

Rule 8.03 incorporates the provisions of the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court (“Access Rules”), except to the extent that the Access Rules are inconsistent with this rule. The Access Rules establish the procedure for requesting access, the timing and format of the response, and an administrative appeal process. The Access Rules also define “case records” as a subcategory of records maintained by a court. Thus, “case records” would not include items that are not made a part of the court file, such notes of a social worker or guardian ad litem. Aggregate statistics on juvenile protection cases that do not identify parties or participants or a particular case are included in the “administrative records” category and are accessible to the public under the Access Rules. Such statistics are routinely published by

the courts in numerous reports and studies. These procedures and definitions are consistent with this rule.

One significant aspect of both this rule and the Access Rules is that they govern public access only. Parties and participants in a juvenile protection matter may have greater access rights than the general public. See, e.g., Minn. R. Juv. P. 17 (2001).

Rule 8.03 preserves the confidentiality of domestic abuse restraining orders issued pursuant to Minn. Stat. § 518B.01 (Supp. 2001). The address of a petitioner for a restraining order under section 518B.01 must not be disclosed to the public if nondisclosure is requested by the petitioner. Minn. Stat. § 518B.01, subd. 3b (Supp. 2001). All other case records regarding the restraining order must not be disclosed until the temporary order made pursuant to subdivision 5 or 7 of section 518B.01 is served on the respondent. Access Rule 4, subd. 1(a) (Supp. 2001).

Rule 8.03 prohibits public access to judicial work products and drafts. These include notes, memoranda, and drafts prepared by a judge or court employed attorney, law clerk, legal assistant, or secretary and used in the process of preparing a decision or order, except the official court minutes prepared pursuant to Minn. Stat. § 546.24 - .25 (Supp. 2001). Access Rule 4, subd. 1(c) (2001).

The “Court Services Records” provision of Access Rule 4, subd. 1(b), is inconsistent with this rule. The Advisory Committee is of the opinion that public access to reports and recommendations of social workers and guardians ad litem, which become case records, is an integral component of the increased accountability that underlies the concept of public access to juvenile protection matters. Court rulings will necessarily incorporate significant portions of what is set forth in those reports, and similar information is routinely disclosed in family law cases.

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 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.

2001 Advisory Committee Comment

Rule 8.04(a) prohibits public access to testimony of anyone taken during portions of a proceeding that are closed to the public by the presiding judge. Hearings or portions of hearings may be closed by the presiding judge only in exceptional circumstances.

Rule 8.04(b) prohibits public access to audio tapes and video tapes of a child alleging or describing physical abuse, sexual abuse, or neglect of any child. This includes all tapes made pursuant to Minn. Stat. § 626.561, subd. 3 (Supp. 2001), during the course of a child abuse assessment, criminal investigation, or prosecution. This is consistent with Minn. Stat. § 13.391 (Supp. 2001), which prohibits an individual who is a subject of the tape from obtaining a copy of the tape without a court order. See also *In re Application of KSTP Television v. Ming Sen Shiue*, 504 F. Supp. 360 (D. Minn. 1980) (television station not entitled to view and copy three hours of video tapes received in evidence in criminal trial). Similarly, Rule 8.04(c) prohibits public access to victims' statements, and this includes written records of interviews of victims made pursuant to Minn. Stat. § 626.561, subd. 3 (Supp. 2001). This is consistent with Minn. Stat. § 609.115, subs. 1, 5; § 609.2244; and § 611A.037 (Supp. 2001) (pre-sentence investigations to

include victim impact statements; no public access; domestic abuse victim impact statement confidential).

Although victims' statements and audio tapes and video tapes of a child alleging or describing abuse or neglect of any child are inaccessible to the public under Rule 8.04(b) and (c), this does not prohibit the attorneys for the parties or the court from including information from the statements or tapes in the petition, court orders, and other documents that are otherwise accessible to the public. In contrast, Rule 8.04(d) prohibits public access to "portions of juvenile protection case records that identify reporters of abuse or neglect." By precluding public access to "portions of records that identify reporters of abuse or neglect," the Advisory Committee did not intend to preclude public access to any other information included in the same document. Thus, courts and court administrators must redact identifying information from otherwise publicly accessible documents and then make the edited documents available to the public for inspection and copying. Similarly, Rule 8.04(e) requires that courts and court administrators redact from any publicly accessible juvenile court record any reference to HIV test results, and Rule 8.04(h) requires administrators to redact the face or other identifying features in a photograph of a child.

The prohibition of public access to the identity of reporters of abuse or neglect under Rule 8.04(d) is consistent with state law governing access to this information in the hands of social services, law enforcement, court services, schools, and other agencies. Minn. Stat. § 626.556 (Supp. 2001). Rule 8.04(d) is also intended to help preserve federal funds for child abuse prevention and treatment programs. See 42 U.S.C. § 5106a(b)(2)(A) and § 5106a(b)(3) (1998); 45 C.F.R. § 1340.1 to § 1340.20 (1997). Rule 8.04(d) does not, however, apply to testimony of a witness taken during a proceeding that is open to the public.

Rule 8.04(e) prohibits public access to HIV test results. This is consistent with state and federal laws regarding court ordered testing for HIV. Minn. Stat. § 611A.19 (Supp. 2001) (defendant convicted for criminal sexual conduct; no reference to the test, the motion requesting the test, the test order, or the test results may appear in the criminal record or be maintained in any record of the court or court services); 42 U.S.C. § 14011 (1998) (defendant charged with crime; test result may be disclosed to victim only). The Committee is also aware that federal funding for early intervention services requires confidential treatment of this information. 42 U.S.C. § 300ff-61(a); § 300ff-63 (1998).

Rule 8.04(f) and (g) prohibit public access to medical records, chemical dependency evaluations and records, psychological evaluations and

records, psychiatric evaluations and records, and sexual offender treatment program reports, unless admitted into evidence under Rule 8.05. This is consistent with public access limitations in criminal and juvenile delinquency proceedings that are open to the public. See, e.g., Minn. Stat. § 609.115, subd. 6 (Supp. 2001) (pre-sentence investigation reports). Practitioners and the courts must be careful not to violate applicable federal laws. Under 42 U.S.C. § 290dd-2 (1998), records of all federally assisted or regulated substance abuse treatment programs, including diagnosis and evaluation records, and all confidential communications made therein, except information required to be reported under a state mandatory child abuse reporting law, are confidential and may not be disclosed by the program unless disclosure is authorized by consent or court order. Thus, practitioners will have to obtain the relevant written consents from the parties or court orders, including protective orders, before disclosing certain medical records in their reports and submissions to the court. See 42 C.F.R. § 2.1 to 2.67 (1997) (comprehensive regulations providing procedures that must be followed for consent and court-ordered disclosure of records and confidential communications).

Although similar requirements apply to educational records under the Federal Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, 1417, and § 11432 (1998); 34 C.F.R. § 99.1 to § 99.67 (1997), FERPA allows schools to disclose education records without consent or court order in certain circumstances, including disclosures to state and local officials under laws in effect before November 19, 1974. 20 U.S.C. § 1232g(b)(1)(E)(i) (1998); 34 C.F.R. § 99.31(a)(5)(i)(A) (1997). Authorization to disclose truancy to the county attorney, for example, was in effect before that date and continues under current law. See Minn. Stat. § 120.12 (1974) (superintendent to notify county attorney if truancy continues after notice to parent); 1987 Minn. Laws ch. 178 § 10 (repealing section 120.12 and replacing with current section 120.103, which adds mediation process before notice to county attorney); see also Minn. Stat. § 260A.06-.07 (Supp. 2001) (referral to county attorney from school attendance review boards; county attorney truancy mediation program notice includes warning that court action may be taken). Practitioners will have to review the procedures under which they receive education records from schools and, where necessary, obtain relevant written consents or protective orders before disclosing certain education records in their reports and submissions to the court. Additional information regarding FERPA may be found in *Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs* (U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, Washington, D.C. 20531, June

1997) (includes hypothetical disclosure situations and complete set of federal regulations).

Rule 8.04(h) prohibits public access to portions of photographs that identify a child, and requires administrators to redact the face or other identifying features in a photograph of a child before permitting public access. Any appropriate concern regarding public access to the remaining portions of such a photograph can be addressed through a protective order (see Rule 8.07).

Rule 8.04(i) precludes public access to an ex parte emergency protective custody order, until the hearing where all parties have an opportunity to be heard on the custody issue. This provision is designed to reduce the risk that a parent or legal custodian would try to hide a child before the child can be placed in protective custody or to take the child from custody before the court can hear the matter. See, e.g., Minn. R. Juv. P. 65 (Supp. 2001) (order must either direct that child be brought immediately before the court or taken to a placement facility designated by the court; parent or legal custodian, if present when child is taken into custody, shall immediately be informed of existence of order and reasons why child is being taken into custody). Rule 8.04(i) also precludes public access to the application or request for the protective custody order, except that if the request is made in a Child In Need of Protection or Services (CHIPS) petition, only that portion of the petition that requests the order is inaccessible to the public.

Rule 8.04(j) precludes public access to portions of records that specifically identify a minor victim of sexual assault. This will require court administrators to redact information from case records that specifically identifies the minor victim, including the victim's name and address. Rule 8.04(j) does not preclude public access to other information in the particular record. This is intended to parallel the treatment of victim identities in criminal and juvenile delinquency proceedings involving sexual assault charges under Minn. Stat. § 609.3471 (Supp. 2001). Thus, the term "sexual assault" includes any act described in Minnesota Statutes § 609.342, § 609.343, § 609.344, and § 609.345. The Committee considered using the term "sexual abuse" but felt that it was a limited subcategory of "sexual assault." See Minn. Stat. § 626.556, subd. 2(a) (Supp. 2001) ("sexual abuse" includes violations of § 609.342 - .345 committed by person in a position of authority, responsible for child's care, or having a significant relationship with the child). Rule 8.04(j) does not require a finding that sexual assault occurred. An allegation of sexual assault is sufficient.

Rule 8.04(k) precludes public access to the notice of pending proceedings given by the responsible social services agency to an Indian child's tribe or to the Secretary of the Interior pursuant to 25 U.S.C. § 1912(a) (1998). The notice includes extensive personal information about the child, including all known information on direct lineal ancestors, and requires parties who receive the notice to keep it confidential. 25 C.F.R. § 23.11(d), (e) (1997). Notices are routinely given in doubtful cases because lack of notice can be fatal to a state court proceeding. See 25 U.S.C. § 1911 (1998) (exclusive jurisdiction of tribes; right to intervene; transfer of jurisdiction). The Committee believed that public access to information regarding the child's tribal heritage is appropriately given whenever a tribe intervenes or petitions for transfer of jurisdiction. Rule 8.04(k) does not preclude public access to intervention motions or transfer petitions.

Rule 8.04(l) recognizes that courts may, in exceptional circumstances, issue protective orders precluding public access to certain records or portions of records. Records of closed proceedings are inaccessible to the public under Rule 8.04(a). Procedures for issuing protective orders are set forth in Rule 8.07.

Rule 8.04(m) prohibits public access to the names, addresses, home, location, or other identifying information about the foster parents, foster care institutions, adoptive parents, and other persons and institutions providing care or pre-adoptive care of the child. This is consistent with the confidentiality accorded adoption proceedings. It is also designed to reduce the risk of continuing contact by someone whose parental rights have been terminated or who is a potentially dangerous family member. If deemed appropriate, the name, address, home, location, or other identifying information about a child's foster placement may be protected from a party through issuance of a protective order pursuant to Rule 8.07

Notwithstanding the list of inaccessible case records in Rule 8.04(a) through (m), many juvenile protection case records will typically be accessible to the public. Examples include: petitions, other than petitions for paternity; summons; affidavits of publication or service; certificates of representation; orders; hearing and trial notices; subpoenas; names of witnesses; motions and supporting affidavits and legal memoranda; transcripts; and reports of social workers and guardians ad litem. With the exception of information that must be redacted under Rule 8.04(d) (e), and (h), these records will be accessible to the public notwithstanding that they contain a summary of information derived from another record that is not accessible to the public. For example, a social services or guardian ad litem report might discuss the results of a chemical dependency evaluation.

Although the chemical dependency evaluation itself is not accessible to the public under Rule 8.04(f), discussion of the details of that evaluation in the social services or guardian ad litem report need not be redacted before public disclosure of the report. Finally, it must be remembered that public access under this rule would not apply to records filed with the court before the effective date of this rule (see Rule 8.02) or to reports of a social worker or guardian ad litem that have not been made a part of the court file (see Rule 8.03).

2006 Advisory Committee Comment

The child's name and other identifying information are not to be redacted from records that are accessible to the public, except under Rule 8.04(j) when the child is the victim of an alleged or adjudicated sexual assault and under Rule 8.04(d) where the child is specifically identified as the reporter of the abuse or neglect. In the latter instance, the child's name and other identifying information should be redacted only in those instances where it is used as the reporter of abuse or neglect but should not be redacted when referenced elsewhere in the record.

Rule 8.05. Access to Exhibits

Case records received into evidence as exhibits shall be accessible to the public unless subject to a protective order issued pursuant to Rule 8.07.

2001 Advisory Committee Comment

Rule 8.05 permits public access to records that have been received in evidence as an exhibit, unless the records are subject to a protective order (see Rule 8.07). Thus, any of the records identified in Rule 8.04(b) through (k) that have been admitted into evidence as an exhibit are accessible to the public, unless there is a protective order indicating otherwise. An exhibit that has been offered, but not expressly admitted by the court, does not become accessible to the public under Rule 8.05. Exhibits admitted during a trial or hearing must be distinguished from items attached as exhibits to a petition or a report of a social worker or guardian ad litem. Merely attaching something as an "exhibit" to another filed document does not render the "exhibit" to be accessible to the public under Rule 8.05.

Rule 8.06. Access to Court Information Systems

Except where authorized by the district court, there shall be no direct public access to juvenile protection case records maintained in electronic format in court information systems.

2001 Advisory Committee Comment

Rule 8.06 prohibits direct public access to case records maintained in electronic format in court information systems unless authorized by the

court. Rule 44.06 intentionally limits access to electronic formats as a means of precluding widespread distribution of case records about children into larger, private databases that could be used to discriminate against children for insurance, employment, and other purposes. This concern also led the Advisory Committee to recommend that case titles in the petition and other documents include only the name of the parent or legal custodian and exclude the names or initials of the children (see Rule 8.08). Rule 8.06 allows the courts to prepare calendars that identify cases by the appropriate caption. To the extent that court information systems can provide appropriate electronic formats for public access, Rule 8.06 allows the district court to make those accessible to the public.

Rule 8.07. Protective Order

Subd. 1. Orders Regarding the Public. The court may sua sponte, or upon motion and hearing, issue an order prohibiting public access to juvenile protection case records that are otherwise accessible to the public only if the court finds that an exceptional circumstance exists. The protective order shall state the reason for issuance of the order. If the court issues a protective order on its own motion and without a hearing, the court shall schedule a hearing on the order as soon as possible at the request of any person. A protective order issued pursuant to this subdivision is accessible to the public.

Subd. 2. Orders Regarding Parties. The court may sua sponte, or upon motion and hearing, issue a protective order prohibiting a party's access to juvenile protection case records that are otherwise accessible to the party. The protective order shall state the reason for issuance of the order. If the court issues a protective order on its own motion and without a hearing the court shall schedule a hearing on the order as soon as possible at the request of any person. A protective order issued pursuant to this subdivision is accessible to the public.

2001 Advisory Committee Comment

Rule 8.07 establishes two categories of protective orders. One is made on motion of a party after a hearing, and the other is made on the court's own motion without a hearing, subject to a later hearing if requested by any person, including representatives of the media. In any case, a protective order may issue only in exceptional circumstances. The Advisory Committee felt that these procedures would provide adequate protection and flexibility.

Rule 8.08. Case Captions and Text of Decisions and Other Records

Subd. 1. District Court.

All juvenile protection court files opened and any petitions, pleadings, reports, orders, or other documents or records filed in any:

(i) of the twelve open hearings pilot project counties on or after June 22, 1998, or

(ii) non-open hearings pilot project county on or after July 1, 2002, shall be captioned in the name of the child's parent(s) or legal custodian(s), as follows: "*In the Matter of the Welfare of the Child(ren) of _____, Parent(s)/ Legal Custodian(s).*" The caption shall not include the child's name or initials. The body of any petitions, pleadings, reports, orders, or other documents or records filed with the court shall include the child's and parent's or legal custodian's full name, not their initials. The case caption shall not be modified upon the issuance of an order terminating parental rights.

Subd. 2. Appellate Court. All juvenile protection court files opened in any Minnesota appellate court shall be captioned in the initials of the parent(s) or legal custodian(s) as follows: "*In the Matter of the Welfare of the Child(ren) of _____, Parent(s)/Legal Custodian(s).*" The caption shall not include the child's name or initials. The body of any decision filed in any Minnesota appellate court shall use the parent's and child's initials, not their names. Upon the filing of an appeal pursuant to Rule 47.02, the appellant shall provide to the court administrator, the appellate court, and the parties and participants notice of the correct appellate case caption required under this Rule. This Rule supercedes Rule 143.01 of the Rules of Civil Appellate Procedure regarding the provisions relating to case captions upon appeal.

2001 Advisory Committee Comment

Twelve counties participated in the pilot project from June 28, 1998, through June 30, 2002: Goodhue and LeSueur (First Judicial District); Houston (Third Judicial District); Hennepin (Fourth Judicial District); Watonwan (Fifth Judicial District); St. Louis–Virginia (Sixth Judicial District); Clay (Seventh Judicial District); Stevens (Eighth Judicial District); Marshall, Pennington, and Red Lake (Ninth Judicial District); and Chisago (Tenth Judicial District).

The change in case captions under Rule 8.08 is designed to minimize the stigma to children involved in juvenile protection matters that are accessible to the public. It is more appropriate to label these cases in the name of the adults involved, who are often the perpetrators of abuse or neglect.

RULE 9. EX PARTE COMMUNICATION

Rule 9.01. Ex Parte Communication Prohibited

Ex parte communication is prohibited, except as to procedural matters not affecting the merits of the case. All communications between the court and a party or participant shall be in the presence of all other parties or in writing with copies to the parties or, if represented, the party's attorney, except as otherwise permitted by statute or these rules. The court shall not consider any ex parte communication from anyone concerning a proceeding, including conditions of release, evidence, adjudication, disposition, or any other matter.

1999 Advisory Committee Comment

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

Rule 9.02. Disclosure

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

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 ten (10) days of the conclusion of the hearing. 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.

Rule 10.02. Immediate Effect of Oral Order

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

Rule 10.03. 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 must be accomplished within five (5) 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 which shall include notice of the right to appeal a final order pursuant to Rule 47. The State Court Administrator shall develop a "notice of filing" form which shall be used by court administrators.

RULE 11. RECORDING AND TRANSCRIPTS

Rule 11.01. Procedure

A verbatim recording of all hearings shall be made by a stenographic reporter or by an electronic sound recording device. If the recording is made by an electronic sound

recording device, qualified personnel shall be assigned by the court to operate the device. Any required transcripts shall be prepared by personnel assigned by the court.

Rule 11.02. Availability of Transcripts

Transcripts may be requested by the county attorney, parties, and participants. The court upon a showing of good cause may grant any other person's written or on the record request for a transcript.

Rule 11.03. Expense

If a party requesting a transcript is unable to pay the preparation cost, the party may apply to the court for an order directing the preparation and delivery of the transcript to the party requesting it, at public expense. A party's request for a transcript shall be accompanied by an in forma pauperis (IFP) application. Upon a finding of the party's ability to do so, the court may order partial reimbursement for the cost of the transcript.

RULE 12. USE OF TELEPHONE AND INTERACTIVE VIDEO

Rule 12.01. Motions and Conferences

The court may hear motions and conduct conferences with counsel by telephone or interactive video.

1999 Advisory Committee Comment

Rule 12.01 authorizes the court to use telephone and interactive video to hear motions where testimony is not required and to resolve procedural matters with counsel for the parties.

Rule 12.02. Hearings and Taking Testimony

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

1999 Advisory Committee Comment

Rule 12.02 authorizes the court to hold hearings and take testimony by telephone or interactive video only upon agreement of the parties or in exceptional circumstances upon motion. The intent of this rule is to ensure that parties are permitted to fully participate in hearings and to be present when testimony is offered. The rule provides that the court has the opportunity, in all but the most exceptional cases, to personally observe witnesses in order to effectively weigh credibility. However, it also gives the court some flexibility in those exceptional cases.

Rule 12.03. In Court Appearance Not Precluded

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

RULE 13. SUBPOENAS

Rule 13.01. Subpoena for a Hearing or Trial

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

Rule 13.02. Form; Issuance; Notice

Subd. 1. Form. Every subpoena shall be issued by the court administrator under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a specified time and place or to produce books, papers, documents, or other tangible things designated in the subpoena. The court administrator shall issue a subpoena, or a subpoena for the production of documentary evidence or tangible things, signed and sealed, but otherwise in blank, to a party or county attorney requesting it, who shall fill it in before service.

Subd. 2. Issuance. A subpoena shall be issued only for appearance at a hearing, a deposition pursuant to Rule 17, a trial pursuant to Rule 39, or to produce books, papers, documents, or other tangible things designated in the subpoena.

Subd. 3. Notice. Every subpoena shall contain a notice to the person to whom it is directed advising the person of the right to reimbursement for certain expenses pursuant to Rule 13.08.

Rule 13.03. Service

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

Rule 13.04. Motion to Quash a Subpoena

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

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

Rule 13.05. Objection

The person to whom the subpoena is directed may, within five (5) days after service of the subpoena or on or before the time specified in the subpoena for compliance

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

Rule 13.06. Production of Documentary Evidence

A subpoena may also command the person to whom it is directed to produce books, papers, documents, or tangible things designated in the subpoena.

Rule 13.07. Subpoena for Taking Depositions; Place of Examination

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

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

Rule 13.08. Expenses

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

Subd. 2. Expenses of Experts. Subject to the provisions of Rule 17, a witness who is not a party to the action or an employee of a party and who is required to give testimony or produce documents relating to a profession, business, or trade, or relating to knowledge, information, or facts obtained as a result of activities in such profession, business, or trade, is entitled to reasonable compensation for the time and expense involved in preparing for and giving such testimony or producing such documents. The party serving the subpoena shall make arrangements for such reasonable compensation prior to the time of the taking of the testimony. If such arrangements are not made, the person subpoenaed may proceed pursuant to Rule 13.04 or Rule 13.05. If the deponent has moved to quash or otherwise objected to the subpoena, the party serving the subpoena may, upon notice and motion to the deponent and all parties and the county

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

Rule 13.09. Failure to Appear

If any person personally served with a subpoena fails, without reasonable cause, to appear or bring the child if ordered to do so, or if the court has reason to believe the person is avoiding personal service, the court may sua sponte or upon the motion of a party or the county attorney pursuant to Rule 15 proceed against the person for civil contempt of court pursuant to Rule 14 or the court may issue a warrant for the person's arrest, or both. When it appears to the court that service will be ineffectual, or that the welfare of the child requires that the child be immediately brought into the custody of the court, the court may issue a warrant for immediate custody of the child.

RULE 14. CONTEMPT

Rule 14.01. Initiation

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

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

Rule 14.02. Supporting and Responsive Affidavits

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

Rule 14.03. Hearing

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

Rule 14.04. Sentencing

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

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

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

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

RULE 15. MOTIONS

Rule 15.01. Form

Subd. 1. Generally. An application to the court for an order shall be by motion.

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

- (a) set forth the relief or order sought;
- (b) state with particularity the grounds for the relief or order sought;
- (c) be signed by the person making the motion;
- (d) be filed with the court, unless it is made orally in court on the record; and
- (e) be accompanied by a supporting affidavit or other supporting documentation or a memorandum of law, unless it is made orally in court on the record.

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

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

Rule 15.02. Service and Notice of Motions

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

Subd. 2. How Made. Service of a motion may be made by personal service, by mail, or by transmitting a copy by facsimile transmission pursuant to Rule 31.

Subd. 3. Time. Any written motion, along with any supporting affidavit or other supporting documentation or memorandum of law, shall be served at least five (5) days before it is to be heard, unless the court for good cause shown permits a motion to be made and served less than five (5) days before it is to be heard. The filing and service of a motion shall not extend the permanency timelines set forth in these rules.

Rule 15.03. Ex Parte Motion and Hearing

Subd. 1. Motion. A motion may be made ex parte when permitted by statute or these rules. Every ex parte motion shall be accompanied by an explanation of the efforts made to notify all parties and the county attorney of the motion or an explanation of why such notice would place the child in danger of imminent harm or could result in the child being hidden or removed from the court's jurisdiction.

Subd. 2. Hearing. When the court issues an ex parte order removing a child from the care of a parent or legal custodian, the court shall schedule a hearing to review the order within seventy-two (72) hours of the child's removal. Upon issuance of an ex parte order in cases of domestic child abuse, the court shall schedule a hearing pursuant to the requirements of Minnesota Statutes § 260C.148. Upon issuance of any other ex parte order, a hearing shall be scheduled on the request of a party or the county attorney at the earliest possible date.

Rule 15.04. Motion to Dismiss Petition

Any party or the county attorney may bring a motion to dismiss the petition upon any of the following grounds:

- (a) lack of jurisdiction over the subject matter;
- (b) lack of jurisdiction over the child; or
- (c) at or prior to the admit/deny hearing, failure of the petition to state facts which, if proven, establish a prima facie case to support the statutory grounds set forth in the petition.

Rule 15.05. Motion to Strike Document

If a motion to strike a document or any portion of a document is granted, the document or portion of document shall be marked by the judge as stricken, but the document shall remain in the court file.

Rule 15.06. Timing of Decision

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

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

Rule 16.01. Signature

Subd. 1. Generally. Except as otherwise provided in these rules, every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's name, address, and telephone number, and attorney registration number if signed by an attorney. If providing a party's address and telephone number would endanger the party, the address and telephone number may be provided to the court in a separate information statement and shall not be accessible to the public or to the parties. Upon notice and motion, the court may disclose the address and telephone number as it deems appropriate. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

Subd. 2. Exception – Social Worker and Guardian Ad Litem Reports. Reports filed by social workers and guardians ad litem under Rule 38 need not be signed.

Rule 16.02. Representations to Court

By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, motion, report, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that:

- (a) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (b) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (c) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (d) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Rule 16.03. Service and Filing of Motions and Other Documents

Except as otherwise provided in this Rule, the party filing a motion or other document, except a pleading, shall be responsible for serving the motion or other

document upon the parties or, if represented, upon the attorneys for such individuals. The court administrator shall serve the motion or other document if the address of the person being served is confidential.

Rule 16.04. Sanctions

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

RULE 17. DISCOVERY

Rule 17.01. Disclosure by Petitioner Without Court Order

Upon the request of any party, the petitioner shall without court order make the following disclosures:

(a) **Documents and Tangible Items.** The petitioner shall allow access at any reasonable time to all information, material, and items within the petitioner's possession or control which relate to the case. The petitioner shall permit inspection and copying of any relevant documents, recorded statements, or other tangible items which relate to the case within the possession or control of the petitioner and shall provide any party with the substance of any oral statements which relate to the case. The copying of a videotaped statement of a child abuse victim or alleged victim shall be governed by Minnesota Statutes § 611A.90. The petitioner shall not disclose the name of or any identifying information regarding a reporter of maltreatment except as provided in Minnesota Statutes § 626.556, subd. 11.

(b) **Witnesses.** The petitioner shall disclose to all other parties and the county attorney the names and addresses of the persons intended to be called as witnesses at trial. The county attorney or petitioner shall permit all other parties to inspect and copy such witnesses' written or recorded statements that relate to the case within the petitioner's knowledge.

(c) **Expert Witnesses.** Petitioner shall disclose to all other parties and the county attorney:

- (1) the names and addresses of all persons intended to be called as expert witnesses at trial;
- (2) the subject matter about which each expert witness is expected to testify; and
- (3) a summary of the grounds for each opinion to be offered.

Rule 17.02. Disclosure by Other Parties Without Court Order

Upon the request of a party or the county attorney, any party who is not the petitioner shall without court order make the following disclosures:

(a) **Documents and Tangible Objects.** The party shall disclose and permit the county attorney, attorney for petitioner, or any other party to inspect and copy any book, paper, report, exam, scientific test, comparison, document, photograph, or tangible object which the party intends to introduce in evidence at the trial or concerning which the party intends to offer evidence at the trial.

(b) **Witnesses.** Each party shall disclose to every other party and the county attorney the names and addresses of the persons the party intends to call as witnesses at trial. Each party shall permit every other party and the county attorney to inspect and copy such witnesses' written or recorded statements within the party's knowledge as relates to the case.

(c) **Expert Witnesses.** Each party shall disclose to all other parties and the county attorney:

(1) the names and addresses of all persons intended to be called as expert witnesses at trial;

(2) the subject matter about which each expert witness is expected to testify; and

(3) a summary of the grounds for each opinion to be offered.

Rule 17.03. Information Not Discoverable

The following information shall not be discoverable by any party or the county attorney with or without a court order:

(a) documents containing privileged information between an attorney and client, legal research, records, correspondence, reports, or memoranda to the extent they contain the opinions, theories, or conclusions of the attorney for a party or other staff of an attorney for a party; and

(b) except as otherwise required by this rule, reports, memoranda, or internal documents made by an attorney for a party or staff of an attorney for a party.

Rule 17.04. Discovery Upon Court Order

Upon written motion of any party or the county attorney, the court may authorize other discovery methods, including, but not limited to, the following:

(a) **Physical and Mental Examinations.**

(1) **Examination by Licensed Professional.** If the physical or mental condition of a party is in controversy, the court may order the party to submit to a physical or mental examination by a licensed professional of the moving party's choice. The examination shall be at the moving party's expense. The order shall specify the time, place, manner, conditions, and the scope of the examination.

(2) **Copy of Report.** The examiner shall prepare a detailed report of the findings and conclusions of the examination and shall provide the report to the moving party who shall forward it to all other parties and the county attorney unless otherwise ordered by the court.

(b) **Depositions.**

(1) **Agreement of Parties.** A deposition may be taken upon agreement of the parties.

(2) **Order of Court.** Following the initial appearance, any party or the county attorney may move the court to order the testimony of any other person or party be taken by deposition upon oral examination, if:

(i) there is a reasonable probability that the witness will be unable to be present or to testify at the hearing or trial because of the witness' existing physical or mental illness, infirmity, or death;

(ii) the party taking the deposition cannot procure the attendance of the witness at a hearing or trial by a subpoena, order of the court, or other reasonable means: or

(iii) upon a showing that the information sought cannot be obtained by other means.

(3) **Subpoena.** Attendance of witnesses at oral deposition may be compelled by subpoena as provided by Rule 13. Attendance of parties at oral deposition shall be ordered by the court when the court grants a motion pursuant to subdivision 2(b) and shall be procured through service of the order and a notice of the time and place of the taking of the deposition on the party.

(4) **Notice.** A party or the county attorney taking a deposition shall give reasonable notice of the deposition. The deposition shall be taken before an officer authorized to administer oaths by the laws of the United States, or before a person appointed by the court in which the matter is pending. The parties shall agree on or the court shall order the manner of recording of the deposition. A stenographic transcription may be made at a party's request. Examination and cross-examination of witnesses shall be as permitted at trial. However, the deponent shall answer any otherwise objectionable question, except that which would reveal privileged material unless the privilege does not apply pursuant to Minnesota Statutes § 626.556, subd. 8, so long as it leads to or is reasonably calculated to lead to the discovery of any relevant data.

(c) **Reports or Examinations and Tests.** Upon motion and order of the court, any party shall disclose and permit the county attorney, attorney for petitioner, and other parties to inspect and copy any results or reports of physical or mental examinations, chemical dependency assessments and treatment records, scientific tests, experiments, and comparisons relating to the particular case. It is not grounds for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Privileged communications are discoverable in accordance with Minnesota Statutes § 626.556, subd. 8.

(d) **Experts.** Discovery of facts known and opinions held by experts, otherwise discoverable pursuant to these rules and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(1) Upon motion, the court may order further discovery by means other than as provided in Rules 17.01 and 17.02, subject to such restrictions as to scope and such provisions concerning fees and expenses as the court may deem appropriate.

(2) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(3) Unless manifest injustice would result,

(i) the court shall require the party seeking discovery to pay the expert a reasonable fee for time spent in responding to discovery pursuant to this rule, and

(ii) with respect to discovery obtained pursuant to this rule, the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

Rule 17.05. Time, Place, and Manner of Discovery

An order of the court granting discovery shall specify the time, place, and manner of discovery and inspection permitted and may prescribe such terms and conditions as are just.

Rule 17.06. Regulation of Discovery

Subd. 1. Continuing Duty to Disclose. Whenever a party or the county attorney discovers additional material, information, or witnesses subject to disclosure, that party or the county attorney shall promptly notify the other parties and the county attorney of the existence of the additional material or information and the identity of the witnesses.

Subd. 2. Protective Orders. The trial court may order that specified disclosures be restricted or deferred, or make such other order as is appropriate to protect the child.

Subd. 3. Timely Discovery. Unless a court order otherwise provides, all material and information to which a party or the county attorney is entitled must be disclosed within fourteen (14) days of a request for disclosure.

Subd. 4. Sanctions. If, at any time, it is brought to the attention of the court that a party or the county attorney has failed to comply with an applicable discovery rule or order, or has failed to appear pursuant to a notice of taking of deposition, be sworn, or answer questions, the court may, upon motion, order such party or the county attorney to permit the discovery or inspection, grant a continuance, or enter such order as it deems just under the circumstances including:

(a) an order that the matters regarding which the order was made, or the other designated facts, shall be taken to be established for purposes of the proceedings, in accordance with the claim of the party who obtained the order;

(b) an order refusing to allow the disobedient party to support or oppose designated claims, or prohibiting the disobedient party from introducing designated matters in evidence;

(c) an order striking the petition or parts of the petition, answer, or parts of an answer, dismissing the proceeding, or entering a finding that the petition is proved or that certain facts alleged in the petition are proved;

(d) in lieu of any of the foregoing, an order treating as a contempt of court the failure to obey any order; or

(e) the court shall require the party or county attorney failing to act or the party's counsel, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds the failure was substantially justified or that other circumstances make an award of expenses unjust.

Subd. 5. Failure to Act. Failure to act as described in this rule may not be excused on the ground that the discovery sought is objectionable unless the party or county attorney failing to act has applied for a protective order as provided in subdivision 2.

RULE 18. DEFAULT

Rule 18.01. Failure to Appear

Except as otherwise provided in Rule 35.02, subd. 1, if a parent, legal custodian, or Indian custodian fails to appear for an admit-deny hearing, a pretrial hearing, or a trial after being properly served with a summons pursuant to Rule 32.02 or a notice pursuant to Rule 32.03 or 32.04, the court may receive evidence in support of the petition or reschedule the hearing.

Rule 18.02. Default Order.

If the petition is proved by the applicable standard of proof, the court may enter an order granting the relief sought in the petition as to that parent, legal custodian, or Indian custodian.

RULE 19. SETTLEMENT

Rule 19.01. Generally

Settlement discussions may be utilized to achieve one or more of the purposes set forth in Rule 1.02.

Rule 19.02. Content of Settlement Agreement

Any settlement agreement shall include a statement of:

- (a) the statutory grounds to be admitted;
- (b) the statutory grounds to be dismissed, if any;
- (c) the factual allegations to be admitted;
- (d) the factual allegations asserted by the petitioner but not admitted;
- (e) whether the court will enter or withhold adjudication; and
- (f) the issues to be addressed at the disposition hearing or the agreed upon disposition and case plan.

Rule 19.03. Procedure

Every settlement agreement shall be filed with the court or stated and agreed to on the record by the settling parties. Before approving a settlement agreement, the court

shall determine that the agreement is in the best interests of the child and that each party to the agreement understands the content and consequences of the admission or settlement agreement and voluntarily consents to the agreement. When a party makes an admission, the court may accept or reject the admission based upon the terms of the settlement agreement or may conditionally accept or reject the admission pending receipt of a predisposition report prepared for the disposition hearing. The court may accept a settlement agreement that resolves the issues with respect to the petitioner and one or more but not all parties, and proceed with the matter with respect to the non-settling parties. If the court approves the settlement agreement, it shall proceed pursuant to Rule 40. If the court rejects the settlement agreement, it shall advise the parties and the county attorney of this decision in writing or on the record and shall call upon the parties to either affirm or withdraw the admission. If the admission is withdrawn, the court shall make a finding that the admission is not accepted and proceed pursuant to Rule 39.

Rule 19.04. Objection to Settlement Agreement – Termination of Parental Rights Matters and Permanent Placement Matters

If a party objects to a settlement agreement in a termination of parental rights matter or a permanent placement matter, that party shall, within five (5) days of service of notice of the proposed settlement agreement, adopt the existing pleadings and assume the burden of proof or file pleadings in support of an alternative. The matter shall be set for trial within the timelines set forth in Rule 39.

RULE 20. ALTERNATIVE DISPUTE RESOLUTION

[Reserved for future use.]

1999 Advisory Committee Comment

The Committee recommends the appointment of a separate advisory committee to research, draft, and recommend rules for alternative dispute resolution in juvenile protection matters. In the meantime, the absence of a rule is not intended to imply that parties may not use mediation or other alternative dispute resolution to achieve results in the best interests of the child.

C. PARTIES AND PARTICIPANTS

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 Indian custodian and Indian 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) any other person who is deemed by the court to be important to a resolution that is in the best interests of the child.

Rule 21.02. Rights of Parties

A party shall have the right to:

- (a) notice pursuant to Rule 32;
- (b) legal representation pursuant to Rule 25;
- (c) be present at all hearings unless excluded pursuant to Rule 27;
- (d) conduct discovery pursuant to Rule 17;
- (e) bring motions before the court pursuant to Rule 15;
- (f) participate in settlement agreements pursuant to Rule 19;
- (g) subpoena witnesses pursuant to Rule 13;
- (h) make argument in support of or against the petition;
- (i) present evidence;
- (j) cross-examine witnesses;
- (k) request review of the referee's findings and recommended order pursuant to Rule 7;
- (l) request review of the court's disposition upon a showing of a substantial change of circumstances or that the previous disposition was inappropriate;
- (m) bring post-trial motions pursuant to Rule 45;
- (n) appeal from orders of the court pursuant to Rule 47; and
- (o) any other rights as set forth in statute or these rules.

1999 Advisory Committee Comment

The former rules did not distinguish between parties and participants. Rule 21 delineates the status and rights of parties, and Rule 22 delineates the status and rights of participants. There may be many

individuals concerned about the best interests of a child who do not have the immediate connection to the child that justifies treating them as parties. The intent of this rule is to ensure that such individuals are aware of the proceedings and are available to provide information useful to the court in making decisions concerning that child. A person with participant status may intervene as a party pursuant to Rule 23 or may be joined as a party pursuant to Rule 24.

Rule 21.03. Parties' Addresses

It shall be the responsibility of the petitioner to set forth in the petition the names and addresses of all parties if known to the petitioner after reasonable inquiry, and to specify that each such person has party status. It shall be the responsibility of each party to inform the court administrator of any change of address. If a party is endangered, the party may ask the court to keep the party's address confidential.

RULE 22. PARTICIPANTS

Rule 22.01. Participant Status

Unless already a party pursuant to Rule 21, or unless otherwise specified, participants to a juvenile protection matter shall include:

- (a) the child;
- (b) any parent who is not a legal custodian and any alleged, adjudicated, or presumed father;
- (c) the responsible social services agency, when the responsible social services agency is not the petitioner;
- (d) any guardian ad litem for the child's legal custodian;
- (e) grandparents with whom the child has lived within the two (2) years preceding the filing of the petition;
- (f) relatives or other persons providing care for the child and other relatives who request notice;
- (g) current foster parents, persons proposed as long-term foster care parents, and persons proposed as pre-adoptive parents;
- (h) the spouse of the child, if any; and
- (i) any other person who is deemed by the court to be important to a resolution that is in the best interests of the child.

1999 Advisory Committee Comment

The former rules did not distinguish between parties and participants. Rule 21 delineates the status and rights of parties, and Rule 22 delineates the status and rights of participants. There may be many individuals concerned about the best interests of a child who do not have the immediate connection to the child that justifies treating them as parties. The intent of this rule is to ensure that such individuals are aware of the proceedings and are available to provide information useful to the court in

making decisions concerning that child. A person with participant status may intervene as a party pursuant to Rule 23 or may be joined as a party pursuant to Rule 24.

Rule 22.02. Rights of Participants

Subd. 1. Generally. Unless a participant intervenes as a party pursuant to Rule 23, or is joined as a party pursuant to Rule 24, the rights of a participant shall be limited to:

- (a) notice and a copy of the petition pursuant to Rule 32;
- (b) attending hearings pursuant to Rule 27; and
- (c) offering information at the discretion of the court, except as provided in subdivision 2.

Subd. 2. Foster Parents, Pre-Adoptive Parents, and Relatives Providing Care. Notwithstanding subdivision 1, any foster parent, pre-adoptive parent, relative providing care for the child, or relative to whom the responsible social services agency recommends transfer of permanent legal and physical custody of the child shall have a right to be heard in any hearing regarding the child. Any other relative may request an opportunity to be heard. This subdivision does not require that a foster parent, pre-adoptive parent, or relative providing care for the child be made a party to the matter. Each party and the county attorney shall be provided an opportunity to respond to any presentation by a foster parent, pre-adoptive parent, or relative.

Rule 22.03. Participants' Addresses

It shall be the responsibility of the petitioner to set forth in the petition the names and addresses of all participants if known to the petitioner after reasonable inquiry, and to specify that each such person has participant status. It shall be the responsibility of each participant to inform the court administrator of any change of address. If a participant is endangered, the participant may ask the court to keep the participant's address confidential.

RULE 23. INTERVENTION

Rule 23.01. Intervention of Right

Subd. 1. Child. A child who is the subject of the juvenile protection matter shall have the right to intervene as a party.

Subd. 2. Grandparents. Any grandparent of the child shall have the right to intervene as a party if the child has lived with the grandparent within the two (2) years preceding the filing of the petition.

Subd. 3. Parent. Any parent who is not a legal custodian of the child shall have the right to intervene as a party.

Subd. 4. Social Services Agency. The responsible social services agency shall have the right to intervene as a party in a case where the responsible social services agency is not the petitioner.

Rule 23.02. Permissive Intervention

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

Rule 23.03. Procedure

Subd. 1. Intervention of Right. A person with a right to intervene pursuant to Rule 23.01 shall file with the court and serve upon all parties and the county attorney a notice of intervention, which shall include the basis for a claim to intervene. The notice of intervention as a matter of right form shall be available from the court administrator. The intervention shall be deemed accomplished upon service of the notice of intervention, unless a party or the county attorney files and serves a written objection within ten (10) days of the date of service. If a written objection is timely filed and served, the court shall schedule a hearing for the next available date.

Subd. 2. Permissive Intervention. A person, including the county attorney in a case where the responsible social services agency is not the petitioner, seeking permissive intervention pursuant to Rule 23.02 shall file with the court and serve upon all parties and the county attorney a notice of motion and motion to intervene pursuant to Rule 15. The notice shall state the nature and extent of the person's interest in the child and the reason(s) that the person's intervention would be in the best interests of the child. A hearing on a motion to intervene shall be held within ten (10) days of the filing of the motion to intervene.

Rule 23.04. Effect of Intervention

The court may conduct hearings, make findings, and issue orders at any time prior to intervention being accomplished or denied. The intervention shall be effective as of the date granted and prior proceedings and decisions of the court shall not be affected.

RULE 24. JOINDER

Rule 24.01. Procedure

The court, upon its own motion or motion of a party or the county attorney pursuant to Rule 15, may join a person or entity as a party if the court finds that joinder is:

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

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

2003 Advisory Committee Comment

In *In Re the Welfare of Q.T.B.*, Nos. C7-97-2093 and C9-97-2094, (Minn. Ct. App. May 26, 1998), *rev. denied* (Minn. July 16, 1998), an unpublished decision of the Court of Appeals, the court considered the appellant's claim that she should have been joined as a party to a child in need of protection or services proceeding because she was at risk of losing her visitation rights with the infant who was the subject of the petition. The court cited Minn. R. Civ. P. 19.01 and determined that the rights of the appellant did not rise to the level of requiring joinder under Rule 19.01. While *In Re the Welfare of Q.T.B.* denies joinder under the specific facts of that case, it implies that joinder is permissible thus authorizing joinder in juvenile protection matters.

RULE 25. RIGHT TO REPRESENTATION; APPOINTMENT OF COUNSEL

Rule 25.01. Right to Representation

Every party and participant has the right to be represented by counsel in every juvenile protection matter, including through appeal, if any. This right attaches no later than when the party or participant first appears in court.

1999 Advisory Committee Comment (amended 2003)

Rule 25.01 sets forth the basic principle that each person appearing in court has the right to be represented by counsel. Each person, however, does not necessarily have the right to court appointed counsel as provided in Rule 25.02.

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 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.

Subd. 2. Parent or Legal Custodian. Each parent or legal 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 must appoint a public defender or other counsel at public expense to represent the parent in accordance with subdivision 2(a).

(c) **Indian 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.

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.

Subd. 4. Child's Preference. In any juvenile protection matter where the child is not represented by counsel, the court shall determine the child's preferences regarding the proceedings, if the child is of suitable age to express a preference.

Rule 25.03. Reimbursement

When counsel is appointed for a child, the court may inquire into the ability of the parent or legal custodian to pay for the attorney's services and, after giving the parent or legal custodian a reasonable opportunity to be heard, may order the parent or legal custodian to pay the attorney's fees. The parent or legal custodian shall have an ongoing duty to disclose any change in the person's financial circumstances.

Rule 25.04. Notice of Right to Representation

Any child, parent, or legal custodian who appears in court and is not represented by counsel shall be advised by the court on the record of the right to representation pursuant to Rule 25.

Rule 25.05. Certificate of Representation

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

Rule 25.06. Withdrawal or Discharge of Counsel

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

- (a) all district court proceedings in the matter have been completed, including filing and resolution of all post-trial motions under Rules 45 and 46;
- (b) the attorney has been discharged by the client in writing or on the record;
- (c) the court grants the attorney's ex parte motion for withdrawal upon good cause shown; or
- (d) the court approves the attorney's ex parte written substitution of counsel.

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

RULE 26. GUARDIAN AD LITEM

Rule 26.01. Appointment for Child

Subd. 1. Mandatory Appointment Generally Required. Pursuant to the procedures set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court, the court shall issue an order appointing a guardian ad litem to advocate for the best interests of the child in each child in need of protection or services matter, termination of parental rights matter, and other permanent placement matter, where such appointment is mandated by Minnesota Statutes § 260C.163, subd. 5. If the court has issued an order appointing a person as a guardian ad litem in a child in need of protection or services matter, the court may, but is not required to, issue an order reappointing the same person in the termination of parental rights or other permanent placement matter. An appointment order is required only if a new person is being appointed as guardian ad litem.

Subd. 2. Discretionary Appointment. Pursuant to the procedures set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court, in all other cases, except as provided in subdivision 1, the court may appoint a guardian ad litem to advocate for the best interests of the child as permitted by Minnesota Statutes § 260C.163, subd. 5.

Subd. 3. Timing; Method of Appointment. Appointment of a guardian ad litem shall occur prior to the emergency protective care hearing or the admit-deny hearing, whichever occurs first. The court may appoint a person to serve as guardian ad litem for more than one child in a proceeding. The appointment of a guardian ad litem shall be

made pursuant to the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court.

Subd. 4. Responsibilities; Rights. The guardian ad litem shall carry out the responsibilities set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court. The guardian ad litem shall have the rights set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court.

Subd. 5. Guardian Ad Litem Not Also Attorney for Child. Counsel for the child shall not also serve as the child's guardian ad litem or as legal counsel for the guardian ad litem.

1999 Advisory Committee Comment (updated 2003)

Rule 26.01 is consistent with Minnesota Statutes § 260C.163, subd. 5, which provides in part:

(a) The court shall appoint a guardian ad litem to protect the interests of the minor when it appears, at any stage of the proceedings, that the minor is without a parent or guardian, or that the minor's parent is a minor or incompetent, or that the parent or guardian is indifferent or hostile to the minor's interests, and in every proceeding alleging a child's need for protection or services under [Minnesota Statutes] § 260C.007, subd. 6.

With respect to the appointment of guardians ad litem, Minnesota Statutes § 260C.163, subd. 5, complies with the federal Child Abuse Prevention and Treatment Act (CAPTA), 42 U.S.C. § 5106a(b)(2)(A). CAPTA mandates that for a state to qualify to receive federal grants for child protection prevention and treatment services, the state must have in place:

[P]rovisions and procedures requiring that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, and who may be an attorney or a court appointed special advocate (or both), shall be appointed to represent the child in such proceedings –

- (I) to obtain first-hand, a clear understanding of the situation and needs of the child; and
- (II) to make recommendations to the court concerning the best interests of the child

42 U.S.C. § 5106a(b)(2)(A)(xiii) (2002).

The types of cases to which guardians ad litem must be appointed are much more expansive under Minnesota's statutes than under federal

statutes. Minnesota requires the appointment of a guardian ad litem not only in cases where the act of an adult places the child in need of protection or services, but also in cases where the child's act or status places the child in need of protection or services. Minn. Stat. § 260C.163, subd. 5.

Rule 26.02. Discretionary Appointment for Child's Parent or Legal Custodian

Subd. 1. Appointment. Pursuant to the procedures set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court, the court may sua sponte or upon the written or on-the-record request of a party or participant appoint a guardian ad litem for a parent who is a party or the legal custodian if the court determines that the parent or legal custodian:

(a) is incompetent to assist counsel in the matter or understand the nature of the proceedings; or

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

Subd. 2. Attorney Not Discharged. Appointment of a guardian ad litem for a parent or legal custodian shall not result in discharge of counsel for the parent or legal custodian.

Subd. 3. Responsibilities; Rights. The guardian ad litem shall carry out the responsibilities set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court. The guardian ad litem shall have the rights set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court.

2004 Advisory Committee Comment

If the minor parent or incompetent adult is unable to admit or deny the petition, the court may choose to appoint a substitute decisionmaker or legal guardian to admit or deny the petition.

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 independent living plan required pursuant to Rule 37.

Rule 26.04. Request for Appointment of Counsel for Child

The guardian ad litem shall request appointment of counsel for a child if the guardian ad litem determines that the appointment is necessary to protect the legal rights or legal interests of the child.

2003 Advisory Committee Comment

In deciding whether to request appointment of counsel for the child, the guardian ad litem should assess the following, among other factors: the child's ability to work with counsel, whether the guardian ad litem's recommendation is contrary to the child's expressed preference, whether the child's siblings are represented, and the complexity of the issues involved.

Rule 26.05. Reimbursement

The court may inquire into the ability of the parent or legal custodian to pay for the guardian ad litem's services and, after giving the parent or legal custodian a reasonable opportunity to be heard, may order the parent or legal custodian to pay the guardian ad litem's fees. The parent or legal custodian shall have an ongoing duty to disclose any change in the person's financial circumstances.

RULE 27. ACCESS TO HEARINGS

Rule 27.01. Presumption of Public Access to Hearings

Absent exceptional circumstances, hearings in juvenile protection matters are presumed to be accessible to the public. Hearings, or portions of hearings, may be closed to the public by the court only in exceptional circumstances. The closure of any hearing shall be noted on the record and the reasons for the closure given. Closure of all or part of a hearing shall not prevent the court from proceeding with the hearing or issuing a decision. Minnesota Statutes § 260C.163, subd. 1(c), is superseded insofar as it applies to public access to hearings in juvenile protection matters. An order closing a hearing or portion of a hearing to the public shall be accessible to the public.

Rule 27.02. Party and Participant Attendance at Hearings

Notwithstanding the closure of a hearing to the public pursuant to Rule 27.01, any party who is entitled to summons pursuant to Rule 32.02 or any participant who is entitled to notice pursuant to Rule 32.03, or any person who is summoned or given notice, shall have the right to attend the hearing to which the summons or notice relates unless excluded pursuant to Rule 27.04.

1999 Advisory Committee Comment

Pursuant to Rule 21, a party has the right to be present in person at any hearing. For a child, the person with physical custody of the child should generally be responsible for ensuring the child’s presence in court. When a child is in emergency protective care or protective care, the responsible social services agency is responsible for ensuring the child’s presence in court. If the child is in the custody of the responsible social services agency in out-of-home placement, the agency should transport the child to the hearing. If the agency fails to make arrangements for the child to attend the hearing, the child’s attorney or guardian ad litem may need to ask for a continuance and for an order requiring the child to be brought to the next hearing.

Rule 27.03. Absence Does Not Bar Hearing

The absence from a hearing of any party or participant shall not prevent the hearing from proceeding provided appropriate notice has been served.

Rule 27.04. Exclusion of Parties or Participants from Hearings

The court may exclude from any hearing any party or participant, other than a guardian ad litem or counsel for any party or participant, only if it is in the best interests of the child to do so or the person engages in conduct that disrupts the court. The exclusion of any party or participant from a hearing shall be noted on the record and the reason for the exclusion given. The exclusion of any party or participant shall not prevent the court from proceeding with the hearing or issuing a decision. An order excluding a party or participant from a hearing shall be accessible to the public.

D. COURSE OF CASE

RULE 28. EMERGENCY PROTECTIVE CARE ORDER AND NOTICE

Rule 28.01. Emergency Protective Care Defined

A child is in “emergency protective care” when:

- (1) taken into custody by a peace officer pursuant to Minnesota Statutes § 260C.151, subd. 6; § 260C.154; or § 260C.175; or
- (2) returned home before an emergency protective care hearing pursuant to Rule 30 with court ordered conditions of release.

1999 Advisory Committee Comment

A child taken into emergency protective care should never be held in secure detention.

Rule 28.02. Ex Parte Order for Emergency Protective Care

Subd. 1. Generally. When the court makes individualized, explicit findings, the court may issue an ex parte order for emergency protective care if it finds from the facts set forth in the petition or any supporting affidavits or sworn testimony that:

- (a) the child has left or been removed from a court-ordered placement; or
- (b) there is a prima facie showing that the child is in surroundings or conditions that endanger the child's health, safety, or welfare and that require that responsibility for the child's care and custody be immediately assumed by the responsible social services agency; and
- (c) continuation of the child in the custody of the parent or legal custodian is contrary to the child's welfare.

Subd. 2. Habitual Truant, Runaway, Prostitution, Delinquent Under Age 10, Incompetent to Proceed, and Domestic Abuse Matters. In addition to the provisions of subdivision 1, the court may issue an ex parte order for emergency protective care if it finds from the facts set forth in the petition or any supporting affidavits or sworn testimony that:

- (a) there is a prima facie showing that pursuant to Minnesota Statutes § 260C.007, subd. 6, the child has engaged in prostitution, is a habitual truant, is a runaway, has committed a delinquent act before becoming ten (10) years of age, has been found incompetent to proceed or not guilty by reason of mental illness or mental deficiency, or has been found by the court to have committed domestic abuse; and
- (b) the child failed to appear after having been personally served with a summons or subpoena, reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons; and
- (c) continuation of the child in the custody of the parent or legal custodian is contrary to the child's welfare.

Rule 28.03. Contents of Order

An order for emergency protective care shall be signed by a judge, shall include the findings required under Rule 28.02, subs. 1 and 2, and shall:

- (a) order the child to be taken to an appropriate relative, a designated caregiver pursuant to Minnesota Statutes § 260C.181, or a shelter care facility designated by the court pending an emergency protective care hearing;
- (b) state the name and address of the child, unless such information would endanger the child, or, if unknown, designate the child by any name or description by which the child can be identified with reasonable certainty;
- (c) state the age and gender of the child or, if the age of the child is unknown, that the child is believed to be of an age subject to the jurisdiction of the court;

- (d) state the reasons why the child is being taken into emergency protective care;
- (e) state the reasons for any limitation on the time or location of the execution of the emergency protective care order;
- (f) state the date when issued and the county and court where issued; and
- (g) state the date, time, and location of the emergency protective care hearing.

Rule 28.04. Execution of Order

An order for emergency protective care:

- (a) may only be executed by a peace officer authorized by law to execute a warrant;
- (b) shall be executed by taking the child into custody;
- (c) may be executed at any place in the state except where prohibited by law or unless otherwise ordered by the court;
- (d) may be executed at any time unless otherwise ordered by the court; and
- (e) need not be in the peace officer's possession at the time the child is taken into emergency protective care.

Rule 28.05. Notice

When an order for emergency protective care is executed, the peace officer shall notify the child and the child's parent or legal custodian:

- (a) of the existence of the order for emergency protective care;
- (b) of the reasons why the child is being taken into emergency protective care;
- (c) of the time and place of the emergency protective care hearing;
- (d) of the name, address, and telephone number of the responsible social services agency; and
- (e) that the parent or legal custodian or child may request that the court place the child with a relative or a designated caregiver rather than in a shelter care facility.

The notice shall be delivered in written form and, when possible, the content of the notice shall also be orally summarized and explained. If the parent or legal custodian is not present when the child is removed from the premises, the notice shall be left with an adult on the premises. If no adult is present at the time the child is removed, the notice shall be left in a conspicuous place on the premises.

Rule 28.06. Enforcement of Order

An emergency protective care order shall be enforceable by any peace officer in any jurisdiction.

RULE 29. PROCEDURES DURING PERIOD OF EMERGENCY PROTECTIVE CARE

Rule 29.01. Release from Emergency Protective Care

Subd. 1. Child Taken Into Emergency Protective Care Pursuant to Court Order.

(a) **Release Prohibited.** A child taken into emergency protective care pursuant to a court order shall be held for seventy-two (72) hours unless the court issues an order authorizing release.

(b) **Release Required.** A child taken into emergency protective care pursuant to a court order shall not be held in emergency protective care for more than seventy-two (72) hours unless an emergency protective care hearing has commenced pursuant to Rule 30 and the court has ordered continued protective care.

Subd. 2. Child Taken Into Emergency Protective Care Without Court Order.

(a) **Release Required.** A child taken into emergency protective care without a court order shall be released unless an emergency protective care hearing pursuant to Rule 30 has commenced within seventy-two (72) hours of the time the child was removed from home and the court has ordered continued protective care.

(b) **Discretionary Release by Peace Officer or County Attorney.** When a peace officer has taken a child into emergency protective care without a court order, the peace officer, peace officer's supervisor, or the county attorney may release the child any time prior to an emergency protective care hearing. The peace officer, the peace officer's supervisor, or the county attorney who releases the child may not place any conditions of release on the child.

2003 Advisory Committee Comment

When calculating the seventy-two (72) hour period referenced in Rule 29.01, pursuant to Rule 4.01 the day the child was removed from home and any Saturday, Sunday, or legal holiday is not counted. The last day of the period shall be included, unless it is a Saturday, Sunday, or legal holiday in which event the period runs to the end of the next day that is not a Saturday, Sunday, or legal holiday.

Rule 29.02. Discretionary Release by Court; Custodial Conditions

The court at any time before an emergency protective care hearing may release a child and may:

(a) place restrictions on the child's travel, associations, or place of abode during the period of the child's release; and

(b) impose any other conditions upon the child or the child's parent or legal custodian deemed reasonably necessary and consistent with criteria for protecting the child.

Any conditions terminate after seventy-two (72) hours unless a hearing has commenced pursuant to Rule 30 and the court has ordered continuation of the condition.

Rule 29.03. Release to Custody of Parent or Other Suitable Person

A child released from emergency protective care shall be released to the custody of the child’s parent, legal custodian, or other suitable person.

Rule 29.04. Reports

Subd. 1. Report by Peace Officer. Any report required by Minnesota Statutes § 260C.176, subd. 6, shall be filed with the court on or before the first court day following placement of the child and the report shall include at least:

- (a) the time the child was taken into emergency protective care;
- (b) the time the child was delivered for transportation to the shelter care facility;
- (c) the reasons why the child was taken into emergency protective care;
- (d) the reasons why the child has been placed;
- (e) a statement that the child and the child’s parent or legal custodian have received the advisory required by Minnesota Statutes § 260C.176, subd. 3, or the reasons why the advisory has not been made; and
- (f) reasons to support the non-disclosure, if disclosure of the location of the placement has not been made because there is reason to believe that the child’s health and welfare would be immediately endangered.

Subd. 2. Report by Supervisor of Shelter Care Facility. Any report required by Minnesota Statutes § 260C.176, subd. 6, shall be filed with the court on or before the first court day following placement. The report shall include, at least, acknowledgement of receipt of the child and state the time the child arrived at the shelter care facility.

RULE 30. EMERGENCY PROTECTIVE CARE HEARING

Rule 30.01. Timing

Subd. 1. Generally. The court shall hold an emergency protective care hearing within seventy-two (72) hours of the child being taken into emergency protective care unless the child is released pursuant to Rule 29. The purpose of the hearing shall be to determine whether the child shall be returned home or placed in protective care.

Subd. 2. Continuance. The court may, upon its own motion or upon the written or oral motion of a party made at the emergency protective care hearing, continue the emergency protective care hearing for a period not to exceed eight (8) days. A continuance may be granted:

- (a) upon a determination by the court that there is a prima facie showing that the child should be held in emergency protective care pursuant to Rule 28; and
- (b) if the court finds that a continuance is necessary for the protection of the child, for the accumulation or presentation of necessary evidence or witnesses, to protect the rights of a party, or for other good cause shown.

1999 Advisory Committee Comment

Subdivision 2 requires that the court make certain findings before permitting a continuance. This provision recognizes that parties may need time to prepare for the hearing, but assures that a child will not be held unnecessarily during the continuance.

Rule 30.02. Notice of Hearing

The court administrator, or designee, shall inform the county attorney; the responsible social services agency; the child; and the child's counsel, guardian ad litem, parent, legal custodian, spouse, Indian custodian, Indian tribe, and school district of residence as required by Minnesota Statutes § 127A.47, subd. 6, of the time and place of the emergency protective care hearing.

Rule 30.03. Inspection of Reports

Prior to the emergency protective care hearing, the parties shall be permitted to inspect reports or other written information or records that any party intends to present at the hearing.

1999 Advisory Committee Comment

Rule 30.03 places upon each party the burden of providing to opposing parties all documentation the party intends to introduce at the hearing. The rule is intended to ensure that the parties have the relevant information before the hearing so they are prepared to respond. This rule is not intended to limit discovery allowed by Rule 17.

Rule 30.04. Determination Regarding Notice

During the hearing, the court shall determine whether all persons identified in Rule 30.02 have been informed of the time and place of the emergency protective care hearing and what further efforts, if any, must be taken to notify all parties and participants as rapidly as possible of the pendency of the matter and the date and time of the next hearing. Before the emergency protective care hearing, the court administrator, or designee, shall file with the court a written statement describing the efforts to inform the persons identified in Rule 30.02 of the emergency protective care hearing, including the date, time, and method of each effort to inform each such person and whether contact was actually made.

Rule 30.05. Advisory

At the beginning of the emergency protective care hearing the court shall on the record advise all parties and participants present of:

- (a) the reasons why the child was taken into emergency protective care;
- (b) the substance of the statutory grounds and supporting factual allegations set forth in the petition;
- (c) the purpose and scope of the hearing;
- (d) the possible consequences of the proceedings;

(e) the right of the parties and participants to legal representation, including the right of the child, the child's parent or legal custodian, and the child's Indian custodian to court appointed counsel pursuant to Rule 25;

(f) the right of the parties to present evidence and to cross-examine witnesses regarding whether the child should return home with or without conditions or whether the child should be placed in protective care; and

(g) that failure to appear at future hearings could result in a finding that the petition has been proved, issuance of an order adjudicating the child in need of protection or services, and an order transferring permanent legal and physical custody of the child to another.

Rule 30.06. Evidence

The court may admit any evidence, including reliable hearsay and opinion evidence, that is relevant to the decision of whether to continue protective care of the child or return the child home. Privileged communications may be admitted in accordance with Minnesota Statutes § 626.556, subd. 8.

Rule 30.07. Filing and Service of Petition

A petition shall be filed with the court and may be served at or before the emergency protective care hearing.

Rule 30.08. Protective Care Determinations

Subd. 1. Initial Finding. 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.

Subd. 2. Endangerment.

(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:

(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

(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.

(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 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.

(c) **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.

1999 Advisory Committee Comment

Rule 30.08 is consistent with Minnesota Statutes § 260C.178, subd. 1(b), which provides:

Unless there is reason to believe that the child would endanger self or others, not return for a court hearing, run away from the child's parent, guardian, or custodian or otherwise not remain in the care or control of the person to whose lawful custody the child is released, or that the child's health or welfare would be immediately endangered, the child shall be released to the custody of a parent, guardian, custodian, or other suitable person, subject to reasonable conditions of release including, but not limited to, a requirement that the child undergo a chemical use assessment as provided in [Minnesota Statutes §] 260C.157, subd. 1.

Rule 30.09. Factors

Subd. 1. Generally. Except in cases described in subdivision 3, or when the parental rights of the parent to a sibling of the child have been terminated involuntarily, or the child is presumed to be an abandoned infant under Minnesota Statutes § 260C.301, subd. 2, at the emergency protective care hearing the court shall require petitioner to present information regarding the following issues:

- (a) whether the responsible social services agency made reasonable efforts, or active efforts in the case of an Indian child, to prevent placement or eliminate the need for removal of the child from the home;
- (b) whether there are services the court could order that would allow the child to safely return home;
- (c) whether responsible relatives or other responsible adults are available to provide services or to serve as placement options if licensed;
- (d) whether the placement proposed by the agency is the least restrictive and most home-like setting that meets the needs of the child;
- (e) whether restraining orders, or orders expelling an allegedly abusive parent or legal custodian from the home, are appropriate;
- (f) whether orders are needed for examinations, evaluations, or immediate services;
- (g) the terms and conditions for parental visitation; and
- (h) what consideration has been given for financial support of the child.

Subd. 2. Determination Regarding Reasonable or Active Efforts. Based upon the information provided to the court in the petition, sworn affidavit, certified report, or on the record, the court shall make a determination whether reasonable efforts, or active efforts in the case of an Indian child, were made to prevent the child's out-of-home placement. The court shall also determine whether there are available services that would prevent the need for further placement. In the alternative, the court shall determine that

reasonable efforts are not required if the court makes a prima facie determination that one of the circumstances under subdivision 3 exists.

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 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.

2003 Advisory Committee Comment

Consistent with Minnesota Statutes § 260C.178, Rule 30.09 requires the court to make a determination about whether the responsible social services agency made reasonable, or active efforts in the case of an Indian child, to prevent the removal of the child. Unless the child's removal is due to circumstances which do not require efforts to reunify the child with the parent or legal custodian, the responsible social services agency should provide services to prevent the child's removal. The circumstances where reunification efforts are not required are set out in subdivision 3. When the removal occurs due to an emergency, the agency should consider what services it might put into the child's home to allow the child to return home or whether the child's safety could be met by excluding from the child's home the individual responsible for abuse or neglect of the child. When the agency documents the services provided or attempted, or other measures it considered but rejected, to provide for the child's safety, and the court finds such actions reasonable, the court may properly find the agency has made reasonable efforts to prevent the removal of the child.

Rule 30.10. Protective Care Findings and Order

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 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.

1999 Advisory Committee Comment

Minnesota Statutes § 260C.178, subd. 1(c), provides as follows:

[In a proceeding regarding a child in need of protection or services,] the court, before determining whether a child should continue in custody, shall also make a determination, consistent with [Minnesota Statutes §] 260.012 as to whether reasonable efforts, or in the case of an Indian child, active efforts, according to the Indian Child Welfare Act of 1978, United States Code, title 25, section 1912(d), were made to prevent placement. The court shall also determine whether there are available services that would prevent the need for further detention.

In compliance with the statutory mandate of Minnesota Statutes § 260C.178, Rules 30.08 and 30.09 require the court to elicit relevant evidence from the petitioner and make findings as to whether the child is in imminent danger, whether the county made reasonable efforts to prevent removal or eliminate the need for removal, and whether there are services the court could order to allow the child to safely return home. Rule 30.10 requires that the court issue a written order that includes specific findings in support of the order.

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(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 *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.

Rule 30.11. Protective Care Review

Subd. 1. Consent for Continued Protective Care. The court may, with the consent of the parties and the county attorney, order that the child continue in protective care even if the circumstances of the parent, legal custodian, or child have changed.

Subd. 2. Release from Protective Care on Consent of Parties and the County Attorney. The court may, with the consent of the parties and the county attorney, order that a child be released from protective care. If the child has no guardian ad litem, the court may not release the child from protective care without a court hearing.

Subd. 3. Formal Review.

(a) **On Motion of Court.** The court may on its own motion schedule a formal review hearing at any time.

(b) **On Request of a Party or the County Attorney.** A party or the county attorney may request a formal hearing concerning continued protective care by filing a motion with the court. The court shall schedule a hearing and provide notice pursuant to Rule 32 if the motion states:

(1) that the moving party has new evidence concerning whether the child should be continued in protective care; or

(2) that the party has an alternate arrangement to provide for the safety and protection of the child.

(c) **Evidence.** The court may admit any evidence, including reliable hearsay and opinion evidence, which is relevant to the decision whether to continue protective care of the child or return the child home. Privileged communications may be admitted in accordance with Minnesota Statutes § 626.556, subd. 8.

(d) **Findings and Order.** At the conclusion of the formal review hearing the court shall:

(1) return the child to the care of the parent or legal custodian with or without reasonable conditions of release if the court does not make findings pursuant to subdivision 3(d)(2);

(2) continue the child in protective care or release the child with conditions to assure the safety of the child or others if the court finds that the petition states a prima facie case to believe that a child protection matter exists and that the child is the subject of that matter, and (a) 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 (b) 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; or

(3) modify the conditions of release.

Rule 30.12. Notification When Child Returned Home

If the parents comply with the conditions of the court order and the child is returned home, including under protective supervision, the county attorney shall immediately file with the court and serve upon all parties a notice stating the date the child was returned home.

RULE 31. METHODS OF FILING AND SERVICE

Rule 31.01. Types of Filing

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

Subd. 2. Filing by Facsimile Transmission.

(a) Any paper may be filed with the court by facsimile transmission. Filing shall be deemed complete at the time that the facsimile transmission is received by the

court. The facsimile shall have the same force and effect as the original. Only facsimile transmission equipment that satisfies the published criteria of the supreme court shall be used for filing in accordance with this rule.

(b) Within five (5) days after the court has received the transmission, the party filing the document shall forward the following to the court:

(1) a \$25 transmission fee for each 50 pages, or part thereof, of the filing, unless otherwise provided by statute or rule or otherwise ordered by the court;

(2) any bulky exhibits or attachments; and

(3) the applicable filing fee or fees, if any.

(c) If a paper is filed by facsimile, the sender's original must not be filed but must be maintained in the files of the party transmitting it for filing and made available to the court or any party to the action upon request.

(d) Upon failure to comply with the requirements of this rule, the court in which the action is pending may make such orders as are just including, but not limited to, an order striking pleadings or parts thereof, staying further proceedings until compliance is complete, or dismissing the action, proceeding, or any part thereof.

2006 Advisory Committee Comment

Rule 31.01, subd. 2, regarding facsimile filing is amended in format and substance consistent with the amendments made to the Rules of Civil Procedure. Specifically, it is amended to delete the requirement that an "original" document follow the filing by facsimile. The requirement of a double filing causes confusion and unnecessary burdens for court administrators, and with the dramatic improvement in quality of received faxes since initial implementation of the Civil Rule in 1988, it no longer serves a useful purpose. Under the amended rule, the document filed by facsimile is the original for all purposes unless an issue arises as to its authenticity, in which case the version transmitted electronically and retained by the sender can be reviewed.

The filing fee for fax filings is changed from \$5.00 to \$25.00 because fax filings, even under the streamlined procedures of the amended rule, still impose significant administrative burdens on court staff, and it is therefore appropriate that this fee, unchanged since its adoption in the Rules of Civil Procedure in 1988, be increased. A number of committee members expressed the view that facsimile filing was, and still is, intended to be a process used on a limited basis in exigent or at least unusual circumstances. It is not intended to be a routine filing method.

The rule does not provide a specific mechanism for collecting the transmission fee required under the rule. Because prejudice may occur to a party if a filing is deemed ineffective, the court should determine the appropriate consequences of failure to pay the necessary fee.

Rule 31.02. Types of Service

Subd. 1. Personal Service. Personal service means personally delivering the original document to the person to be served or leaving it at the person's home or usual place of abode with a person of suitable age and discretion residing therein, unless the court authorizes service by publication. Unless otherwise provided by these rules or ordered by the court, the sheriff or other person not less than eighteen (18) years of age and not a party to the action may make personal service of a summons or other process. The social services reports and guardian ad litem reports required under Rule 38 may be served directly by the social worker and guardian ad litem.

(a) **Personal Service Outside State.** Personal service of a summons outside the state, proved by the affidavit of the person making the same sworn to before a person authorized to administer an oath, shall have the same effect as the published notice.

(b) **Service Outside United States.** Unless otherwise provided by law, service upon an individual, other than an infant or an incompetent person, may be effected in a place not within the state:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(a) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(b) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(c) unless prohibited by the law of the foreign country, by:
(i) delivery to the individual personally of a copy of the summons and the complaint; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the court administrator to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the court.

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

Subd. 3. Publication. Service by publication means the publication in full of the summons, notice, or other papers in the regular issue of a qualified newspaper, once each week for the number of weeks specified pursuant to Rule 32.02. Service by publication substitutes for personal service where authorized by the court. The court shall authorize service by publication only if the petitioner has filed a written statement or affidavit describing unsuccessful efforts to locate the party to be served.

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

Rule 31.03. Service by Facsimile Transmission

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

Rule 31.04. Service Upon Counsel; Social Services Agency

Unless personal service upon a party is required, service upon counsel for a party or counsel for a participant shall be deemed service upon the party or participant. Service upon the county attorney shall be deemed to be service upon the responsible social services agency. Reports and other documents that are not court orders shall not be served directly upon a represented party.

Rule 31.05. Service of Subpoena

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

Rule 31.06. Completion of Service

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

Rule 31.07. Proof of Service

Subd. 1. Generally. On or before the date set for appearance, the person serving the document shall file with the court a notarized affidavit of service stating:

- (a) whether the document was served;
- (b) the method of service;
- (c) the name of the person served; and
- (d) the date and place of service.

Subd. 2. Exceptions.

(a) **Social Worker and Guardian Ad Litem Court Reports.** Social workers and guardians ad litem are not required to file proof of service when serving the court reports required under Rule 38 and, instead, shall include with their report a non-notarized certificate of distribution stating:

- (1) the name of the person served,
- (2) the method of service,
- (3) the date and place of service, and
- (4) the name of the person submitting the certificate of distribution.

(b) **Court Administrators.** If the court administrator served the document, the court administrator may file a written statement in lieu of an affidavit.

RULE 32. SUMMONS AND NOTICE

Rule 32.01. Commencement

A juvenile protection matter is commenced by filing a petition with the court.

Rule 32.02. Summons

Subd. 1. Definition. A summons is a document issued by the court that orders the initial appearance in court of the person to whom it is directed.

Subd. 2. Upon Whom; Cost.

(a) **Generally.** The court shall serve a summons and petition upon each party identified in Rule 21, except as provided in subdivision 3(b), and upon any other person whose presence the court deems necessary to a determination concerning the best interests of the child. The cost of service of a summons and petition filed by someone other than a non-profit or public agency shall be paid by the petitioner.

(b) **Termination of Parental Rights Matters.** In addition to the requirements of subdivision 2(a), in any termination of parental rights matter the court administrator shall serve the summons and petition upon the county attorney, any guardian ad litem for the child's legal custodian, and any attorney representing a party in an ongoing child in need of protection or services proceeding involving the subject child.

Subd. 3. Service.

(a) **Generally.** Unless the court orders service by publication pursuant to Rule 31.02, subd. 3, the summons and petition shall be personally served upon the child's parent or legal custodian, and the summons shall be served personally or by U.S. mail upon all other parties and attorneys.

(b) Habitual Truant, Runaway, and Prostitution Matters.

(1) **Initial Service.** Notwithstanding the requirements of subdivisions 2(a) and 3(a), when the sole allegation is that the child is a habitual truant, a runaway, or engaged in prostitution, initial service may be made as follows:

(i) in lieu of a summons, the court may send a notice of hearing and a copy of the petition by U.S. mail to the legal custodian, the person with custody or control of the child, and each party and participant; or

(ii) a peace officer may issue a notice to appear or a citation.

(2) **Failure to Appear.** If the child or the child's parent or legal custodian or the person with custody or control of the child fails to appear in response to the initial service, the court shall order such person to be personally served with a summons.

(c) **Voluntary Placement – Service by Mail.** In all cases involving a voluntary placement of a child pursuant to Rule 44, the summons shall be served by U.S. mail upon the parent or legal custodian.

Subd. 4. Content.

(a) **Generally.** A summons shall contain or have attached:

(1) a copy of the petition, court order, motion, affidavit or other legal documents not previously provided; however, these documents shall not be contained in or attached to the summons and complaint if the court has authorized service of the summons by publication pursuant to Rule 32.02, subd. 3(a);

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

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

(4) a statement explaining the right to representation pursuant to Rule 25; and

(5) a statement that failure to appear may result in:

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

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

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

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

(v) an order granting the relief requested.

(b) **Child in Need of Protection or Services Matters.** In addition to the content requirements set forth in subdivision 4(a), in any child in need of protection or services matter the summons shall also contain or have attached a statement pursuant to Rule 18.01 that:

(1) if the person summoned fails to appear, the court may conduct the hearing in the person's absence; and

(2) a possible consequence of the hearing is that the child may be removed from the home of the parent or legal custodian and placed in foster care, and such removal may lead to other proceedings for permanent out-of-home placement of the child or termination of parental rights.

(c) **Termination of Parental Rights Matters.** In addition to the content requirements set forth in subdivision 4(a), in any termination of parental rights matter the summons shall also contain or have attached a statement pursuant to Rule 18.01 that if the person summoned fails to appear the court may conduct the hearing in the person's absence and the hearing may result in termination of the person's parental rights.

(d) **Permanent Placement Matters.** In addition to the content requirements set forth in subdivision 4(a), in any permanent placement matter the summons shall also contain or have attached a statement pursuant to Rule 18.01 that if the person summoned fails to appear the court may conduct the hearing in the person's absence and the hearing may result in an order granting the relief requested in the petition.

Subd. 5. Timing of Service of Summons and Petition.

(a) **Generally.** The summons and petition shall be served either at or before the emergency protective care hearing held pursuant to Rule 30, or at least three (3) days prior to the admit/deny hearing, whichever is earlier. At the request of a party, the hearing shall not be held at the scheduled time if the summons and petition have been served less than three (3) days before the hearing. If service is made outside the state or by publication, the summons shall be personally served, mailed, or last published at least ten (10) days before the hearing. In cases where publication of a child in need of protection or services petition is ordered, published notice shall be made one time with the last publication at least ten (10) days before the date of the hearing. Service by publication shall be made pursuant to Rule 31.02, subd. 3.

(b) **Termination of Parental Rights Matters and Permanent Placement Matters.** In any termination of parental rights matter or permanent placement matter the summons and petition shall be served upon all parties in a manner that will allow for completion of service at least ten (10) days prior to the date set for the admit/deny hearing. In cases where publication of a termination of parental rights or other permanency summons is ordered, published notice shall be made once per week for three (3) weeks with the last publication at least ten (10) days before the date of the hearing. Pursuant to Minnesota Statutes § 260C.307, subd. 3, notice sent by certified mail to the last known address shall be mailed at least twenty (20) days before the date of the hearing. Service by publication shall be made pursuant to Rule 31.02, subd. 3.

Subd. 6. Waiver. Service is waived by voluntary appearance in court or by a written waiver of service filed with the court.

Subd. 7. Failure to Appear. If any person personally served with a summons or subpoena fails, without reasonable cause, to appear or bring the child if ordered to do so, or if the court has reason to believe the person is avoiding personal service, the court may sua sponte or upon the motion of a party or the county attorney pursuant to Rule 15 proceed against the person for contempt of court or the court may issue a warrant for the person's arrest, or both. When it appears to the court that service will be ineffectual, or that the welfare of the child requires that the child be immediately brought into the custody of the court, the court may issue a warrant for immediate custody of the child.

1999 Advisory Committee Comment

Rule 32.02 specifies the procedure for summoning a party to his or her first appearance in a case. Rule 32.03 specifies the procedure for providing initial notice to a participant. While failure to notify a non-legal custodial parent does not create a jurisdictional defect, the best practice is to invite that parent to participate in the proceedings, as failure to do so may create substantial barriers to permanency.

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

Subd. 1. Definition. A notice is a document issued by the court notifying the person to whom it is addressed of the specific time and place of a hearing.

Subd. 2. Upon Whom.

(a) **Emergency Protective Care Hearing.** If the initial hearing is an emergency protective care hearing, written notice is not required to be served. Instead, the court administrator, or designee, shall use whatever method is available to inform all parties and participants identified by the petitioner in the petition, and their attorneys, of the date, time, and location of the hearing.

(b) **Admit/Deny Hearing.** If the initial hearing is an admit/deny hearing, the court administrator shall serve a summons and petition upon all parties identified in Rule 21, and a notice of hearing and petition upon all participants identified in Rule 22, the county attorney, any attorney representing a party in the matter, and the child through the child's attorney, if represented, or the child's physical custodian.

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 61;

(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.

Subd. 4. Service by Mail or Delivery at Hearing. Notice shall be served by U.S. mail or may be delivered at a hearing. The court may order service of notice to be by personal service.

1999 Advisory Committee Comment

Rule 32.02 specifies the procedure for summoning a party to his or her first appearance in a case. Rule 32.03 specifies the procedure for providing initial notice to a participant. While failure to notify a non-legal custodial parent does not create a jurisdictional defect, the best practice is to invite that parent to participate in the proceedings as failure to do so may create substantial barriers to permanency.

Rule 32.04. Notice of Subsequent Hearings

For each hearing following the emergency protective care or admit/deny hearing, the court administrator shall serve upon each party, participant, and attorney a written notice of the date, time, and location of the next hearing. Such notice shall be delivered at the close of each hearing or mailed at least five (5) days before the date of the hearing or ten (10) days before the date of the hearing if mailed to an address outside the state. If written notice is delivered at the end of the hearing, later written notice is not required.

Rule 32.05. Orders on the Record

An oral order stated on the record directed to the parties which either separately or with written supplementation contains the information required by this rule is sufficient to provide notice and compel the presence of the parties at a stated time and place. Such an order shall be reduced to writing pursuant to Rule 10.

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.

RULE 33. PETITION

Rule 33.01. Drafting; Filing; Service

Subd. 1. Generally. A petition may be drafted and filed by the county attorney or any responsible person. A petition shall be served pursuant to Rule 32.02. If the petition contains any information under Rule 8.04 that is inaccessible to the public, the

petitioner shall file with the court the original petition and a copy of the petition from which the inaccessible information has been redacted.

Subd. 2. Habitual Truant and Runaway Matters. A matter based solely on grounds that a child is a habitual truant or a runaway may be initiated by citation issued by a peace officer or school attendance officer. A citation shall contain:

- (a) the name, address, date of birth, and race of the child;
- (b) the name and address of the parent or legal custodian of the child;
- (c) the offense alleged and a reference to the statute which is the basis for the charge; and
- (d) the time and place the alleged offense was committed. In the event the child is alleged to be a runaway, the place where the offense was committed may be stated in the notice as either the child's parent's residence or lawful placement or where the child was found by the officer. In the event the child is alleged to be a habitual truant, the place where the offense was committed may be stated as the school or the place where the child was found by the officer.

Subd. 3. Termination of Parental Rights Matters.

(a) **Drafting.** A termination of parental rights petition may be drafted and filed by the county attorney or any responsible person.

(b) **Filing and Service.** Any termination of parental rights petition shall be filed in the child in need of protection or services file, if one exists. A petition shall be served pursuant to Rule 32.02.

(c) **Egregious Harm, Abandonment of an Infant, Previous Involuntary Termination of Parental Rights, or Previous Involuntary Transfer of Permanent Legal and Physical Custody Matters.** The county attorney shall file a termination of parental rights petition within thirty (30) days of the responsible social services agency determining that a child:

- (1) has been subjected to egregious harm as defined in Minnesota Statutes § 260C.007, subd. 14;
- (2) is the sibling of another child who was subjected to egregious harm by the parent;
- (3) is an abandoned infant as defined in Minnesota Statutes § 260C.301, subd. 2;
- (4) is a child of a parent whose parental rights to another child have been involuntarily terminated; or
- (5) is the child of a parent whose custodial rights to another child have been involuntarily transferred to a relative under Minnesota Statutes § 260C.201, subd. 11, or similar law of another jurisdiction.

(d) **Joinder of Social Services Agency.** If the termination of parental rights petition has been filed by a party other than the responsible social services agency, that party shall join the responsible social services agency as a party pursuant to Rule 24.

(e) **Termination of Parental Rights or Other Permanency Petition.** The county attorney need not file a termination of parental rights petition if the county attorney files with the court:

(1) a petition for transfer of permanent legal and physical custody to a relative, including a determination that such transfer is in the best interests of the child; or

(2) a petition alleging the child and, where appropriate, the child's siblings, to be in need of protection or services and such petition is accompanied by a case plan or out-of-home placement plan prepared by the responsible social services agency documenting a compelling reason why filing a termination of parental rights petition is not in the best interests of the child.

Subd. 4. Permanent Placement Matters.

(a) **Generally.** Any permanent placement petition required under Rule 42 shall be filed in the child in need of protection or services file, if one exists.

(b) **Filing by Whom; Service.** The county attorney shall file a permanent placement petition in juvenile court to determine the permanent placement of a child. The county attorney may seek any alternative permanent placement relief, and any other party may seek only termination of parental rights or transfer of permanent legal and physical custody to a relative. A party, including a guardian ad litem for the child, shall file a permanent placement petition if the party disagrees with the permanent placement determination set forth in the petitions filed by other parties. A petition shall be served pursuant to Rule 32.02.

1999 Advisory Committee Comment

If a child in need of protection or services matter is pending at the time a termination of parental rights matter is filed regarding the same child, the termination petition should be filed in the same file as the child in need of protection or services matter.

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;

(c) the names, race, date of birth, residence, and post office addresses of the child's parents when known;

(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;

(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 address of the parties identified in Rule 21, as well as a statement designating them as parties; and.
- (i) the names and addresses of the participants identified in Rule 22, as well as a statement designating them as participants.

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.

Subd. 2. Child in Need of Protection or Services Matters.

(a) **Petitions Drafted and Filed by County Attorney.** A child in need of protection or services matter is defined in Minnesota Statutes § 260C.007, subd. 6. All child in need of protection or services petitions shall be drafted and filed under the supervision of the county attorney, except as provided in Minnesota Statutes § 260C.141, subd. 1, and subdivision 2(b) of this Rule.

(b) **Petitions Drafted and Filed By Others.**

(1) **Petition Form.** A child in need of protection or services petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services shall be filed on a form developed by the state court administrator. Copies of the form shall be available from the court administrator in each county.

(2) **Additional Content Requirements for Petitions Not Filed by County Attorney.** In addition to the content requirements set forth in subdivision 1, a petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services shall contain:

(i) a statement that the petitioner has reported the circumstances underlying the petition to the responsible social services agency and that protection or services were not provided to the child;

(ii) a statement, including court file numbers where possible, of pending juvenile or family court proceedings and prior or present juvenile or family court orders relating to the child; and

(iii) a statement regarding the relationship of the petitioner to the child and to any other parties.

(3) **Review by Court Administrator.** Any petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services shall be reviewed by the court administrator before it is filed to determine whether it is complete. The court administrator may reject the petition as incomplete if it does not indicate that the petitioner has contacted the responsible social services agency.

(4) **Court Review.** Within three (3) days of the date a petition is filed by a person who is not a county attorney or an agent of the Commissioner of Human Services, the court shall review the petition. If the court determines that the petition and attachments establish a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter, the court shall set the matter for an admit/deny hearing pursuant to Rule 34 and shall direct notice pursuant to Rule 32. The court shall not allow a petition to proceed if it appears that the sole purpose of the petition is to modify custody between the parents or if it fails to set forth the information required in subdivisions 1 and 2(b) of this rule.

(c) **Petition Based Upon Prima Facie Case.**

(1) **When Required.** In addition to the content requirements of subdivisions 1 and 2(b), a petition establishing a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter shall be filed with the court:

(i) before the court may issue an ex parte order for emergency protective care pursuant to Rule 28; or

(ii) before an emergency protective care hearing is held pursuant to Rule 30 for a child taken into emergency protective care without a court order.

(2) **Manner.** The facts establishing a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter may be set forth in writing in or with the petition, or in supporting affidavits, and may be supplemented by sworn testimony of witnesses taken before the court. If such testimony is taken, a note stating this fact shall be made by the court on the petition. The testimony shall be recorded pursuant to Rule 11.

Subd. 3. Termination of Parental Rights Matters.

(a) **Generally.** A termination of parental rights matter shall be entitled “Petition to Terminate Parental Rights” and shall conform to the requirements of Minnesota Statutes § 260C.141.

(b) **Petitions Drafted and Filed By Others.**

(1) **Petition Form.** A termination of parental rights petition filed by an individual who is not a county attorney or responsible social services agency shall be filed on a form developed by the state court administrator. Copies of the form shall be available from the court administrator in each county.

(2) **Additional Content Requirements for Petitions Not Filed by County Attorney.** In addition to the content requirements set forth in subdivision 1, a petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services shall contain:

(i) a statement, including court file numbers where possible, of pending juvenile or family court proceedings and prior or present juvenile or family court orders relating to the child;

(ii) a statement regarding the relationship of the petitioner to the child and to any other parties; and

(iii) a statement identifying any past or pending cases involving the child or family that is the subject of the petition.

(3) **Review by Court Administrator.** Any petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services shall be reviewed by the court administrator before it is filed to determine whether it is complete. The court administrator may reject the petition if incomplete.

(c) **Petitions Seeking Alternative Permanent Placement Relief.** In addition to the content requirements set forth in subdivision 1, any termination of parental rights petition filed by the county attorney or agent of the Commissioner of Human Services may seek alternative permanent placement relief, and any other party may seek only transfer of permanent legal and physical custody to a relative as the alternative to termination of parental rights. A petition seeking alternative permanent placement relief shall identify which proposed permanent placement option the petitioner believes is in the best interests of the child. A petition may seek separate permanent placement relief for each child named as a subject of the petition as long as the petition identifies which option(s) is sought for each child and why that option(s) is in the best interests of the child. At the admit/deny hearing on a petition that seeks alternative relief, each party shall identify on the record the permanent placement option that is in the best interests of the child.

Subd. 4. Permanent Placement Matters.

(a) **Captions and Title.** Every petition in a permanent placement matter, or a sworn affidavit accompanying such petition, shall contain a title denoting the permanency relief sought:

(1) A transfer of permanent legal and physical custody matter shall be entitled “Juvenile Protection Petition to Transfer Permanent Legal and Physical Custody” and shall name a fit and willing relative as a proposed permanent legal and physical custodian.

(2) A request for long-term foster care shall be entitled “Juvenile Protection Petition for Long-Term Foster Care.”

(3) A request for foster care for a specified period of time for a child adjudicated to be in need of protection or services solely on the basis of the child’s behavior shall be entitled “Juvenile Protection Petition for Foster Care for a Specific Period of Time.”

(b) **Petitions Seeking Alternative Permanent Placement Relief.** Any permanent placement petition filed by the county attorney or agent of the Commissioner of Human Services may seek alternative permanent placement relief, including termination of parental rights, transfer of permanent legal and physical custody to a relative, or placement of the child in long-term foster care. Any permanent placement petition filed by a party who is not the county attorney or agent of the Commissioner of Human Services may seek only transfer of permanent legal and physical custody to a relative as the alternative to termination of parental rights. A petition seeking alternative permanent placement relief shall identify which permanent placement option the

petitioner believes is in the best interests of the child. A petition may seek separate permanent placement relief for each child named as a subject of the petition as long as the petition identifies which option(s) is sought for each child and why that option is in the best interests of the child. At the admit/deny hearing on a petition that seeks alternative relief, each party shall identify on the record the permanent placement option that is in the best interests of the child. If another party files a permanent placement petition in response to the county's petition, it must be filed and served at least fifteen (15) days prior to the date of trial.

Subd. 5. Out of State Party. If a party resides out of state, or if there is likelihood of interstate litigation, the petition or an attached affidavit shall include a statement regarding the whereabouts of the party and any other information required by the Uniform Child Custody Jurisdiction and Enforcement Act, Minnesota Statutes § 518D.101 to § 518D.317.

Subd. 6. Disclosure of Name and Address – Endangerment. If there is reason to believe that an individual may be endangered by disclosure of a name or address required to be provided pursuant to this rule, that name or address may be provided to the court in a separate informational statement and shall not be accessible to the public or to the parties. Upon notice and motion, the court may disclose the name or address as it deems appropriate.

Rule 33.03. Verification

A petition shall be verified by a person having knowledge of the facts and may be verified on information and belief.

Rule 33.04. Amendment

Subd. 1. Prior to Trial. The petition may be amended at any time prior to the commencement of the trial, including, in a child in need of protection or services matter, adding a child as the subject matter of the petition. The petitioner shall provide written or on-the-record notice of the amendment to all parties and participants. When the petition is amended, the court shall grant all other parties sufficient time to respond to the amendment.

Subd. 2. After Trial Begins. The petition may be amended after the trial has commenced if the court finds that the amendment does not prejudice a party and all parties are given sufficient time to respond to the proposed amendment. Upon receipt of approval from the court, the petitioner shall provide written or on-the-record notice of the proposed amendment to all parties and participants.

Rule 33.05. Timing

If a child is in emergency protective care pursuant to Rule 28, the petition shall be filed at or prior to the time of the emergency protective care hearing held pursuant to Rule 30.

1999 Advisory Committee Comment

Minnesota Statutes § 260C.143 provides that a peace officer or school attendance officer may issue a notice to a child to appear in court and file the notice with the juvenile court.

RULE 34. ADMIT/DENY HEARING

Rule 34.01. Generally

An admit/deny hearing is a hearing at which the statutory grounds set forth in the petition are admitted or denied pursuant to Rule 35.

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.

Subd. 2. Child Not in Placement.

(a) **Generally.** When the child is not placed outside the child's home by court order, an admit/deny hearing shall be held no sooner than three (3) days and no later than twenty (20) days after the parties have been served with the summons and petition.

(b) **Child's Behavior.** In matters where the sole allegation is that the child's behavior is the basis for the petition and the child is not in placement, an admit/deny hearing shall be commenced within a reasonable time after service of the summons and petition upon the child.

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 name, age, race, 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;

(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.

Subd. 2. Child in Need of Protection or Services Matters.

(a) In each child in need of protection or services matter, after completing the initial inquiries set forth in subdivision 1, the court shall determine whether the petition establishes a prima facie showing that a juvenile protection matter exists and that the child is the subject of the matter, unless the prima facie determination was made at the emergency protective care hearing pursuant to Rule 30.08. 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 the matter.

(b) In addition to the initial procedures set forth in subdivision 1, in each child in need of protection or services matter the court shall also advise all persons present that if the petition is proven and the child is not returned home:

(1) a permanency progress review hearing shall be held within six (6) months of the date of the child's placement in foster care or in the home of a noncustodial parent if the child was under eight (8) years of age at the time of the filing of the petition; and

(2) a permanent placement determination hearing must be held within twelve (12) months of the date of the child's placement in foster care or the home of a noncustodial parent.

Subd. 3. Termination of Parental Rights Matters.

(a) In each termination of parental rights matter, after completing the initial inquiries set forth in subdivision 1, the court shall determine whether the petition states a prima facie case in support of one or more statutory grounds set forth in the petition to terminate parental rights and a prima facie showing that a juvenile protection matter exists and that the child is the subject of the matter. 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) When the petition alleges that reasonable efforts, or active efforts in the case of an Indian child, have been made to reunify the child with the parent or legal custodian, the court shall enter a separate finding regarding whether the factual allegations contained in the petition state a prima facie case that the agency has provided reasonable efforts, or active efforts in the case of an Indian child, to reunify the child and the parent or legal custodian. In the alternative, the court may enter a finding that reasonable efforts to reunify the child and the parent or legal custodian were not required under Minnesota Statutes § 260.012.

(c) If the court determines that the petition states a prima facie case in support of termination of parental rights, the court shall proceed pursuant to Rule 35. If the court determines that the petition fails to state a prima facie case in support of termination of parental rights, the court shall:

- (i) return the child to the care of the parent or legal custodian;
- (ii) give the petitioner ten (10) days to file an amended petition or supplementary information if the petitioner represents there are additional facts which, if presented to the court, would establish a prima facie case in support of termination of parental rights;
- (iii) give the petitioner ten (10) days to file a child in need of protection or services petition; or
- (iv) dismiss the petition.

Subd. 4. Permanent Placement Matters.

(a) In each permanent placement matter, after completing the initial inquiries set forth in subdivision 1, the court shall review the facts set forth in the petition, consider such argument as the parties may make, and determine whether the petition states a prima facie case in support of one or more of the permanent placement options.

(b) When the petition seeking permanent placement of the child away from the parent or legal custodian requires a determination by the court that reasonable efforts, or active efforts in the case of an Indian child, have been made to reunify the child with the parent or legal custodian, the court shall enter a separate finding regarding whether the factual allegations in the petition state a prima facie case that the agency has provided reasonable efforts, or active efforts in the case of an Indian child, to reunify the child and the parent or legal custodian. In the alternative, the court may enter a finding that reasonable efforts were not required under Minnesota Statutes § 260.012.

(c) If the court determines that the petition states a prima facie case, the court shall proceed pursuant to Rule 35. If the court determines that the petition fails to state a prima facie case, the court may:

- (i) return the child to the care of the parent;
- (ii) give the petitioner ten (10) days to file an amended petition or supplementary information if the petitioner represents there are additional facts which, if presented to the court, would establish a prima facie case; or
- (iii) dismiss the petition.

Subd. 5 Motions. The court shall hear any motions, made pursuant to Rule 15, addressed to the sufficiency of the petition or jurisdiction of the court without requiring any person to admit or deny the statutory grounds set forth in the petition prior to making a finding on the motion.

1999 Advisory Committee Comment (amended 2003)

Rule 34.03, subd. 2, is consistent with Minnesota Statutes § 260C.201, subd. 11, which provides that a 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.

RULE 35. ADMISSION OR DENIAL

Rule 35.01. Generally

Subd. 1. Parent or Legal Custodian.

(a) **Generally.** Unless the child's parent or legal custodian is the petitioner, a parent who is a party or a legal custodian shall admit or deny the statutory grounds set forth in the petition or remain silent. If the parent or legal custodian denies the statutory grounds set forth in the petition or remains silent, or if the court refuses to accept an admission, the court shall enter a denial of the petition on the record.

(b) **Termination of Parental Rights Matters.** In a termination of parental rights matter, only the parents of the child are required to admit or deny the petition. A party who is not required to admit or deny the petition may object to the admission if that party has filed a petition pursuant to Rule 33.

(c) **Permanent Placement Matters.** In a permanent placement matter:

(1) Only the legal custodian of the child who is not the petitioner is required to admit or deny the petition. A party who is not required to admit or deny the petition may object to the entry of the proposed permanent placement order if that party has filed a petition pursuant to Rule 33.

(2) When there is a petition for transfer of permanent legal and physical custody to a relative who is not represented by counsel, the court may not enter an order granting the transfer of custody unless there is testimony from the proposed custodian establishing that the proposed custodian understands:

- (i) the legal consequences of a transfer of permanent legal and physical custody;
- (ii) the nature and amount of financial support and services that will be available to help care for the child;
- (iii) how the custody order can be modified; and
- (iv) any other permanent placement options available for the subject child.

Subd. 2. Child.

(a) **Generally.** Except as otherwise provided in this rule, the child shall not admit or deny the petition.

(b) **Child's Behavior.** In matters where the sole allegation is that the child's behavior is the basis for the petition, only the child shall admit or deny the statutory grounds set forth in the petition or remain silent.

Subd. 3. Contested Petition. Any party has the right to contest the basis of a petition. The county attorney has the right to contest the basis of a petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services.

Rule 35.02. Denial

Subd. 1. Denial Without Appearance. A written denial or a denial on the record of the statutory grounds set forth in a petition may be entered by counsel without the personal appearance of the person represented by counsel.

Subd. 2. Further Proceedings After Denial. When a denial by any party is entered, the court shall schedule further proceedings pursuant to Rule 36 or Rule 39.

Rule 35.03. Admission

Subd. 1. Admission Under Oath. Any admission must be made under oath.

Subd. 2. Admission Without Appearance. Upon approval of the court, a written admission of the statutory grounds set forth in the petition, made under oath, may be entered by counsel without personal appearance of the person represented by counsel.

Subd. 3. Questioning of Person Making Admission.

(a) **Generally.** Before accepting an admission the court shall determine on the record or by written document signed by the person admitting and the person's counsel, if represented, whether:

- (1) the person admitting acknowledges an understanding of:
 - (i) the nature of the statutory grounds set forth in the petition;
 - (ii) if unrepresented, the right to representation pursuant to Rule 25;
 - (iii) the right to a trial;
 - (iv) the right to testify; and
 - (v) the right to subpoena witnesses; and
- (2) the person admitting acknowledges an understanding that the facts being admitted establish the statutory grounds set forth in the petition.

(b) **Child in Need of Protection or Services Matters, and Habitual Truant, Runaway, and Prostitution Matters.** In addition to the questions set forth in subdivision 3(a), before accepting an admission in a child in need of protection or services matter or a matter alleging a child to be a habitual truant, a runaway, or engaged in

prostitution, the court shall also determine on the record or by written document signed by the person admitting and the person's counsel, if represented, whether the person admitting acknowledged an understanding that:

(1) a possible effect of a finding that the statutory grounds are proved may be the transfer of legal custody of the child to another or other permanent placement option including termination of parental rights to the child; and

(2) if the child is in out-of-home placement, a permanency progress review hearing will be held within six (6) months of the date the child is ordered placed in foster care or in the home of a noncustodial parent if the child was under eight (8) years of age at the time of the filing of the petition, and a permanent placement determination hearing will be held within twelve (12) months of the date the child is ordered placed in foster care or in the home of a noncustodial parent.

Subd. 4. Basis for Admission. The court shall refuse to accept an admission unless there is a factual basis for the admission.

(a) **Full Admission.** A party may admit all of the statutory grounds set forth in the petition.

(b) **Partial Admission.** Pursuant to a Rule 19 settlement agreement, a person may admit some, but not all, of the statutory grounds set forth in the petition.

Subd. 5. Withdrawal of Admission. After filing a motion with the court:

(a) an admission may be withdrawn at any time upon a showing that withdrawal is necessary to correct a manifest injustice; or

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

Subd. 6. Acceptance or Non-Acceptance of Admission. At the time of the admission, the court shall make a finding that:

(a) the admission has been accepted and the statutory grounds admitted have been proved;

(b) the admission has been conditionally accepted pending the court's approval of a settlement agreement pursuant to Rule 19; or

(c) the admission has not been accepted.

Subd. 7. Further Proceedings. If the court makes a finding that the admission is accepted and the statutory grounds admitted are proved, or that the admission is conditionally accepted pending the court's approval of a settlement agreement pursuant to Rule 19, the court shall enter an order with respect to adjudication pursuant to Rule 40 and proceed to disposition. If the court makes a finding that the admission has not been accepted, the court shall schedule further proceedings pursuant to Rule 36 or Rule 39.

RULE 36. PRETRIAL HEARING

Rule 36.01. Timing

The court 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; and

(k) determine any other relevant issues.

Rule 36.03. Pretrial Order

The pretrial order shall include the information specified in Rule 36.02 and shall specify all factual allegations and statutory grounds admitted and denied.

Rule 36.04. Continuing Obligation to Update Information

From the date of the pretrial hearing through the date of trial, the parties shall have a continuing obligation to update information provided during the pretrial hearing.

1999 Advisory Committee Comment

Rule 36.02(d) addresses the need to determine whether the child will testify. The intent of the rule is to provide that an order protecting the child from testifying or placing conditions on the child's testimony can only be made after notice of motion and a hearing. The Committee intends that any such motion be heard and resolved at the pretrial conference.

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

Rule 37.01. Case and Out-of-Home Placement Plans and Reports Generally

When the responsible social services agency is the petitioner, the agency shall file with the court and provide to the parties and foster parent a case plan or out-of-home placement plan for the child and the parents or legal custodians, as appropriate. A case plan shall be prepared according to the requirements of Minnesota Statutes § 245.4871, subd. 19 or 21; § 245.492, subd. 16; § 256B.092; § 260C.212, subd. 1; or § 626.556, subd. 10, whichever is applicable.

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

Subd. 1. Plan Required. When a child is placed in foster care by court order, the responsible social services agency shall file with the court and provide to the parties and foster parents the case plan or out-of-home placement plan required under Minnesota Statutes § 260C.212, subd. 1.

Subd. 2. Timing. The out-of-home placement plan shall be filed with the court and provided to the parties and foster parents by the responsible social services agency within thirty (30) days of the court order placing the child in foster care, an order for protective care, or order transferring legal custody to the responsible social services agency, whichever is earliest.

Subd. 3. Content. The out-of-home placement plan shall include a statement about whether the parent, legal 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 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 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.

Subd. 4. Procedure for Approving or Ordering Out-of-Home Placement Plan Prior to Disposition.

(a) **Court's Approval of Plan.** Upon the filing of the out-of-home placement plan, together with the information about whether the parent or legal custodian; the child, if appropriate; the child's tribe, if the child is an Indian child; and the foster parents have received a copy of the plan, the court may, based upon the allegations in the petition, approve the responsible social services agency's implementation of the plan if it was developed jointly with the parent and in consultation with others required under this Rule

and Minnesota Statutes § 260C.212, subd. 1. The court shall send written notice of the approval of the plan to all parties and the county attorney, or may state such approval on the record at a hearing after the plan has been filed with the court and provided to the parties, foster parents, and the child, as appropriate.

(b) **Refusal to Participate in Development of Plan or Disagreement With Services.** When a parent or legal custodian refuses to participate in the preparation of the out-of-home placement plan or disagrees with the services recommended by the responsible social services agency, the agency shall notify the court of the services it will provide or efforts it will attempt under the plan notwithstanding the parent's refusal to cooperate or disagreement with the services. Any party may ask the court to modify the plan to require different or additional services. The court may approve the plan as presented by the agency or may modify the plan to require services requested. The court's approval of the plan shall be based upon the content of the petition or amended petition.

(c) **Voluntary or Court-Ordered Compliance with Plan.** A parent may voluntarily agree to comply with the terms of an out-of-home placement plan filed with the court. Unless the parent voluntarily agrees to the plan, the court may not order a parent to comply with the plan until there is a disposition ordered under Minnesota Statutes § 260C.201, subd. 1, and Rule 41. However, the court may find that the responsible social services agency has made reasonable efforts to finalize a permanent placement plan for the child if the agency makes efforts to implement the terms of an out-of-home placement plan approved under this rule and Minnesota Statutes § 260C.178, subd. 7.

(d) **Copy of Plan.** When the out-of-home placement plan is either ordered or approved, a copy of the plan shall be incorporated into the order by reference. The plan need not be served with the order, unless the plan has been modified.

Subd. 5. Procedure for Ordering Out-of-Home Placement Plan at Disposition. Rule 41 governs the ordering of an out-of-home placement plan at the time of disposition.

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

Subd. 1. Child in Voluntary Foster 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 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 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. 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.

Rule 37.04. Child Not in Foster Care: Child Protective Services Case Plan

A responsible social services agency may file a petition alleging that the child is in need of protection or services seeking to ensure the provision of adequate child protective services as required under Minnesota Statutes § 626.556, subd. 10, and Minnesota Rule 9560.0228.

(a) **Timing.** When the child is not in foster care, the child protective services plan required under Minnesota Statutes § 626.556, subd. 10, and Minnesota Rule 9560.0228 shall be filed with the petition alleging the child to be in need of protection or services unless the responsible social services agency includes a statement in the petition explaining why it has not been possible to develop the plan, which may include exigent circumstances or the non-cooperation of the child's parents or guardian. The child protective services plan shall be provided to the parties by the responsible social services agency at the time it is filed with the court.

(b) **Procedure for Ordering Child Protective Services Plan.** When the child is not in foster care or is not recommended to continue in foster care, but the court finds endangerment under Rule 30, the court may order the parties to comply with the

provisions of the child protective services plan as a condition of the child remaining in the care of the parent, guardian, or custodian. The court may also order the parties to comply with the provisions of the plan as part of a disposition under Rule 41. When the court orders a child protection services plan, a copy of the plan shall be attached to the court's order and incorporated into it by reference.

Rule 37.05. Child with Disability: Case Plan

Subd. 1. Procedure. If a child found to be in need of protection or services has a physical or mental disability and a case plan is required under Minnesota Statutes § 245.4871, subd. 19 or 21; § 245.492, subd. 16; or § 256B.092, the plan shall be filed with the court. Services may be ordered provided to the child according to the provisions of Minnesota Statutes § 260C.201, subd. 1(a)(3). When an out-of-home placement plan is required under Rule 37.02 or a child protective services plan is required under Rule 37.04, the requirements of a plan under this paragraph may be included in such plans and need not be a separate document.

Subd. 2. Timing. The case plan shall be provided to the parties by the responsible social services agency at the time it is filed with the court.

Rule 37.06. Non-Child Protection Cases; Child Not in Out-of-Home Care

Subd. 1. Timing of Filing of Case Plan for Child Under Protective Supervision, in Need of Special Care or Services, Allowed to Live Independently, or Who is a Runaway or Habitual Truant. When a petition is filed alleging a child to be in need of protection or services and no plan is required under Rule 37.02, 37.04, or 37.05, the responsible social services agency or other agency shall file a case plan designed to correct the conditions underlying the allegations that make the child in need of protection or services and may be based on the investigation and report required under subdivision 2. The case plan must be filed and served not later than five (5) days prior to the date of the disposition hearing.

Subd. 2. Predisposition Investigation and Report. Upon request of the court, the responsible social services agency or probation officer shall investigate the personal and family history and environment of any minor coming within the jurisdiction of the court under Minnesota Statutes § 260C.101 and shall report its findings to the court. The court may order any minor coming within its jurisdiction to be examined by a duly qualified physician, psychiatrist, or psychologist appointed by the court, the cost of which shall be paid pursuant to Minnesota Statutes § 260C.331, subd. 1. The predisposition report shall be governed by Rule 41.

RULE 38. REPORTS TO THE COURT

Rule 38.01. Social Services Court Reports -- Generally

Subd. 1. Periodic Reports Required. After an out-of-home placement plan or case plan is approved or ordered by the court pursuant to Rule 37 or Rule 41, the responsible social services agency shall make periodic certified reports to the court

regarding progress made on the plan. When the report relates to plans for siblings who are in foster care, the agency may combine information related to each child's plan into one report as long as the report addresses each child's individual needs and circumstances. The agency may also submit written information from collateral sources regarding assessments or the delivery of services or any other relevant information regarding the child's safety, health, or welfare in support of the report or as a supplement to the report. Such reports may be supplemented at or before the hearing either orally or in writing.

Subd. 2. Content. Although pursuant to Rule 16 a report is not required to be signed, each report shall include the name of the person submitting the report; a statement certifying the content as true based upon personal observation, first-hand knowledge, or information and belief; and shall include the case caption, the date of the report, and the date of the hearing at which the report is to be considered. Each report shall contain or have attached the certificate of distribution required under Rule 31.07, subd. 2.

Subd. 3. Timing of Reports. Periodic reports required under this Rule shall be filed with the court and served upon the parties by the responsible social services agency not later than five (5) business days prior to each review hearing required under Rule 41.06, permanent placement determination hearing required under Rule 42.04, and as otherwise directed by the court.

Rule 38.02. Social Services Court Reports – Child Ordered into Foster Care

Subd. 1. Content. In addition to the requirements of Rule 38.01, subd. 2, each certified report regarding a case plan or out-of-home placement plan shall include the name of the person submitting the report and the following:

(a) **Identifying Information.** Identifying and baseline placement information regarding the child shall be included as follows:

- (1) the child's name and date of birth and, in the case of an Indian child, the Tribe in which the child is enrolled or eligible for membership;
- (2) the names of the child's parents or legal custodians;
- (3) the dates of birth of the child's parents who are minors;
- (4) the date the child was first placed in foster care;
- (5) the date the child was ordered placed in foster care;
- (6) the total length of time the child has been in foster care, including all cumulative time the child may have experienced within the previous five (5) years;
- (7) the number of moves the child has experienced while in foster care, including all moves during the previous five (5) years;
- (8) if the child's placement has changed since the out-of-home placement plan was approved or ordered, a description of how the child's placement meets the child's best interests as set out in the modified out-of-home placement plan, or in the case of an Indian child, whether the placement complies with placement preferences established in 25 U.S.C. § 1915; and

(9) when the child has siblings, the names and ages of the child's siblings, the residence or placement status of each sibling and, where appropriate, the efforts the agency has made to place the children together; and

(b) **Review of Out-of-Home Placement Plan.** As applicable, a description of:

(1) the agency's efforts to implement the out-of-home placement plan requirements;

(2) the parent's or legal custodian's compliance with the plan requirements;

(3) services provided to the child;

(4) the child's adjustment in placement;

(5) visitation between the parents or legal custodian and the child and between the child and any siblings; and

(6) the agency's efforts to finalize adoption; and

(c) **Placement with Relatives.** At least once during the first six (6) months the child is in placement or until placement is made with a relative or the court finds the agency's efforts adequate under Minnesota Statutes § 260C.212, subd. 5, the report shall describe the efforts the agency has made to identify and notify relatives, or in the case of an Indian child the report shall describe how the placement complies with requirements of 25 U.S.C. § 1915; and

(d) **Independent Living Plan.** When the child is age sixteen (16) or older, the report shall include a description of the elements of the child's independent living plan and how the child is progressing on that plan; and

(e) **Child with Emotional Disturbance.** For a child in placement due solely or in part to the child's emotional disturbance, the report shall include diagnostic and assessment information, specific services relating to meeting the mental health care needs of the child, and treatment outcomes; and

(f) **Recommendations.** The report shall include recommendations to the court for modification of the plan or for actions the parents or legal custodian must take to provide protection or services for the child.

Subd. 2. Reports Between Disposition Review Hearings. Once disposition has been ordered pursuant to Rule 41, the responsible social services agency, through the county attorney, may ask the court for orders related to meeting the safety, protection, and best interests of the child based upon a certified report that meets the requirements of Rule 38.01, subd. 2, and states the child's identifying and baseline placement information and the factual basis for the request including, where appropriate, other relevant reports or data. Such reports shall be filed with the court together with proof of service upon all parties by the responsible social services agency. Any party may request a hearing regarding the agency's report. Pending hearing, if any, upon two (2) day's actual notice and based upon the report the court may issue an order that is in the best interests of the child. Upon a finding that an emergency exists, the court may issue a temporary order that is in the best interests of the child.

Rule 38.03. Social Services Court Reports – Child Not in Foster Care

In addition to the requirements of Rule 38.01, subd. 2, each certified report regarding the case plan shall include the name of the person submitting the report and the following:

(a) **Identifying Information.** Identifying information regarding the child shall be included as follows:

(1) the child's name and date of birth and, in the case of an Indian child, the Tribe in which the child is enrolled or eligible for membership;

(2) a statement about whether the child is an Indian child, whether or not the Indian Child Welfare Act applies, and in the case of an Indian child the Tribe in which the child is enrolled or eligible for membership;

(3) the names of the child's parents or legal custodians;

(4) the dates of birth of the child's parents who are minors;

(5) the child's residence and, if the child's residence has changed since the case plan was ordered, the date of the change;

(6) the date the case was most recently opened for services in the responsible social services agency;

(7) the date of all other case openings for this child and the child's siblings with the responsible social services agency and, if known, case openings for this child or the child's siblings with any other social services agency responsible for providing child welfare or child protection services to this child; in addition to the date of other case openings, the report should contain a brief description of the nature of the contact with the responsible or other social services agency; and

(b) **Review of Plan.** As applicable, a description of:

(1) the agency's efforts to implement the case plan;

(2) the parents' or legal custodian's and child's compliance with plan requirements; and

(3) the services provided to the child; and

(c) **Recommendations.** The report shall include recommendations to the court for modification of the plan or for actions the parent or legal custodian must take to provide adequate protection or services for the child.

Rule 38.04. Objections to Agency's Report or Recommendations

Any party objecting to the content or recommendations of the responsible agency's report may submit a written objection to the report either before or at the hearing at which the report is to be considered. The objection shall include a statement certifying the content as true based upon personal observation, first-hand knowledge, or information and belief. The certified objection shall be supported by a sworn statement of the party's factual basis for the objection and may state other or additional facts on information and belief and argument that the court should consider in making its determinations or orders. An objection may also be supported by reports from collateral service providers or assessors. Objections to the agency's report and recommendations may also be stated on the record as long as the court gives the agency a reasonable opportunity to respond to the party's objection.

Rule 38.05. Reports to the Court by Child’s Guardian ad Litem

Subd. 1. Periodic Reports Required. The guardian ad litem for the child shall submit periodic certified written reports to the court which may be supplemented at or before the hearing either orally or in writing.

Subd. 2. Content. Although pursuant to Rule 16 a report is not required to be signed, each report shall include the name of the person submitting the report, a statement certifying the content as true based upon personal observation, first-hand knowledge, or information and belief and shall include the following:

- (a) the child’s name, date of birth, and age at the time the report is filed;
- (b) the names of the child’s parents or legal custodians;
- (c) the case caption;
- (d) the date of the report;
- (e) the date of the hearing at which the report is to be considered;
- (f) the date the guardian ad litem was appointed by the court;
- (g) a brief summary of the issues that brought the child and family into the court system;
- (h) a list of the resources or persons contacted who provided information to the guardian ad litem since the date of the last court hearing;
- (i) a list of the dates and types of contacts the guardian ad litem had with the child(ren) since the date of the last court hearing;
- (j) a list of all documents relied upon when generating the court report;
- (k) a summary of information gathered regarding the child and family since the date of the last hearing relevant to the pending hearing;
- (l) a list of any issues of concern to the guardian ad litem about the child’s or family’s situation; and
- (m) a list of recommendations designed to address the concerns and advocate for the best interests of the child.

Each report shall contain or have attached the certificate of distribution required under Rule 31.07, subd. 2.

Subd. 3. Timing of Reports. Except for an emergency protective care hearing for which no written report is required, reports required under this rule shall be filed with the court and served upon the parties by the guardian ad litem not later than five (5) business days prior to each review hearing required under Rule 41.06, permanent placement determination hearing required under Rule 42, and as otherwise directed by the court.

Subd. 4. Objections to Guardian Ad Litem’s Report or Recommendations. Any party objecting to the content or recommendations of the guardian ad litem may submit a written objection to the report either before or at the hearing at which the report is to be considered. The objection shall include a statement certifying the content as true based upon personal observation, first-hand knowledge, or information and belief. The

certified objection shall be supported by a sworn statement of the party's factual basis for the objection and may state other or additional facts on information and belief and argument that the court should consider in making its determinations or orders. An objection may also be supported by reports from collateral service providers or assessors. Objections to the guardian ad litem's report and recommendations may also be stated on the record as long as the court gives the guardian ad litem a reasonable opportunity to respond to the party's objection.

RULE 39. TRIAL

Rule 39.01. Generally

A trial is a hearing to determine whether the statutory grounds set forth in the petition are or are not proved.

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.

(b) **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 shall be 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 in the case of a petition for termination of parental rights.

(c) **Termination of Parental Rights Matters.** Unless otherwise provided by these rules, a trial regarding a termination of parental rights matter shall commence within ninety (90) days from the date of the filing of the petition.

(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 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 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.

(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 39.03. Procedure

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

(a) verify the name, age, race, 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;

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

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

(d) determine whether any child or the child's parent or legal custodian is present without counsel and, if so, explain 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.

Subd. 2. Conduct and Procedure.

(a) **Trial Rights.** The parties and the county attorney shall have the right to:

- (1) present evidence;
 - (2) present witnesses;
 - (3) cross-examine witnesses;
 - (4) present arguments in support of or against the statutory grounds set forth in the petition; and
 - (5) ask the court to order that witnesses be sequestered.
- (b) **Trial Procedure.** The trial shall proceed as follows:
- (1) the party that drafted and filed the petition pursuant to Rule 33 may make an opening statement confining the statement to the facts expected to be proved;
 - (2) the other parties, in order determined by the court, may make an opening statement or may make a statement immediately before offering evidence, and the statement shall be confined to the facts expected to be proved;
 - (3) the party that drafted and filed the petition pursuant to Rule 33 shall offer evidence in support of the petition;
 - (4) the other parties, in order determined by the court, may offer evidence;
 - (5) the party that drafted and filed the petition pursuant to Rule 33 may offer evidence in rebuttal;
 - (6) the other parties, in order determined by the court, may offer evidence in rebuttal;
 - (7) when evidence is presented, other parties may, in order determined by the court, cross-examine witnesses;
 - (8) at the conclusion of the evidence the parties, other than the party that drafted and filed the petition pursuant to Rule 33, in order determined by the court, may make a closing statement;
 - (9) the party that drafted and filed the petition pursuant to Rule 33 may make a closing statement; and
 - (10) if written argument is to be submitted, it shall be submitted within fifteen (15) days of the conclusion of testimony, and the trial is not considered completed until the time for written arguments to be submitted has expired.

Rule 39.04. Standard of Proof

Subd. 1. Generally. To be proved at trial, the statutory grounds set forth in the petition must be proved by clear and convincing evidence.

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.

1999 Advisory Committee Comment

In *In Re the Matter of M.S.S.*, 465 N.W.2d 412 (Minn. Ct. App. 1991), the court held that the parental rights to an Indian child may not be terminated unless the county proves beyond a reasonable doubt that it has complied with section 1912(f) of the Indian Child Welfare Act, 25 U.S.C. § 1901 *et. seq.*, requiring the county to make active efforts to prevent or avoid placement.

Rule 39.05. Decision

Subd. 1. Generally. Within fifteen (15) days of the conclusion of the trial, the court shall make a finding and issue an order regarding whether 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. 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. If the court makes a finding that the statutory grounds set forth in the petition have been proved, the court shall schedule the matter for further proceedings pursuant to Rule 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 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 dismiss the petition or determine that the child is in need of

protection or services and schedule further proceedings pursuant to Rule 40. If the court finds that the statutory grounds set forth in the petition are proved, the court may terminate parental rights. The findings and order shall be filed with the court administrator who shall proceed pursuant to Rule 10.

(b) **Particularized Findings.** 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 one of the following:

(1) **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 that 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.

Subd. 4. Permanent Placement Matters. The court shall issue its decision regarding permanency consistent with Rule 42.

RULE 40. ADJUDICATION

Rule 40.01. Adjudication

If the court makes a finding that the statutory grounds set forth in a petition alleging a child to be in need of protection or services are proved, the court shall:

- (a) adjudicate the child as in need of protection or services and proceed to disposition pursuant to Rule 41; or
- (b) withhold adjudication of the child pursuant to Rule 40.02.

Rule 40.02. Withholding Adjudication

Subd. 1. Generally. When it is in the best interests of the child to do so, the court may withhold an adjudication that the child is in need of protection or services. The court may withhold adjudication for a period not to exceed ninety (90) days from the finding that the statutory grounds set forth in the petition have been proved. During the withholding of an adjudication, the court may enter a disposition order pursuant to Rule 41.

Subd. 2. Further Proceedings. At a hearing, which shall be held within ninety (90) days following the court's withholding of adjudication, the court shall either:

- (a) dismiss the matter without an adjudication if both the child and the child's legal custodian have complied with the terms of the continuance; or

(b) adjudicate the child in need of protection or services if either the child or the child's legal custodian has not complied with the terms of the continuance. If the court enters an adjudication, the court shall proceed to disposition pursuant to Rule 41.

RULE 41. DISPOSITION

Rule 41.01. Disposition

After an adjudication that a child is in need of protection or services pursuant to Rule 40.01, the court shall conduct a hearing to determine disposition. Dispositions in regard to review of voluntary foster care matters shall be pursuant to Minnesota Statutes § 260C.205 and § 127A.47.

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. The disposition order 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 41.03. Pre-Disposition Reports

Subd. 1. Investigations and Evaluations. At any time after the court accepts or conditionally accepts an admission pursuant to Rule 35 or finds that the statutory grounds set forth in the petition have been proved, the court may, upon its own motion or the motion of a party or the county attorney, order a pre-disposition report which may include:

- (a) an investigation of the personal and family history and environment of the child;
- (b) medical, psychological, psychiatric, or chemical dependency evaluations of the child and any parent who is a party; and
- (c) information regarding the factors set forth in Rule 41.05.

Subd. 2. Advisory. The court shall advise the persons present in court that a pre-disposition investigation is being ordered, the nature of the evaluations to be included, the date when the reports resulting from the investigation are to be filed with the court, and the right of each party to present opposing evidence and reports.

Subd. 3. Pre-Disposition Reports.

(a) **Filing and Service.** The person who intends to offer the pre-disposition report shall file the report with the court and serve the report on all parties at least forty-eight (48) hours prior to the time scheduled for the hearing. When the child or the child's parent or legal custodian is not represented by counsel, the court may limit the inspection of reports by the child or the child's parent and legal custodian if the court determines it is in the best interests of the child. Any party or the person making the pre-disposition report may by motion request a protective order limiting the release of confidential or sensitive information contained in the report.

(b) **Consideration of Reports.** Before making a disposition in a case, terminating parental rights, or appointing a legal guardian for a child, the court may consider any report or recommendation made by the responsible social services agency, probation officer, licensed child-placing agency, foster parent, guardian ad litem, tribal representative, the child's health or mental health care provider, or other authorized advocate for the child or child's family, a school district concerning the effect on student transportation of placing a child in a school district in which the child is not a resident, or any other information deemed material by the court.

Subd. 4. Discussion of Contents of Reports. The person making the pre-disposition report may discuss the contents of the report with all parties and the county attorney.

Subd. 5. Discussion of Content of Report - Limitation by Court. The court may upon a showing of good cause limit the extent of the discussion of the contents of the pre-disposition report with the parties if the court finds the limitation to be in the best interests of the child. The limitation may be made:

- (a) on the court's own motion; or
- (b) upon the written or on-the-record motion of a party, the county attorney, or the person making the pre-disposition report.

Rule 41.04. Procedure; Evidence

Disposition hearings shall be conducted in an informal manner designed to facilitate the opportunity for all parties to be heard.

The court may admit any evidence, including reliable hearsay and opinion evidence, which is relevant to the disposition of the matter. Privileged communications may be admitted in accordance with Minnesota Statutes § 626.556, subd. 8.

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.

Subd. 2. Content.

(a) **Mandatory Provisions.** The court shall enter an order making one of the following dispositions for the child:

(1) **Protective Supervision.** Place the child under the protective supervision of the responsible services agency or child-placing agency in the home of a parent or legal custodian under conditions directed to correction of the child's need for protection or services:

(i) the court may order the child into the home of a parent who does not otherwise have legal custody of the child, however, an order under this section does not confer legal custody on that parent;

(ii) if the court orders the child into the home of a father who has not been adjudicated as such, the order shall require the alleged or presumed father to cooperate with paternity establishment proceedings regarding the child in the appropriate jurisdiction as one of the conditions prescribed by the court for the child to continue in his home; and

(iii) the court may order the child into the home of a noncustodial parent with conditions and may also order both the noncustodial and the custodial parent to comply with the requirements of a case plan under subdivision 2; or

(2) **Transfer Legal and Physical Custody to Agency.** Transfer legal custody to a child-placing agency or the responsible social services agency, which shall have legal responsibility for the child's placement in foster care, including making an individualized determination of how the particular placement is in the child's best interests using the consideration for relatives and the best interest factors in Minnesota Statutes § 260C.212, subd. 2(b); or

(3) **Trial Home Visit.** Order a trial home visit, as defined in Rule 2.01(x), without modifying the transfer of legal custody to the responsible social services agency under subdivision 2(a)(2) of this Rule; or

(4) **Special Services.** If the child has been adjudicated as a child in need of protection or services because the child is in need of special services or care to treat or ameliorate a physical or mental disability or emotional disturbance as defined in Minnesota Statutes § 245.4871, subd. 15, the court may order the child's parent, guardian or custodian to provide it. The court may order the child's health plan company to provide mental health services to the child. Minnesota Statutes § 62Q.535 applies to an order for mental health services directed to the child's health plan company. If the health plan, child's parent, or legal custodian fails or is unable to provide the treatment or care, the court may order it provided. Absent specific written findings by the court that the child's disability is the result of abuse or neglect by the child's parent or guardian, the court shall not transfer legal custody of the child for the purpose of obtaining special treatment or care solely because the parent is unable to provide the treatment or care. If the court's order for mental health treatment is based on a diagnosis made by a treatment professional, the court may order that the diagnosing professional not provide the treatment to the child if it finds that such an order is in the child's best interests; or

(5) **Independent Living.** Allow a child sixteen (16) years old or older to live independently under appropriate supervision, if the court determines that the child has sufficient maturity and judgment, and the responsible social services agency after consultation with the court has specifically authorized this alternative.

(6) **Monitoring.** When a parent has complied with a case plan and the child is in the care of the parent, the court may order the responsible social services agency to monitor the parent's continued ability to maintain the child safely in the home under such terms and conditions as the court determines appropriate under the circumstances.

(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;

- (2) review the case plan, make modifications supported by the evidence appropriate, and approve the plan;
- (3) order all parties to comply with the approved case plan;
- (4) incorporate into the order by reference the approved case plan and attach a copy of the plan only if it has been modified;
- (5) give notice to the parent on the record and in writing of the requirements of Minnesota Statutes § 260C.201, subs. 11 and 11a; and
- (6) set the date and time for the permanency placement determination hearing pursuant to Rule 42.

(c) **Habitual Truant and Runaway Matters.** If the child is adjudicated in need of protection or services because the child is a habitual truant or a runaway, the court may order any of the following dispositions in addition to or as alternatives to the dispositions ordered under subdivisions (a) and (b):

- (1) counseling for the child or the child's parent or legal custodian;
- (2) place the child under the supervision of a probation officer or other suitable person in the child's own home under conditions prescribed by the court, including reasonable rules for the child's conduct and the conduct of the parent or legal custodian designed for the physical, mental, and moral well-being and behavior of the child;
- (3) with the consent of the commissioner of corrections, place the child in a group foster care facility that is under the commissioner's management and supervision;
- (4) subject to the court's supervision, transfer legal custody of the child to one of the following:
 - (i) a reputable person of good moral character; or
 - (ii) a county probation officer for placement in a group foster home established under the direction of the juvenile court and licensed pursuant to Minnesota Statutes § 241.021;
- (5) require the child to pay a fine of up to \$100, to be paid in a manner that will not impose undue financial hardship upon the child;
- (6) require the child to participate in a community service project;
- (7) order the child to undergo a chemical dependency evaluation and, if warranted by the evaluation, order participation by the child in a drug awareness program or an inpatient or outpatient chemical dependency treatment program;
- (8) order the commissioner of public safety to cancel the child's driver's license or permit or, for a child who does not have a driver's license or permit, order a denial of driving privileges for any period up to the child's 18th birthday; or
- (9) order the child's parent or legal custodian to deliver the child to school at the beginning of each school day for a period of time specified by the court.

2006 Advisory Committee Comment

Minnesota Statutes § 260C.331, subd. 1(a)(3), provides that
“whenever a child is given physical or mental examinations or treatment

under order of the court, and no provision is otherwise made by law for payment of the care, examination, or treatment of the child, those costs are a charge upon the welfare funds of the county in which proceedings are held upon certification of the judge of juvenile court.”

Rule 41.06. Hearings to Review Disposition

Subd. 1. Timing. When disposition is an award of legal custody to the responsible social services agency, the court shall review the disposition in court at least every ninety (90) days. Any party or the county attorney may request a review hearing before ninety (90) days. When the disposition is protective supervision, the court shall review the disposition in court at least every six (6) months from the date of disposition.

Subd. 2. Procedure in Reviewing Disposition.

(a) **Legal Custody to Agency With Foster Care.** When the disposition is transfer of legal custody to the responsible social services agency, the court shall conduct a hearing 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. The review shall include the following:

- (1) whether the out-of-home placement plan is relevant to the safety and best interests of the child;
- (2) whether the agency is making reasonable or, in the case of an Indian child, active efforts to implement the requirements of the out-of-home placement plan;
- (3) the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement;
- (4) whether the parents or legal custodian of the child are visiting the child and, if not, what barriers exist to visitation;
- (5) whether the agency has made diligent efforts to identify both parents of the child as required under Minnesota Statutes § 260C.212, subd. 4, and whether the case plan or out-of-home placement plan addresses the need for services of both parents;
- (6) whether the child is receiving appropriate services under the out-of-home placement plan;
- (7) when a child has siblings in foster care:
 - (i) whether the child resides with the siblings;
 - (ii) when the child and siblings are not placed together, whether further efforts are appropriate to place the siblings together; and
 - (iii) when the child and siblings are not placed together, whether there is visitation amongst siblings;
- (8) when a child is not placed with a relative, whether the agency’s efforts under Minnesota Statutes § 260C.212, subd. 5, are adequate; in the case of an Indian child, whether the placement preferences of 25 U.S.C. § 1915 are met;
- (9) when the agency is utilizing concurrent permanency planning, the agency’s efforts to place the child with a relative or a foster parent who has committed to

providing the child's legally permanent home in the event reunification efforts are not successful; and

(10) whether the parent or legal custodian understands the requirements of Minnesota Statutes § 260C.201, subd. 11, related to the required permanency placement determination hearing, including the projected date by which the child will be returned home or the hearing will be held.

(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; and

(3) the court shall conduct a hearing to determine whether the trial home visit continues to be necessary.

(c) **Protective Supervision in Home of Parent.** When the disposition is protective supervision of the child in the home of a custodial parent, the court shall conduct a review hearing at least every six (6) months. When the disposition is protective supervision of the child in the home of a noncustodial parent, the court shall conduct a review hearing at least every ninety (90) days. At the hearing, the court shall review:

(1) whether the agency has submitted a case plan for the parents or legal custodian and child as required under Rule 37;

(2) after the agency has submitted a plan to the court as required under Rule 37, whether the plan continues to be relevant to the safety and best interests of the child;

(3) whether the agency is making appropriate efforts to implement the plan;

(4) whether the agency, child's attorney and the guardian ad litem have reasonable access to the child to determine the child's safety, health, and well-being;

(5) whether the parents or legal custodian are able to utilize the services set out in the plan to correct the conditions which led to the court's determination that the

child is in need of protection or services, and if not, what other services might be appropriate; and

(6) whether the child is receiving necessary services identified in the plan and whether those services are meeting the best interests of the child.

Subd. 3. Procedure. Any party or the county attorney may seek modification of a disposition order by motion made pursuant to Rule 15. The motion may be heard at the scheduled review hearing or at an earlier date or may be considered by the court without hearing if no party objects.

Subd. 4. Modification of Disposition; Modification of Case Plan or Out-of-Home Placement Plan.

(a) **Agreement.** The court, on its own motion or that of any party, may modify the disposition or order the case plan or out-of-home placement plan modified when all parties agree the modification is in the best interests of the child and:

(1) a change of circumstances requires a change in the disposition or modification of the case plan or out-of-home placement plan; or

(2) the original disposition or case plan or out-of-home placement plan is inappropriate.

(b) **Objection.** If a party objects to a proposed modification, or if the child does not have a guardian ad litem at the time the motion is made, the court shall schedule a hearing for the next available date. A party has a right to request a court review of the reasonableness of the case plan or out-of-home placement plan upon a showing of a substantial change in circumstances. The court may also:

(1) order the agency to make further efforts to identify and place a child with a relative if the court finds the agency has failed to perform duties required under Minnesota Statutes § 260C.212, subs. 2 and 5; or

(2) find that the agency has performed required duties under Minnesota Statutes § 260C.212, subd. 5, and no further efforts to locate relatives are required; or

(3) in the case of an Indian child, unless good cause is found under 25 U.S.C. § 1915, order the agency to make additional efforts to comply with the placement preferences of 25 U.S.C. § 1915.

Subd. 5. Notice. Notice of the review hearing shall be given to all parties and participants.

Subd. 6. Procedure. Review hearings shall be conducted pursuant to Rule 41.04.

Subd. 7. Findings and Order. In the event the disposition is modified, the court shall issue a disposition order in accordance with Rule 41.05.

RULE 42. PERMANENT PLACEMENT MATTERS

Rule 42.01. Timing and Purpose

Subd. 1. Timing. In the case of a child who has been alleged to be in need of protection or services, the court in its first order shall set the date or deadline for the permanent placement determination hearing, and 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. Not later than when the court sets the date or deadline for the permanent placement determination 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. 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 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.

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

Subd. 2. Purpose.

(a) **Any Child in Foster Care or in Home of a Noncustodial Parent.** The purpose of the permanent placement determination hearing 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 consistent with the child's best interests.

(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.

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 42.04. Procedures for 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 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:

(a) **Written Report.** Not later than ten (10) days prior to the hearing, the county attorney 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 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. A trial on the petition shall be held as provided in subdivision 1(c).

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

(1) if the court has either returned the child home or 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, 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. 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.

(a) **Admit-Deny Hearing on Permanency Petition.** The court shall commence and complete an admit/deny hearing on the permanency petition 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.

(b) **Petition or Motion.** Unless the responsible social services agency recommends return of the child to the custodial parent or files a motion pursuant to Rule 42.06, not later than thirty (30) days prior to the admit/deny hearing required in 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 Rule 42.05.

(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 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. 2. Order.

(a) **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:

- (i) the child returned on a trial home visit pursuant to Rule 41.05, subd. 2(a)(3);
- (ii) the child placed under the protective supervision of the responsible social services agency under Rule 41.05, subd. 2(a)(1); or
- (iii) monitoring of the parent's continued ability to maintain the child safely in the home under Rule 41.05(a)(6).

(b) **Transfer of Permanent Legal and Physical Custody.** 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. The court may maintain 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 court may order further in-court hearings at such intervals as it determines to be in the best interests of the child. 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 shall be brought in the family court pursuant to Minnesota Statutes § 518.18. Notice of any family court proceedings shall be provided 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). 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. 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.

(c) **Termination of Parental Rights.**

(1) Unless the responsible social services agency has already filed a termination of parental rights petition, the court may order such a petition be filed pursuant to Rule 33.01.

(2) When a child has been in placement fifteen (15) of the last twenty-two (22) months, if the court finds following a trial on a termination of parental rights

petition that the petition is not proven or that termination of parental rights is not in the child's best interests, the court must order the child returned to the care of the parent unless the court approves the responsible social services agency's determination of compelling reasons why the child should remain out of the care of the parent. If the court orders the child returned to the care of the parent, the court may order a trial home visit, protective supervision, or monitoring under Rule 41.05, subd. 2.

(d) **Guardianship and Legal Custody to the Commissioner of Human Services.** The court may award guardianship and legal custody to the Commissioner of Human Services under the following procedures and conditions:

(1) 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 except that such consent 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;

(2) the matter is reviewed in court at least every ninety (90) days under the requirements of Rule 43.03 as if a termination of parental rights had occurred; and

(3) 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.

(e) **Long-term Foster Care.**

(1) 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, 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.

(3) 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.

(f) **Foster Care for a Specified Period of Time.**

(1) 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, are met.

(2) 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.

(g) Continued Reviews for Long-term Foster Care and for Foster Care for a Specified Period of Time.

(1) 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 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.

(h) Modifying an Order for Long-term Foster Care.

(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.

(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 and that such an option is in the child's best interests.

(a) 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.

(b) 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:

- (i) that the relative is fit and willing; and
- (ii) that the transfer is in the best interest of the child.

(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.

(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.

(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).

Rule 42.06. Motion by Responsible Social Services Agency to Modify Adjudication and Transfer of Custody Order for a Child Who Continues in Placement Due Solely to the Child's Emotional Disturbance or Developmental Disability.

Subd. 1. Motion to Continue Foster Care on Voluntary Basis When Conditions Leading to Foster Care Placement Have Been Corrected. If a child diagnosed with developmental disability or emotional disturbance has been ordered into foster care under Minnesota Statutes §§ 260C.178 or 260C.201 and the conditions that led to the court's order have been corrected so that the child could safely return to the care of the parent or guardian except for the child's need for continued placement to access necessary treatment or services, the responsible social services agency may file a motion pursuant to Rule 15 to vacate the finding that the child is in need of protection or services, to vacate the award of custody to the responsible agency, and to proceed under Rule 44.02, subd. 1(b).

- (a) **Affidavit.** The motion shall be supported by an affidavit setting forth:
- (i) the agency's reasonable efforts to finalize a permanent plan for the child including returning the child home;
 - (ii) the agency's compelling reasons why a permanent placement need not be ordered under Minnesota Statutes § 260C.201, subd. 11; and
 - (iii) why the voluntary placement is in the child's best interests.

(b) **Timing of Motion.** The motion must be filed no later than the time a permanent placement determination hearing is required under this Rule.

Subd. 2. Contemporaneous Execution of Voluntary Placement Agreement. At the time scheduled for the court to hear the agency's motion under subdivision 1, the parent or legal custodian and agency may execute a voluntary placement agreement when the court approves the child's continued foster care placement as a voluntary arrangement.

Subd. 3. Required Findings to Proceed under Rule 44.02, subd. 1. When the parent or legal custodian executes a voluntary placement agreement, the court may proceed under Rule 44.02, subd. 1, if it grants the responsible social services agency's motion and finds that:

- (a) the conditions which led to the foster care placement of the child have been corrected such that the child could safely return home;
- (b) the child needs to continue in foster care due solely to the child's emotional disturbance or developmental delay;
- (c) there are compelling reasons to approve the continued voluntary arrangement; and
- (d) the agency has made reasonable efforts to finalize a permanent plan for the child.

Subd. 4. Vacate Adjudication and Order for Legal Custody to Responsible Social Services Agency. When the court makes the findings required under subdivision 3, the court may vacate the finding that the child is in need of protection or services and the order transferring legal custody to the responsible social services agency and proceed under Rule 44.02, subd. 1. A finding that the court approves the continued voluntary placement means that the responsible social services agency has continued legal responsibility for the child's placement due to the voluntary placement agreement and that the parent may terminate the voluntary agreement as provided in Minnesota Statutes § 260C.212, subd. 4(c)(2), or, in the case of an Indian child, as provided in Minnesota Statutes § 260.765, subd. 4.

RULE 43. TERMINATION OF PARENTAL RIGHTS MATTERS

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 placements made pursuant to Minnesota Statutes § 260C.212, subs. 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. 2. Other Voluntary Placements.

(a) **Petition.** In the case of a child in voluntary foster care placement pursuant to Minnesota Statutes § 260C.212, subd. 8, 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 case 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.

(b) **Hearing.** The matter shall be set for hearing within twenty (20) days of service.

(c) **Findings.** If 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.

(d) **Approval of Placement.** If the court makes the findings required pursuant to subdivision 2(c), the court shall approve the voluntary placement arrangement without requiring any party to admit or deny the petition and continue the matter for ninety (90) days to assure the child returns to the parent's home.

(e) **Further Proceedings.**

(1) 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. If the child does not return home within the ninety (90) days approved by the court, the matter shall be returned to court for further proceedings pursuant to Rule 34.

(2) If the court or any party, including the child, disagrees with the voluntary placement or the sufficiency of the services offered by the responsible social services agency, 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. If the court makes required findings pursuant to Rule 30, the court may order the child in protective care.

(f) **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(c)(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.

RULE 45. POST-TRIAL MOTIONS

Rule 45.01. Procedure and Timing

Subd. 1. Timing. All post-trial motions shall be filed within 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.

Subd. 2. Basis of Motion. A post-trial motion shall be made and decided on the files, exhibits, and minutes of the court. Pertinent facts that would not be a part of the minutes may be shown by affidavit except as otherwise provided by these rules. A full or partial transcript of the court reporter's notes of the testimony taken at the trial or other verbatim recording thereof may be used in deciding the 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 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.

Rule 45.02. New Trial on Court's Own Motion

Not later than fifteen (15) days after finding that the statutory grounds set forth in the petition are or are not proved, the court may upon its own initiative order a new trial for any reason for which it might have granted a new trial on a motion. After giving appropriate notice and an opportunity to be heard, the court may grant a motion for a new trial, timely served, for reasons not stated in the motion. In either case, the court shall specify in the order the basis for ordering a new trial.

Rule 45.03. Amendment of Findings.

Upon motion, the court may amend its findings or make additional findings, and may amend the order accordingly. The motion may be made with a motion for a new trial and may be made on the files, exhibits, and minutes of the court. The question of

sufficiency of the evidence to support the findings may be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend the order.

Rule 45.04. Grounds for New Trial

A new trial may be granted on all or some of the issues for any of the following reasons:

- (a) irregularity in the proceedings of the court, referee, or prevailing party, or any order or abuse of discretion whereby the moving party was deprived of a fair trial;
- (b) misconduct of counsel;
- (c) fraud, misrepresentation, or other misconduct of the county attorney, any party, their counsel, or their guardian ad litem;
- (d) accident or surprise that could not have been prevented by ordinary prudence;
- (e) material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the trial;
- (f) errors of law occurring at the trial and objected to at the time, or if no objection need have been made, then plainly assigned in the motion;
- (g) a finding that the statutory grounds set forth in the petition are proved is not justified by the evidence or is contrary to law; or
- (h) if required in the interests of justice.

Rule 45.05. Decision

The court shall rule on all post-trial motions within fifteen (15) days of 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.

Rule 45.06. Relief

In response to any post-trial motion, including a motion for a new trial, the court may:

- (a) conduct a new trial;
- (b) reopen the proceedings and take additional testimony;
- (c) amend the findings of fact and conclusions of law; or
- (d) make new findings and conclusions as required.

RULE 46. RELIEF FROM ORDER

Rule 46.01. Clerical Mistakes

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

Rule 46.02. Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud

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

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

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

Rule 46.03. 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 petition to invalidate such action upon a showing that such action violates the Indian Child Welfare Act, 25 U.S.C. §§ 1911–1914. The form and content of the petition shall be in writing and shall be governed by Rule 33.

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.

RULE 47. APPEAL

Rule 47.01. Applicability of Rules of Civil Appellate Procedure

Except as provided in Rule 47.02, appeals of juvenile protection matters shall be in accordance with the Rules of Civil Appellate Procedure.

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 adjudging a child to be in need of protection or services, neglected and in foster care.

Subd. 2. Timing. Any appeal shall be taken within thirty (30) days of the service of notice by the court administrator of the filing of the court's order. In the event of the filing and service of a timely and proper post-trial motion under Rule 45, or 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, subdivisions 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.

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

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

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

Rule 47.03. Application for Stay of Trial Court Order

The service and filing of a notice of appeal does not stay the order of the juvenile court. The order of the juvenile court shall stand pending the determination of the appeal, but the juvenile court may in its discretion and upon application stay the order. If the juvenile court denies an application for stay pending appeal, upon motion, a stay may be granted by the court of appeals.

Rule 47.04. Right to Additional Review

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

Rule 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.

Rule 47.06. Time for Rendering Decisions

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