

STATE OF MINNESOTA
IN SUPREME COURT

ADM10-8046

**ORDER PROMULGATING AMENDMENTS TO
THE RULES OF PROCEDURE GOVERNING PROCEEDINGS
UNDER THE MINNESOTA COMMITMENT AND TREATMENT ACT**

The Minnesota Supreme Court Advisory Committee on the Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act has proposed amendments to the rules to accommodate the transition by the judicial branch to a more universal electronic environment. Specifically, the committee recommends amendments to the rules to permit electronic service, filing, distribution, and signing of documents. The committee also recommends amendments to update the rules, address legislative changes, and clarify the public, including remote, access to civil commitment case records.

In an order filed January 2, 2015, the court provided a public comment period on the proposed amendments to the Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act. The court also scheduled a public hearing on March 17, 2015 to consider issues related to public access to judicial branch records that may be presented by the amendments recommended to these rules. One written comment was received that raised concerns regarding parity in access to electronic records and provided suggestions on possible future rule amendments.

The court has carefully considered the committee's recommendations, as well as the comment. The court agrees with the recommended amendments, with the exception of some amendments proposed for Rule 13. Based on all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The attached amendments to the Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act be, and the same are, prescribed and promulgated to be effective in all cases pending on or after July 1, 2015, except that amended rules 13 and 21 shall apply only to pleadings and other documents submitted to, filed with, or filed by the court on or after July 1, 2015.

2. The inclusion of committee comments is for convenience and does not reflect court approval of the comments.

3. The Advisory Committee for the Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act shall continue to serve and monitor the rules and these amendments during the expansion of electronic filing and electronic service in the district courts and by April 1, 2016, report to the court concerning any additional or new amendments to the rules deemed necessary by the committee.

Dated: April 22, 2015

BY THE COURT:

Lorie S. Gildea
Chief Justice

STATE OF MINNESOTA
IN SUPREME COURT

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MEMORANDUM

PER CURIAM.

In July 2014, we directed the Advisory Committee on the Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act to consider whether amendments to the rules were needed to accommodate the transition by the judicial branch to a more universal electronic environment. The committee met several times in 2014, and on December 23, 2014, filed a report and recommendations for amendments to several rules. These recommended amendments: (a) add language permitting electronic filing, service, distribution, and signatures, where appropriate; (b) update rule language based on legislative amendments or current terminology for commitment matters; (c) propose procedures for a future pilot project on the voluntary electronic transfer and storage of medical records; and (d) clarify public access, including remote access, to civil commitment case records.

We provided a public comment period, and as it relates to the proposed amendments to these rules, received written comments from Kurt Anderson that offered proposals for possible future rule amendments. Anderson also offered comments on parity in access among case participants to provider and medical records for civil commitment cases.

We agree with the committee's recommended amendments, with one exception, the amendments proposed as Rule 13(c)-(g). These proposed amendments present new procedures based on a pilot project that will be authorized by separate order. Because the procedures that will govern the pilot project will be addressed in that order, the recommended amendments for new language in Rule 13 as paragraphs (c)-(g) are not adopted here.

We refer to the committee the comments of Kurt Anderson to consider in future deliberations on possible rule amendments. We appreciate the thorough and thoughtful work of the committee in completing this work in the time frame established to allow implementation of e-filing and e-service as recommended by the eCourtMN Steering Committee.

AMENDMENTS TO THE RULES OF PROCEDURE GOVERNING PROCEEDINGS UNDER THE MINNESOTA COMMITMENT AND TREATMENT ACT

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

Rule 3. Service And Filing; Signing of Documents

Whenever a person is required to give or serve any document under this chapter to any party, attorney, or entity other than the court, service ~~shall~~may be made in any manner ~~provided~~allowed under the Minnesota Rules of Civil Procedure and the General Rules of Practice for the District Courts. Attorneys for both parties must also be served whether or not service upon counsel is specifically required by statute.

Where electronic filing is authorized or required under Minnesota General Rules of Practice 14, documents shall be filed in accordance with that rule.

Notwithstanding Minn. Stat. § 253B.23, subd. 3a, a signature on an electronic document filed in a proceeding subject to these rules is valid if it complies with General Rules of Practice 14.04.

* * *

Rule 6. Commencement

A proceeding for commitment or early intervention is commenced upon filing a petition with the District Court pursuant to Minn. Stat. ch. 253B or Minn. Stat. ch. 253D.

~~The petition should be filed in the county of financial responsibility as defined in Minn. Stat. § 253B.045, subd. 2. If the county of financial responsibility refuses to file a petition, the county where the respondent is present must file the petition if statutory conditions for commitment are present. Financial responsibility for the costs of the proceedings and treatment will be resolved by subsequent administrative process.~~

Advisory Committee Comment—2015 Amendments

Various statutes set forth where pre-petition screenings are conducted, where petitions are filed, and which county is the county of financial responsibility. See Minn. Stat. § 253B.23, subd. 1b (2014). The committee determined the statute supersedes the second paragraph of Rule 6 and as such, the second paragraph of the former rule no longer serves a purpose.

* * *

Rule 8. Summons

Once a petition has been filed, the court shall issue a summons to be personally served upon the respondent. The summons shall direct the respondent to appear at the times and places stated in the summons for psychiatric, psychological, and medical examination and court hearing. The summons shall state in bold print that an order to apprehend and hold the respondent may be issued if the respondent does not appear as directed. The court need not issue a summons if the respondent is already under a medical or judicial hold.

The court shall direct that a copy of the pre-petition screening report, the petition, and the examiner's supporting statement be personally served upon the respondent with the summons if issued, and that a copy be distributed or electronically transmitted through the E-Filing System to the petitioner, ~~the proposed patient,~~ the respondent's patient's counsel, the county attorney, ~~and~~ any person authorized by the ~~patient~~respondent, and any other person as the court directs.

* * *

Rule 10. Attorney-Client Privilege

The content of attorney-client communications by telephone, mail, electronic means, or conference at the facility, shall not be monitored, censored, or made part of a respondent's medical record. The facility may open and inspect, but not read, a letter or package, and must do so in the respondent's presence.

* * *

Rule 12. Examiner Reports

Each court-appointed examiner shall examine the respondent and prepare and file with the court a separate report stating the examiner's opinion and the facts upon which the opinion is based. The report shall address:

(a) Whether the respondent is mentally ill, ~~mentally retarded~~developmentally disabled, chemically dependent, mentally ill and dangerous to the public, a sexually dangerous person, or a sexual psychopathic personality;

(b) Whether the examiner recommends commitment;

(c) The appropriate form, location, and conditions of treatment, including likelihood of the need for treatment with neuroleptic medication; and

(d) The respondent's capacity to make decisions about neuroleptic medication, if needed; and.

(e) —If the petition alleges that the respondent is mentally ill and dangerous to the public, the report shall also address whether there is a substantial likelihood that respondent will engage in acts capable of inflicting serious physical harm on another.

(f) —If the petition alleges that the respondent is a sexual psychopathic personality and/or a sexually dangerous person, the report shall address each element set out in Minn. Stat. § 253D.02, subs. 11 and 12 respectively, including an opinion as to the likelihood that the respondent will engage in future dangerous behavior.

The court shall ~~send~~ distribute or electronically transmit through the E-Filing System a copy of the examiner's report to the ~~petitioner's~~ county attorney, the respondent, and respondent's attorney immediately upon receiving the report.

Rule 13. Medical Records

(a) Medical Records – Defined. For purposes of these rules, “medical records” are records and reports prepared by medical, healthcare, and/or scientific professionals that relate to the past, present, or future physical or mental health or condition of an individual, including but not limited to medical histories, examinations, diagnoses and treatment, pre-petition screening reports, court-appointed examiner's reports prepared pursuant to Rule 12 of these rules, and any other records designated by the presiding judge as medical records for purposes of this rule.

(b) Access to Respondent's Medical Records. The county attorney, respondent, respondent's attorney, court-appointed examiner, guardian ad litem, substitute decision-maker, and their agents and experts retained by them shall have access to all of the respondent's medical records and the reports of the court-appointed examiners. The records and reports may not be disclosed to any other person without court authorization or the respondent's signed consent. Except for a preliminary hearing, each party shall disclose to the other party or parties at least 24 hours as soon as possible in advance of the hearing which of the respondent's medical records the party intends to introduce at the hearing.

Advisory Committee Comment—2015 Amendments

Rule 13(b) is language retained, substantially unchanged, from the former Rule 13. The only modification concerns the elimination of a specified time frame for the disclosure of all medical records that parties intend to introduce at the hearing. The advisory committee believes that parties should continue to aspire to meet the former 24-hour deadline whenever possible, but recognizes that frequently, in practice, attorneys and parties do not receive respondent's medical records until immediately before the hearing. Accordingly, the disclosures should be made as soon as possible after receiving the records.

*The amendments to Rule 13 are not intended to modify or limit the right of a respondent to request a protective order excluding from examiner review medical records which are not relevant or germane to the present mental and/or physical condition of the respondent in accordance with the procedures established in *In re D.M.C.*, 331 N.W.2d 236 (Minn. 1983).*

Rule 14. Location of Hearing, Rules of Decorum, Alternative Methods of Presenting Evidence

The judge or judicial officer shall assure the decorum and orderliness of any hearing held pursuant to Minn. Stat. ch. 253B or Minn. Stat. ch. 253D. The judge or judicial officer shall afford to respondent an opportunity to be dressed in conformity with the dignity of court appearances.

A hearing may be conducted or an attorney for a party, a party, or a witness may appear by telephone, audiovisual, or other electronic means if the party intending to use electronic means notifies the other party or parties at least 24 hours in advance of the hearing and the court approves. If a witness will be testifying electronically, the notice must include the name, address, and telephone number where the witness may be reached in advance of the hearing. This rule does not supersede Minn. Stat. §§ 595.02-595.08 (competency and privilege). Respondent's counsel will be physically present with the ~~patient~~respondent. The court shall insure that the respondent has adequate opportunity to speak privately with counsel, including, where appropriate, suspension of the audio recording or allowing counsel to leave the conference table to communicate with the client in private.

* * *

Rule 18. Recombitment

For commitments pursuant to Minn. Stat. § 253B.13, the court shall ~~append~~reference the immediately preceding commitment file ~~into~~ the file on the new petition.

Rule 19. Termination of Early Intervention

Any petition for involuntary commitment filed at the termination of court-ordered early intervention under Minn. Stat. § 253B.065 shall be treated as ~~a~~a petition for initial commitment ~~petition and not a recommitment.~~

Advisory Committee Comment—2015 Amendments

Rule 19 is amended for clarity only, and the amendment does not denote a change in law.

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Rule 21. Public Access to Records

(a) Except as provided in these Special Rules, the Rules of Public Access to Records of the Judicial Branch, or ~~and~~ as limited by court order, all court files relating to civil commitment shall be available to the public for inspection, copying, printing, or ~~released~~downloading.

(b) ~~The court administrator shall create a separate section or file in which the pre-petition screening report, court-appointed examiner's report, and all medical records shall be filed with or received by the court. Records in that section or file shall not be disclosed to the public except by express order of the district court. This provision shall not limit the parties' ability of any party, witness, or the court to mention the contents of the pre-petition screening report, court-appointed examiner's report, and medical records in open court or in otherwise publicly accessible pleadings or documents the course of proceedings under Minn. Stat. ch. 253B or Minn. Stat. ch. 253D. Any reference at a public hearing or in an otherwise public document to confidential reports or medical records shall not render the reports or medical records available to the public, or create a sufficient basis for making the reports or records available to the public.~~

(c) Where electronic filing is authorized or required under General Rules of Practice 14, the pre-petition screening report, court-appointed examiner's report, and all medical records filed with the court must be designated as confidential by the filing party. Upon discovery by court administration staff that any pre-petition screening reports,

court-appointed examiner reports, or medical records have not been designated as confidential by the filing party, the court administrator shall designate the document as confidential and notify the filer of the change in designation.

(d) The court may, sua sponte, or upon motion and hearing, issue an order prohibiting public access to civil commitment case records that are otherwise accessible to the public only if the court finds that exceptional circumstances exist.

(e) Except when authorized by order of the presiding judge or the Minnesota Supreme Court, there shall be no public access to case records of proceedings seeking commitment of a minor. The petition for commitment of a minor must be designated as confidential by the filing party. Upon discovery by court administration staff that the petition for the civil commitment of a minor has not been designated as confidential by the filing party, court administration staff shall designate the petition as confidential and notify the filer of the change in designation.

Advisory Committee Comment—2015 Amendments

This rule is amended to clarify public access issues with civil commitment case records. Generally, civil commitment case records are publicly accessible. Rule 4, subdivision 2, of the Rules of Public Access to Records of the Judicial Branch sets forth the procedures for when a court may restrict access to public case records.

Rule 21(b) is amended to remove the requirement for the court administrator to maintain confidential documents in a separate section or file as this requirement is no longer applicable with electronic records. As authorized by these rules and Rule 8, subdivision 5(b) of the Rules of Public Access to Records of the Judicial Branch, all medical records, whether submitted to the court or admitted into evidence, are confidential and shall not be accessible to the public except by express order of the district court. Rule 21(c) establishes the duty of the filing party to properly classify medical records as confidential when filed in the E-Filing System. Medical records introduced and admitted into evidence during a hearing remain confidential even if referenced at a public hearing or in an otherwise public document.

There may be times when otherwise public documents should be kept confidential and Rule 21(d) reminds court users that an order restricting public access may be requested by motion or may issue upon the court's own initiative. However, an order granting such relief must include specific findings that support the order granting the request. Pursuant to Minnesota General Rules of Practice 14.06, a Registered User electronically filing a document that is not accessible to the public is responsible for designating that document as confidential in the E-Filing

System at the time of filing. A Registered User is defined in Minnesota General Rules of Practice 14.01.

The Rules of Public Access to Records of the Judicial Branch clarify that civil commitment case records are publicly accessible at courthouses, to ensure that court administration can ensure confidentiality is preserved when appropriate. Rule 21(e) contains provisions intended to satisfy the public need for safety and oversight, while safeguarding the privacy interests of minors who may become or who are civilly committed. The collateral consequences of public accessibility to civil commitment records can have long-term impact on minor respondents and adversely impact treatment. Rule 21(e) clarifies that case records of any civil commitment of a minor respondent shall not be publicly accessible absent a district court order or order or directive of the Minnesota Supreme Court or its designee.

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Rule 23. Evaluation and Final Hearings in Cases Governed by Minn. Stat. §§ 253B.18, ~~253B.185~~, and ~~Minn. Stat. ch. 253D~~

(a) For persons who have been committed as mentally ill and dangerous to the public, ~~sexually dangerous persons, or as sexual psychopathic personalities,~~ the head of the treatment facility shall file the report required by Minn. Stat. § 253B.18. The evaluation may be conducted at a secure treatment facility or at a correctional facility. If transport is needed, the court shall designate the agency responsible to do it.

(b) Prior to making the final determination with regard to a person initially committed as mentally ill and dangerous to the public, ~~as a sexually dangerous person, or as a sexual psychopathic personality,~~ the court shall hold a hearing. The head of the treatment facility, or his or her designee, shall file the report required by Minn. Stat. § 253B.18, subd. 2. The hearing for final determination shall be held within 14 days of the court's receipt of the report from the head of the treatment facility or within 90 days of the date of initial commitment, whichever is earlier, unless continued by agreement of the parties, or by the court for good cause shown. As its final determination, the court may, subject to Minn. R. Crim. P. 20.01, subd. 4:

- (1) Discharge the respondent's commitment;
- (2) Commit the respondent as mentally ill only, in which case the respondent's commitment shall be deemed to have commenced upon the date of initial commitment, for purposes of determining the maximum length of the determinate commitment; or

(3) Commit the respondent for an indeterminate period as mentally ill and dangerous to the public, ~~as a sexually dangerous person, or as a sexual psychopathic personality.~~

(c) At the request of the respondent, the court shall appoint an examiner of the respondent's choice for purposes of the hearing required by this rule.

(d) The written report of the head of the treatment facility pursuant to Minn. Stat. § 253B.18, subd. 2, shall address the criteria for commitment and whether there has been any change in the respondent's condition since the commitment hearing. The report shall provide the following information:

- (1) the respondent's diagnosis;
- (2) the respondent's present condition and behavior;
- (3) the facts, if any, that establish that the respondent continues to satisfy the statutory requirements for commitment;
- (4) a description of treatment efforts and response to treatment by the respondent during hospitalization;
- (5) the respondent's prognosis;
- (6) the respondent's individual treatment plan;
- (7) an opinion as to whether the respondent is in need of further care and treatment;
- (8) an opinion as to the program or facility best able to provide further care and treatment, if needed;
- (9) an opinion as to whether respondent is dangerous to the public or himself. All supportive data and documentation shall be submitted with ~~attached to~~ the report.

(e) At the hearing, the court shall consider all competent evidence relevant to the respondent's present need for continued commitment. The burden of proof at the hearing is upon the proponent of indeterminate commitment to establish by clear and convincing evidence that the statutory requirements for commitment under Minn. Stat. ch. 253B ~~or Minn. Stat. ch. 253D~~ continue to be met.

Advisory Committee Comment—2015 Amendments

Rule 23 is amended to conform to the statutory abrogation of the initial commitment period and review hearing for respondents committed as sexually dangerous persons and/or persons with a sexual psychopathic personality. All such commitments are now for an indeterminate period of time under Minn. Stat. § 253D.07, subd. 4. The amendment is not intended to modify or limit the rights of respondents committed under petitions filed prior to the statutory change of section 253B.18. See 2011 Minn. Laws, ch. 102, art. 3, § 1 (effective May 28, 2011).