

**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 release of a videotaped statement of a child abuse victim or alleged victim shall be governed by Minnesota Statutes, section 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, section 260E.35.

(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.** The 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 relate 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 12. Attendance of parties at oral deposition shall be ordered by the court when the court grants a motion pursuant to Rule 17.04(b)(2), 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, section 260E.04), so long as it leads to or is reasonably calculated to lead to the discovery of any admissible evidence.

(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 may be discoverable in accordance with Minnesota Statutes, section 260E.04.

(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 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) an order requiring 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.

(Amended effective January 1, 2024.)

#### ***2019 Advisory Committee Comment***

*Rule 17 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 17.01(a) is amended to refer to the "release" of a videotaped statement instead of the "copying" of a videotaped statement, because Minnesota Statutes, section 611A.90, refers to the "release" of the statement. Rule 17.04(b)(4) is amended to provide for a consistent "reasonably calculated to lead to the discovery of admissible evidence" standard for questions asked in depositions, instead of the former language: "reasonably calculated to lead to the discovery of any relevant data." Rule 17.04(c) is amended to reflect that privileged communications "may be" discoverable under Minnesota Statutes, section 626.556, subdivision 8, instead of stating that privileged communications "are" discoverable under the statute. Minnesota Statutes, section 626.556, subdivision 8, abrogates some privileges, but does not abrogate all privileges. The amendments are intended to ensure the Rule's language is consistent with the statutory language. The amendments are not intended to substantively change the Rule's meaning.*