

Rule 17. Discovery**17.01 Applicability**

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

17.02 Regulation of Discovery

Discovery in adoption matters shall be governed by Rules 26 through 37 of the Minnesota Rules of Civil Procedure, except discovery for a contested adoptive placement under Minnesota Statutes, section 260C.607, is governed by Rule 17 of the Rules of Juvenile Protection Procedure.

(Amended effective July 1, 2014.)

2014 Advisory Committee Comment

Rule 17.02 provides clarification that discovery in the case of a contested adoptive placement for a child under the guardianship of the Commissioner of Human Services is governed by the Rules of Juvenile Protection Procedure. This results from changes to the requirements of Minnesota Statutes, chapters 259 and 260C. In 2012, most adoption procedures regarding children under the guardianship of the commissioner were moved from Minnesota Statutes, chapters 259 to 260C. The relevant provisions in Minnesota Statutes, chapter 260C, include:

1. Requirements for reasonable efforts to finalize the adoption (see Minnesota Statutes, section 260C.605);

2. Strengthening provisions related to concurrent permanency planning, especially:

a. early court review of requirements for ensuring the child's relatives are notified of the child's foster care placement and of the need for a home, including the potential need for a legally permanent home if the child cannot return to the parent (see Minnesota Statutes, section 260C.221); and

b. giving relatives the right to notice of court hearings and to ask to be considered as a placement resource for the child (see Minnesota Statutes, sections 260C.204, 260C.221, and 260C.607); and

3. Clearly articulated state policy giving the responsible social services agency exclusive authority to make the adoptive placement while also providing opportunities for relatives or foster parents who want to be considered for placement to ask the court to direct the agency to take appropriate action to consider them and to challenge the agency's decision regarding the adoptive placement (see Minnesota Statutes, sections 260C.204 and 260C.607).

The purpose of the statutory amendments regarding a child under guardianship of the Commissioner of Human Services and accompanying provisions strengthening relative search and concurrent permanency planning requirements is to help reduce the length of time the child is in foster care and the number of moves the child experiences.

Rule 17.01 of the Minnesota Rules of Juvenile Protection Procedure provides for 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 in a motion under Minnesota Statutes, section 260C.607, is the entity that brought the action making the child a ward of the Commissioner of Human Services

because the motion is brought in the context of the review of progress towards adoption. In the event that access to the file and materials in the petitioner's possession does not provide sufficient information for the movant, Rule 17.04 of the Rules of Juvenile Protection Procedure allows the judge to order additional discovery, including depositions.

Providing that the discovery rule in the Rules of Juvenile Protection Procedure applies to motions challenging adoptive placement decisions of the responsible agency made under Minnesota Statutes, chapter 260C, accomplishes two things:

1. It strikes a balance between the need for expedited decision-making and the child's need for stability with the parties' need to access information, especially when the party has had the ongoing right to raise issues about the agency's placement decision from very early in the proceedings; and

2. It continues the Rules of Juvenile Protection Procedure in effect until an adoption petition is filed. This is a bright line that helps avoid confusion about which rules or parts of rules (the Juvenile Protection Rules or Adoption Rules) apply to proceedings up to the point an adoption petition is filed.