

Rule 4. Accessibility to Case Records

Subdivision 1. Accessibility. Subject to subdivision 4 of this rule (Records Referring to Information in Non-Public Documents) and Rule 8, subdivision 5 (Access to Certain Evidence), the following case records are not accessible to the public:

(a) *Domestic Abuse and Harassment Records.*

(1) Records maintained by a court administrator in accordance with the domestic abuse act, Minnesota Statutes, section 518B.01, until a court order as authorized by Minnesota Statutes, section 518B.01, subdivision 5 or 7, is served upon the record subject who is the respondent to the action.

(2) Records of harassment restraining order proceedings maintained by a court administrator in accordance with Minnesota Statutes, section 609.748, until a court order as authorized by Minnesota Statutes, section 609.748, is served upon the record subject who is the respondent to the action. Upon the petitioner's request, information maintained by the court regarding the petitioner's location or residence is not accessible to the public but may be disclosed to law enforcement for purposes of service of process, conducting an investigation, or enforcing an order.

(3) A law enforcement information form provided by the petitioner in a proceeding under clause (1) or clause (2) of this rule. "Law enforcement information form" means a document in the form of OFP105 or HAR103 as published by the state court administrator on the website www.mncourts.gov. A law enforcement information form may be disclosed to law enforcement for purposes of service of process, conducting an investigation, or enforcing an order.

(b) *Court Services Records.* Records on individuals maintained by a court that are gathered at the request of a court to:

(1) determine an individual's need for counseling, rehabilitation, treatment or assistance with personal conflicts (including, without limitation, support or attendance letters, e.g., regarding Alcoholics Anonymous, submitted by or for a party),

(2) assist in assigning an appropriate sentence or other disposition in a case (including, without limitation, disposition advisor memoranda or reports in criminal matters),

(3) provide the court with a recommendation regarding the custody of minor children,
or

(4) provide the court with a psychological evaluation of an individual.

Provided, however, that this paragraph (b) does not apply to social services reports and guardian ad litem reports to the court in juvenile protection matters governed by the Rules of Juvenile Protection Procedure, which must be filed with the court in accordance with Minn. R. Juv. Prot. P. 8.04, subd. 5(b). In addition, the following information on adult individuals is accessible to the public: name, age, sex, occupation, and the fact that an individual is a parolee, probationer, or participant in a diversion program, and if so, at what location; the offense for which the individual was placed under supervision; the dates supervision began and ended and the duration of supervision; information which was public in a court or other agency which originated the data; arrest and detention orders; orders for parole, probation or participation in a diversion program and the extent to which those conditions have been or are being met; identities of agencies, units within agencies and individuals providing supervision; and the legal basis for any change in supervision and the date, time and locations associated with the change.

(c) *Judicial Work Product and Drafts.* All notes and memoranda or drafts thereof prepared by a judge or by a court employed attorney, law clerk, legal assistant or secretary and used in the process of preparing a final decision or order, except the official minutes prepared in accordance with Minnesota Statutes, sections 546.24 and 546.25.

(d) *Juvenile Appeal Cases.* Case records arising from an appeal from juvenile court proceedings that are not open to the public, except the appellate court's written opinion or unless otherwise provided by rule or order of the appellate court.

(e) *Race Records.* The contents of completed race census forms obtained from participants in criminal, traffic, juvenile and other matters, and the contents of race data fields in any judicial branch computerized information system, except that:

(1) the records may be disclosed in bulk format if the recipient of the records:

(A) executes a nondisclosure agreement in a form approved by the state court administrator in which the recipient of the records agrees not to disclose to any third party any information in the records from which either the identity of any participant or other characteristic that could uniquely identify any participant is ascertainable; and

(B) obtains an order from the Supreme Court authorizing the disclosure;

(2) A juror's race may be disclosed to the parties or their attorneys as part of the juror profile information unless otherwise provided by law or court rule.

Nothing in this section (e) shall prevent public access to source documents such as complaints or petitions that are otherwise accessible to the public.

(f) *Medical Records.* Records in civil commitment cases, or in other cases if they are submitted under a non-public cover sheet or using an electronic filing code designated for non-public documents as provided in Rules 11.03(a) and 14.06 of the General Rules of Practice for the District Courts, that are from medical, health care, or scientific professionals (including but not limited to reports and affidavits) that are of the following types:

(1) Records that relate to the past, present, or future physical or mental health or condition of an individual, including but not limited to medical history, examinations, diagnoses and treatment, pre-petition screening reports, and court-appointed examiner reports and any other records designated by the presiding judge as medical records; and

(2) Records on genetic information. For purposes of this rule, "genetic information" means information about a specific human being that is derived from the presence, absence, alteration, or mutation of a gene or genes, or the presence or absence of a specific deoxyribonucleic acid or ribonucleic acid marker or markers, and which has been obtained from an analysis of an individual's biological information or specimen or the biological information or specimen of a person to whom an individual is genetically related.

(g) *Request for Assistance Other Than Counsel and Any Resulting Order.* A request made under Minnesota Statutes, section 611.21, for assistance other than counsel and any resulting order. The register of actions may publicly disclose the existence of the request and the order granting or denying the request, but not the substance of the assistance sought or granted.

(h) *Response to Petition for Criminal Expungement.* A response to a petition for expungement filed with the court under Minnesota Statutes, section 609A.03, shall not include any confidential or private data except on a separate document clearly marked as sealed or confidential, provided that the petition included or was accompanied by a request by the petitioner to seal or declare as

not accessible to the public any private or confidential data as defined by Minnesota Statutes, chapter 13, included in a response to the petition by an agency or jurisdiction that is subject to Minnesota Statutes, chapter 13. When submitting a response and separate document via the court's E-Filing System, the agency or jurisdiction filing the separate document must also appropriately designate the separate document as sealed or confidential by selecting the appropriate designation in the court's E-Filing System. The agency or jurisdiction filing a response to the petition shall be entirely responsible for ensuring compliance with this rule. The court administrator is not responsible for reviewing filings for compliance with this rule. The court may issue appropriate sanctions for failure to comply with this rule.

(i) *Will Deposited for Safekeeping During Testator's Lifetime.* A will deposited with the court for safekeeping under Minnesota Statutes, section 524.2-515, except that upon proof of a testator's death the existence of the testator's will on deposit with the court may be publicly disclosed. Access to the will during the testator's lifetime by the testator, testator's attorney or agent, guardian or conservator is governed by Minn. Gen. R. Prac. 418. The court, following notice of the testator's death, may deliver the will to the appropriate court and may order that copies of the will be provided to appropriate persons.

(j) *Administrative Warrants.* All records of a request, and any resulting order, submitted pursuant to Minnesota Statutes, section 182.659, subdivisions 6, 7 (Occupational Safety and Health Inspection), Minnesota Statutes, section 299F.08, subdivision 2 (authorization for entry by state fire marshal), Minnesota Statutes, section 340A.704 (authorization for search warrants for liquor law violations), and for housing code inspections authorized pursuant to *Camara v. Municipal Court*, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967), and *McCaughtry v. City of Red Wing*, 831 N.W.2d 518 (Minn. 2013), unless and until the search or inspection authorized by the court has been completed, except by order of the court or consent of the official submitting the request. The person seeking to file the request for warrant/inspection shall contact the court administrator, who will establish a confidential file in the court's case records management system and provide the file number to the person seeking to file, who may then submit the request for warrant/inspection for filing into that court case file.

(k) *Motion to Enforce or Quash Attorney General or County Attorney Subpoena.* A request for an order enforcing or quashing an administrative subpoena issued pursuant to Minnesota Statutes, section 8.16 or 388.23, unless and until authorized by order of the court. The person seeking to file the request shall contact the court administrator, who will establish a confidential file in the court's case records management system and provide the file number to the person seeking to file, who may then submit the request for filing into that court case file.

(l) *Release of Video Recordings for Use in Administrative Hearing.* All records of a petition, and any resulting order, submitted pursuant to Minnesota Statutes, section 611A.90, seeking release of or access to a video recording of a child victim or alleged victim alleging, explaining, denying, or describing an act of physical or sexual abuse as part of an investigation or evaluation of the abuse and for use as provided in an administrative proceeding (see, e.g., Minnesota Statutes, section 256.045, subdivision 4), except by order of the court. The person seeking to file the petition shall contact the court administrator, who will establish a confidential file in the court's case records management system and provide the file number to the person seeking to file, who may then submit the request for order for filing into that court case file.

(m) *Minor Victim Identifying Information.*

(1) *Where Applicable.* Except as otherwise provided by order of the court, information that specifically identifies a victim who is a minor at the time of the alleged offense or incident in the following cases:

(A) criminal or juvenile delinquency or extended jurisdiction juvenile cases involving a petition, complaint, or indictment issued pursuant to Minnesota Statutes, section 609.322, 609.342, 609.343, 609.344, 609.345, 609.3451, or 609.3453;

(B) commitment proceedings related to a case in (A) above, in which supervisory responsibility is assigned to the presiding judge under Minn. R. Crim. P. 20.01, subd. 7, or 20.02, subd. 8(4);

(C) judicial review pursuant to Minnesota Statutes, section 256.045, subdivision 7, of maltreatment determinations made under Minnesota Statutes, section 626.556, that involve allegations of sexual abuse as defined by Minnesota Statutes, section 626.556, subdivision 2(d).

(2) *Burden on Filer.* No person shall submit information that specifically identifies a minor victim on any pleading or document filed with the court in the above cases except on a separate, confidential document entitled Confidential Victim Identifier Information. It shall not be a violation of this rule for a pleading or document to include generic references, including but not limited to "the victim" or "Child 1," and, unless otherwise ordered by the presiding judge, the victim's initials and year of birth.

(3) *Other Information Unaffected.* Nothing in this rule authorizes denial of access to any other data contained in the records, including the identity of the defendant.

(4) *Exception: Transcript.* Unless otherwise directed by the presiding judge, identifying information on a minor victim under this rule need not be redacted from a transcript of a public proceeding before such transcript is disclosed to the public.

(n) *Pre-Adjudication Paternity Proceedings In Cases Filed Before January 1, 2021.* Records of proceedings in cases filed before January 1, 2021, to determine the existence of parent-child relationship under Minnesota Statutes, sections 257.51 to 257.74, provided that the following are public: the final judgment under section 257.70(a) (minus findings of fact and restricted identifiers under Minn. Gen. R. Prac. 11), affidavits filed pursuant to Minnesota Statutes, sections 548.09 to 548.091, to enforce the judgment, and all subsequent proceedings seeking to modify or enforce the judgment except an appeal of the initial, final judgment. The subsequent proceedings shall be brought in the same case file provided that the register of actions in the case shall then be made public but identifying information on persons who were alleged to be the parent of the child but were not adjudicated as such parent will remain nonpublic, and documents that were not previously public will also remain nonpublic except that the register of actions may publicly reflect the existence of the document and its title.

(o) *Death Certificates.* A certificate of death issued by the proper governmental authority except to the extent that the certificate, or a redacted version of the certificate, has been formally admitted into evidence in a testimonial hearing or trial. The burden shall be on any filer e-filing a death certificate to classify the certificate as confidential. If it comes to the attention of the court administrator that a death certificate has not been appropriately classified as required under this rule the court administrator shall classify the document as confidential and notify the parties and the presiding judge of the classification change.

(p) *Information From DPS for Collection of Court Debt.* Social Security numbers obtained by the judicial branch from the Department of Public Safety for the purposes of collection of court debts.

(q) *Voluntary Foster Care for Treatment.* Records of judicial reviews of voluntary foster care for treatment under Minnesota Statutes, section 260D.06 (Records of voluntary foster care

proceedings under Minnesota Statutes, section 260D.07, are accessible to the public as authorized by these rules and by Minn. R. Juv. Prot. P., see clause (v)(2)(D), below.).

(r) *Juvenile Protection Case Records Child Name Search Results.* In juvenile protection case records, searching by a child's name shall not provide results through any public name search functionality provided by the court. For purposes of this rule "child" is defined as set forth in Minn. R. Juv. Prot. P. 2.01(5).

(s) *Images Containing Sexual Content or Nudity.* Any of the following images, or internet addresses described in a court filing as linking to any of the following images:

(1) images that are "obscene" as defined in Minnesota Statutes, section 617.241;

(2) images that constitute "pornographic works" involving minors as defined in Minnesota Statutes, section 617.246, subdivision 1, paragraph (f);

(3) images containing depictions of actual or simulated "sexual conduct" as defined in Minnesota Statutes, section 617.246, subdivision 1, paragraph (e), regardless of the age of the individuals depicted in the image;

(4) images that are "private sexual images" covered by Minnesota Statutes, section 604.31; or

(5) images that depict nudity.

(t) *Drivers' Licenses and Passports.* An image of a state government driver's license or identification card, or a United States passport or passport card.

(u) *In Forma Pauperis Denials.* An order denying permission to commence or defend any civil action or appeal therein, without prepayment of fees, under Minnesota Statutes, sections 563.01 to 563.02, shall be accessible to the public, but the petition or application seeking such permission, including the financial disclosure, affidavit, and the proposed initial pleadings, shall not be accessible to the public except by court order for good cause shown.

(v) *Other.* Case records that are made inaccessible to the public under:

(1) state statutes, other than Minnesota Statutes, chapter 13, Minnesota Statutes, section 257.70, paragraph (a), and Laws 2020, chapter 86, article 1, which are superseded to the extent inconsistent with these rules;

(2) court rules not inconsistent with these rules, including but not limited to:

(A) Minn. R. Adopt. P. 7 (all adoption case records);

(B) Minn. Spec. R. Ct. App. Family L. Mediation 7, 9 (appellate family mediation confidential information form and selection of mediator form);

(C) Minn. Gen. R. Prac. 114.08, 114.09 (notes, records and recollections of the neutral);

(D) Minn. R. Juv. Prot. P. 8 (various records and data elements in juvenile protection proceedings);

(E) Minn. R. Crim. P. 9.03, subs. 5-7, 18.04, 18.07, 25.01, 26.02, subd. 2, 26.02, subd. 4(4), 26.03, subd. 6, 33.04, 36.06 (in camera discovery materials, grand jury records, closed hearings and records, and search warrants);

(F) Minn. Gen. R. Prac. 313 (2004) (Social Security numbers and tax returns submitted to the court prior to July 1, 2005);

(G) Minn. Gen. R. Prac. 11, 361.02, 361.05, 370.04, 371.04, 372.04, 807(e), 814 (restricted identifiers and financial source documents submitted to the court on or after July 1, 2005; juror records);

(H) Minn. Spec. R. Commitment & Treatment Act 13, 21 (medical records in all commitment matters and all records in proceedings for commitment of a minor);

(I) Minn. R. Civ. App. P. 112 (confidential or sealed portions of the record on appeal);
and

(J) Minn. R. Civ. P. 47.01 (supplemental juror questionnaire).

(3) court orders; or

(4) other applicable law.

The state court administrator shall maintain, publish and periodically update a partial list of case records that are not accessible to the public.

Subd. 2. Restricting Access; Procedure. Procedures for restricting access to case records shall be as provided in the applicable court rules. A court may restrict access to public case records in a particular case only if it makes findings that are required by law, court rule, or case law precedent. The factors that a court must consider before issuing a restrictive order in regard to criminal case records are discussed in Minn. R. Crim. P. 25, *Minneapolis Star & Tribune v. Kammeyer*, 341 N.W.2d 550 (Minn. 1983), and *Northwest Publications, Inc. v. Anderson*, 259 N.W.2d 254 (Minn. 1977). For a discussion of the factors to consider in civil cases, see Minn. R. Civ. P. 26.03 and *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197 (Minn. 1986). For standards to consider in cases involving a child in need of protective services, see Minn. R. Juv. Prot. P. 8.07. For factors to consider in juvenile delinquency cases, see Minn. R. Juv. Del. P. 10.06, subd. 5. For factors to consider for restricting public access to jury records, see Minn. Gen. R. Prac. 814(a).

Subd. 3. Access to Recordings. This subdivision governs access to recordings of proceedings in the district court:

(a) **General.** Recordings of proceedings in the district court, including without limitation those used as a back-up to a stenographically recorded proceeding or as the electronic recording, are intended to assist in the preparation of a transcript. The transcript, and not the recording, is the official record of the proceedings. Recordings of proceedings in the district court may only be used as authorized in this or other applicable rules or orders promulgated by the Supreme Court.

(b) **Off the Record Remarks.** Any spoken words in the courtroom that are not a part of a proceeding, hearing or trial of a specific case are not intended to be recorded. Recordings of such words may not be listened to or used in any way other than by authorized operators of the recording equipment to orient themselves on recording content.

(c) **Playback.** Playback of any part of the recording of a proceeding, hearing, or trial of a specific case is authorized in only the following situations:

(1) during the proceeding, hearing or trial at the direction of the court;

(2) by authorized operators of the recording equipment or an official court reporter or other authorized reporting service employee for the purpose of creating a transcript as the official record; and

(3) at the direction of the court for the use of the court.

(d) **Disseminate by Transcript Only.** Except as provided in part (c) of this rule, the contents of the recording shall be disseminated by transcript only, which transcript, and not the recording, shall be the official record.

(e) **No Transcripts in Conciliation Court.** Nothing in this rule shall permit the transcription of conciliation court proceedings, hearings or trials. Playback of any part of the recordings of conciliation court proceeding, hearing or trial is authorized only at the direction of the court for the use of the court.

Subd. 4. Records Referring to Information in Non-Public Documents. Generally, a rule or law precluding public access to an entire document such as a report or medical record shall not preclude the parties or the court from mentioning the contents of the document in open court or in otherwise publicly accessible pleadings or documents such as motions, affidavits, and memoranda of law where such discussion is necessary and relevant to the particular issues or legal argument being addressed in the proceeding. Except as otherwise authorized by the presiding judge in a particular case, this rule permitting mention of otherwise non-public information shall not apply to:

(a) Restricted identifiers governed by Minn. Gen. R. Prac. 11;

(b) Identity of a minor victim of sexual assault under Rule 4, subd. 1(m), except that unless otherwise ordered by the presiding judge, such victim may be referred to by initials and year of birth;

(c) Specific data elements protected by applicable law, court rule or order, including but not limited to those protected by Minn. R. Juv. Prot. P. 8.04, subd. 1(e); and

(d) Records sealed by order in individual cases, unless otherwise directed by the court issuing such order.

Unless otherwise directed by the presiding judge, data elements in (a) through (d) of this rule that appear in a transcript of a public proceeding need not be redacted from the transcript before such transcript is disclosed to the public.

(Amended effective July 1, 2005; amended effective July 1, 2007; amended effective March 1, 2008; amended effective July 1, 2015; amended effective October 1, 2016; amended effective January 1, 2021; amended effective April 7, 2021.)

Advisory Committee Comment - 2005

The 2005 deletion of the word "temporary" in Rule 4, subd. 1(a), reflects statutory changes that allow the initial, ex parte order to be the permanent order of the court if no hearing is requested. See Minnesota Laws 1995, chapter 142, sections 4, 5 (amending Minnesota Statutes, section 518B.01, subs. 5, 7).

The 2005 reorganization of Rule 4, subd. 1, parts (d) and (f) is not substantive in nature. Trial level juvenile court proceedings that are not accessible to the public include adoption (Minnesota Statutes 2004, section 259.61; MINN. R. ADOPTION P. 8.01 (effective 1-1-2005), delinquency and extended jurisdiction juveniles (except where there are felony level charges and the juvenile was at least 16 years old at the time of the offense) (Minnesota Statutes 2004, section 260B.163, subd. 1(c); MINN. R. JUV. DEL. P. 2.01), and other proceedings closed to the public by order of the court on a case-by-case basis (see, e.g., MINN. R. JUV. PROT. P. 27.01 (permitting closure of child protection proceeding only in exceptional circumstances, and requiring public access to

closure order)). If a trial level juvenile court proceeding is not accessible to the public, then Rule 4, subd. 1(d) precludes public access to the appellate records related to that proceeding except the written opinion of the appellate court or unless otherwise ordered by the court.

The 2005 addition of race records in Rule 4, subd. 1(e) is based on the understanding that race and ethnicity information is not solicited from participants for the purpose of reselling race status of individuals to commercial enterprises. The goal is to ensure fair resolution of cases, and the rule attempts to provide a limited right of public access consistent with that goal. Access to race records, e.g., for research purposes, can be obtained under a nondisclosure agreement that limits ultimate public disclosure to aggregate statistics that do not identify individual participants. The Supreme Court has a longstanding tradition of authorizing disclosure of juvenile court records for scholarly research using nondisclosure agreements. See, e.g., *Order Authorizing Disclosure of Juvenile Court Database for Research Purposes*, No. C4-85-1848 (Minn. S. Ct. filed May 14, 2001).

The substitution of a periodically updated list of inaccessible case records for the former Appendix B in Rule 4, subd. 1(f) recognizes that the state court administrator maintains an updated list of statutes (and court rules and other legal authority) that identify case records that are not accessible to the public. The list is updated as necessary, whereas the former Appendix B quickly became obsolete soon after it was first published. It is contemplated that the list will be posted on the main state court website (www.courts.state.mn.us) for access by the general public.

The 2005 changes to Rule 4, subd. 2, recognize that a number of rules address restrictive orders. The factors to consider in seeking a protective order in regard to criminal case records are discussed in *Minn. R. Crim. P. 25*, *Minneapolis Star & Tribune v. Kammeyer*, 341 N.W.2d 550 (Minn. 1983), and *Northwest Publications, Inc. v. Anderson*, 259 N.W.2d 254 (Minn. 1977). For civil cases, see *Minn. R. Civ. P. 26.03* and *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197 (Minn. 1986). For child in need of protective services cases, see *Minn. R. Juv. Prot. P. 8.07*. For juvenile delinquency cases, see *Minn. R. Juv. Del. P. 10.06 subd 5*.

Advisory Committee Comment - 2007

The 2007 addition of Rule 4, subd. 1(f), is designed to provide some privacy protection for genetic information about individuals. The definition of "genetic information" is based in part on the privacy law governing executive branch genetic information. Act of June 1, 2006, chapter 253, section 4, Minnesota Laws 2006 424, 426 (codified at Minnesota Statutes 2006, section 13.386). Genetic information can affect not only a party, witness or victim, but also his or her genetic relatives. Courts and parties need to consider the scope of this information when admitting and offering to admit such information into evidence. Rule 4, subd. 2, recognizes that, when necessary, protective orders can be issued under applicable procedural rules. The factors to consider in seeking a protective order in regard to criminal case records are discussed in *Minn. R. Crim. P. 25*, *Minneapolis Star & Tribune v. Kammeyer*, 341 N.W.2d 550 (Minn. 1983), and *Northwest Publications, Inc. v. Anderson*, 259 N.W.2d 254 (Minn. 1977). For civil cases, see *Minn. R. Civ. P. 26.03* and *Minneapolis Star & Tribune v. Schumacher*, 392 N.W.2d 197 (Minn. 1986).

Advisory Committee Comment - 2008

The 2008 addition of Rule 4, subd. 1(e)(2), is designed to recognize that race data is routinely disclosed to parties as part of juror profile information for purposes of voir dire.

The 2008 addition of Rule 4, subd. 3, is based in part on *Il. 18th Cir. R. 1.03*. Rule 4, subd. 3, attempts to clarify the application of the Rules to recordings of testimony in light of Supreme Court policy limiting audio and video coverage of trial court proceedings, and to clarify the proper scope and role of recordings in preparing and preserving the official record.

The broad definition of "records" in Rule 3, subd. 1, appears to include recordings of court proceedings, but arguably may not include court reporter's notes. Assuming that recordings are included, it is not clear whether recordings would then be subject to the work product exception to public access (Rule 4, subd. 1(c)) or the presumption of public access (Rule 2). Assuming the presumption applies, public access creates significant administrative burdens, unresolved issues regarding what constitutes the official record, and conflicts with the Supreme Court's policy limiting audio and video coverage of trial court proceedings. Minn. Gen. R. Prac. 4; Mn. Code Jud. Conduct Canon 3A(11); Minn. S. Ct. Order, In Re Modification of Section 3A(10) of the Minnesota Code of Judicial Conduct, #C7-81-300 (filed Jan. 11, 1996) (reinstating experimental program for audio and video coverage of trial court proceedings). Although the conflict might be partially reduced by permitting public access but no public dissemination of copies of the recordings, this conflicts with the policy in Rule 2 permitting both inspection and copying. Rule 4, subd. 3, provides a straightforward resolution of all conflicts and it includes controlled playback access in appropriate circumstances.

Rule 4, subd. 3(a), recognizes that the transcript is the official record and that recordings are intended to support the creation of that record. Use of recordings is limited as provided in the rule or in other rules or orders promulgated by the Supreme Court.

Rule 4, subd. 3(b), recognizes that courtroom microphones may inadvertently pick up conversation that is intended to be protected by the attorney client privilege or is simply intended to be private conversation. The rule does not permit public access to portions of recordings that contain this material.

The controlled playback access in Rule 4, subd. 3(c), reflects what typically occurs in practice. To the extent that any abuses occur, actions of the court in controlling playback are subject to appellate review. See, e.g., Blanchard v. Golden, No. C8-95-2390 (Minn. App. filed Feb. 29, 1996) (unpublished interim order) (denying appellant's motion for correction of transcript where trial court provided opportunity to listen to backup tape).

Rule 4, subd. 3(e), reflects the requirement of Minn. Gen. R. Prac. 504(c) which provides that conciliation court proceedings and trials shall not be reported. Judges presiding in conciliation court often use recordings to supplement their notes. Access to the recordings of conciliation court proceedings, hearings or trials is treated in the same manner as judge's notes under Rule 4, subd. 1(c), and their playback is subject to the control of the court.

Rule 4, subd. 3, does not address the procedures for requesting and obtaining transcripts, or for correcting or modifying the same. These matters are addressed in other appropriate rules and statutes. See, e.g., Minn. R. Civ. App. P. 110; Minn. R. Crim. P. 28.02, subs. 8, 9; Minnesota Statutes 2006, sections 486.02 to 486.03.

Advisory Committee Comment - 2015

Rule 4, subd. 1(a), is amended in 2015 to provide a consistent level of privacy to orders for protection involving domestic abuse under Minnesota Statutes, section 518B.01, and harassment restraining orders under Minnesota Statutes, section 609.748, as proceedings under either statute can involve domestic abuse. Courts have attempted to provide uniformity through use of standardized order forms but such forms may not always be used. The amended rule obviates the need to rely on forms. The information maintained by the court regarding the petitioner's location or residence that is not accessible to the public under the rule will typically include, but is not limited to, residence address and telephone number. The amendments also recognize that the courts provide a pass-through of a "law enforcement information form" (including, but not limited to information such as Respondent Employer Name, Employer Address, Nickname or Alias, Phone Number, Work

Days/Hours, Additional Address to be Located, Expected Date/Time of Return, Vehicle Make, Vehicle Model, Vehicle Color, Vehicle License Plate Number, Vehicle License State, Respondent Has Vicious Animal, Respondent's Weapon Use or Possession) from the petitioner to law enforcement for purposes of ensuring effective and safe service and enforcement of any resulting order. The courts do not utilize the law enforcement information form in determining whether a restraining order is appropriate.

Rule 4, subd. 1(b), is amended in 2015 to expressly add to the list of non-public records support letters submitted by or for a party and disposition advisor memos. Similar items are regularly included in pre-disposition reports from probation authorities, and this change attempts to provide consistent treatment of the same information regardless of its route to the court file. Language making the records public to the extent formally admitted into evidence in a publicly accessible, testimonial-type hearing or trial has been relocated to Rule 8, subd. 5, which addresses this issue globally.

Rule 4, subd. 1, is also amended in 2015 by adding part (g) to preclude public access to the substance of a request under Minnesota Statutes, section 611.21, for assistance other than counsel and any resulting order. The rule is intended to allow the register of actions to publicly disclose the existence of the request and the fact that an order granting or denying the request has been entered, but not to publicly disclose the substance of the assistance sought or granted. At least one district has a standing order precluding public access to these requests and resulting orders, and similar individual orders are common. Standing orders generally require approval of the Supreme Court. See, e.g., Minn. R. Crim. P. 1.03; Minn. R. Civ. P. 83. The rule obviates the use of such orders.

Rule 4, subd. 1, is amended in 2015 to add a new clause (h) that is intended to provide a procedure for carrying out recent legislative amendments codified as Minnesota Statutes, section 609A.03, subdivision 3, paragraph (d) (2014). This legislation authorizes an agency or jurisdiction that is served with an expungement petition to submit to the court private or confidential data on the petitioner that the agency or jurisdiction determines is necessary to respond to the petition. The legislation further directs the agency or jurisdiction to inform the court and the petitioner that the submission contains private or confidential data, and provides that the petitioner may, at the time of filing the petition or after that time, file a request with the court to seal the private or confidential data that are submitted by the agency or jurisdiction. Rule 4, subd. 1(h) allows the petitioner to include the request in the petition and upon such request the agency or jurisdiction must submit any confidential or private data to the court in a manner that protects such data from public view. This process attempts to avoid public disclosure of the confidential or private data before the petitioner can make a request.

Rule 4, subd. 1, is amended in 2015 by adding clause (i) to clarify the status of a filed will during a testator's lifetime. Minnesota Statutes, section 524.2-515, requires that the will be kept sealed and confidential during the testator's lifetime and that the court may deliver the will to the appropriate court upon testator's death. Neither section 524.2-515 nor Minn. Gen. R. Prac. 418 addresses a public index to such wills. Rule 4, subd. 1(i) requires proof of testator's death before the existence of a filed will may be publicly disclosed, and is based on rules in several other jurisdictions. See, e.g., 14 Verm. Stat. Ann. section 2; N. Car. Rule of Recordkeeping 6.9; and St. Joseph County Michigan probate FAQs posted at <http://www.stjosephcountymi.org/probate/faq.htm#c>.

Rule 4, subd. 1, is amended in 2015 to add clause (j) recognizing that various administrative warrants must be submitted in a secure manner in order to avoid improper advance disclosure. See, e.g., Minnesota Statutes, section 182.667, subdivision 3 (2014) (imposing criminal penalty for

wrongful advance disclosure). A confidential case type must be established in the case management system in order to ensure that any related electronic filing remains undisclosed. The current technology in the E-Filing System does not allow the filer to establish a confidential case type (as apposed to allowing a filer to designate a particular document as confidential or sealed) so the court must establish the case type ahead of time. The rule places the burden on the filer to contact the court so that the necessary confidential case type can be established prior to the initial electronic filing in the case.

Rule 4, subd. 1, is amended in 2015 to add clause (k) to recognize that the legislature intended that requests for an order enforcing or quashing an administrative subpoena issued pursuant to Minnesota Statutes, section 388.23, be handled in a confidential manner. Under Minnesota Statutes, section 388.23, subdivision 4, the recipient of the subpoena is not authorized to disclose it except as necessary to respond to it or as directed by a court order, and Minnesota Statutes, section 388.23, subdivision 6, permits an ex parte application to enforce the subpoena, and provides that any resulting order need not be filed. Rule 4, subd. 1(k) provides the necessary confidentiality and recognizes that the order will be in the court's computer systems and although it may technically be considered filed it remains confidential unless and until authorized by order of the court. As is the case with administrative warrants under clause (j), a confidential case type must be established in the case management system, and the E-Filing System does not allow the filer to establish a confidential case type, so the court must establish the case type ahead of time. The rule places the burden on the filer to contact the court so that the necessary confidential case type can be established prior to the initial electronic filing in the case.

Rule 4, subd. 1, is amended in 2015 to add clause (l) to ensure confidentiality of petitions under Minnesota Statutes, section 611A.90, seeking release of certain video recordings of child victims for use in private administrative hearings. The video recordings depict a child victim or alleged victim alleging, explaining, denying, or describing an act of physical or sexual abuse as part of an investigation or evaluation of the abuse. If authorized the video recording may be used in administrative proceedings that are not accessible to the public. See, e.g., Minnesota Statutes, section 256.045, subdivision 4. As is the case with administrative warrants under clause (j) and motions to enforce or quash a county attorney subpoena under clause (k), a confidential case type must be established in the case management system, and the E-Filing System does not allow the filer to establish a confidential case type, so the court must establish the case type ahead of time. The rule places the burden on the filer to contact the court so that the necessary confidential case type can be established prior to the initial electronic filing in the case.

Rule 4, subd. 1, is amended in 2015 to add clause (m) to comprehensively address minor victim privacy in otherwise publicly accessible case records involving criminal sexual conduct offenses. The legislature in Minnesota Statutes, section 609.3471 (2014), attempted to do this, but the statute left out one offense and lacks clarity regarding the scope. Clause (m) adds the missing offense and clarifies when a closely-related commitment matter is included, what duties must be undertaken by anyone filing documents in such a case, and whether redaction of identifiers from a transcript is required when identifiers have been disclosed in testimony during a publicly accessible hearing or trial.

Rule 4, subd. 1, is amended in 2015 to add clause (n) to ensure consistent treatment of post-adjudication paternity proceedings. Following the initial determination of a relationship between a parent and a child under Minnesota Statutes, sections 257.51 to 257.74, parties may seek to modify custody or support, and such modifications are brought either as separate custody or support proceedings or as a continuation of the initial paternity matter. When custody or support modifications are brought as a continuation, there is precedent for continuing to treat the matter as non-public. See *In re Disciplinary Action Against Terrazas*, 581 N.W.2d 841 (Minn. 1998)

*(dismissing supplementary ethics petition in part because the board's investigator viewed the trial court file without obtaining the approval of the parties or the court under section 257.70, and that file was a custody modification motion brought some five years after the initial paternity adjudication, see *Autenreigh v. Terrazas*, 1997 WL 309414, No CX-96-2482 (Minn. Ct. App. filed June 10, 1997)). The policy supporting privacy of the initial paternity proceeding, however, is no longer present as the final judgment has already become public. Minn. Gen. R. Prac. 371.10, subdivision 1, purports to make the hearings post-adjudication open to the public, but the rule arguably does not address the records. A few trial courts require that all modification proceedings be brought as separate proceedings, and this may be the preferred approach or best practice. This rule is aimed at providing consistent public access treatment for these modification proceedings regardless of how they are presented.*

*Rule 4, subd. 1, is amended in 2015 to revise the catch-all paragraph by renumbering it as clause (o) and providing examples of other rules that establish non-public case record categories. The list is not exhaustive, but the rules included in the list are deemed to be consistent with these access rules and would not create a conflict under Rule 1, subd. 1, of these rules. Noteworthy changes in other rules that are new in 2015 include extending confidentiality to all records in commitment proceedings involving commitment of a minor and to juvenile protection proceedings in which a child is a party (e.g., in truancy and runaway cases the child is always a party, but is generally only a "participant" in other child protection cases involving abuse and neglect). Rule 4, subd. 2, is amended in 2015 to emphasize that closure of otherwise publicly accessible records by court order must be determined on a case-by-case basis with appropriate findings to support the closure. Cross references to rules and case law are included in the rule rather than the comment to better assist self-represented litigants. The analysis can be complex. For example, in a civil case a court must first examine the proceeding or document to determine whether it has historically and philosophically been presumed open to the public, and if so, the court must examine the constitutional right asserted to determine whether it "affords protection" to the proceeding or document in question. If this analysis suggests a right of access under the First Amendment, then "[i]n order to overcome the presumption in favor of access, a party must demonstrate that a compelling governmental interest exists and that the restriction on access is narrowly tailored to meet this governmental interest." *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 204 (Minn. 1986) (citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980)). If the analysis fails to demonstrate a right of access borne out of a constitutional dimension, then the balancing test of the common law applies: "In order to overcome the [common law] presumption in favor of access, a party must show strong countervailing reasons why access should be restricted." *Schumacher*, *supra*, at 205-06. The burden on a party seeking closure in a criminal case is greater than that in civil cases. See Minn. R. Crim. P. 25; *Minneapolis Star & Tribune v. Kammeyer*, 341 N.W.2d 550 (Minn. 1983).*

Rule 4, subd. 4, is added in 2015 to minimize the redaction burdens on all participants. It is based in part on existing Minn. Spec. R. Commitment & Treatment Act 21(b) (2014). It recognizes that although certain documents, such as medical records in a commitment case or a presentence investigation report in a criminal case, are not accessible to the public, their contents are necessarily routinely discussed in various pleadings and orders and at open hearings and trials with or without the report being admitted into evidence. Disclosure must be both necessary and relevant to the particular issues or legal argument being addressed as otherwise the rule would be a loophole for violating privacy interests of various individuals. Certain exceptions are necessary to ensure that certain data elements, such as social security numbers, remain non-public.

Rule 4, subd. 4, will have one noteworthy impact on the application of Minn. R. Civ. App. P. 112.03, which requires the parties to "take reasonable steps to prevent the disclosure of confidential information" in otherwise publicly accessible documents submitted on appeal. It is likely that most

issues and facts discussed in publicly accessible appellate court documents have also been discussed in publicly accessible pleadings, affidavits, motions, etc., at the trial court such that under Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 4, the discussion itself is not "confidential" information within the scope of Minn. R. Civ. App. P. 112.03. This is a complex issue, however, and one that may not be readily grasped if Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 4, and Minn. R. Civ. App. P. 112.03 are not read together.

Advisory Committee Comment - 2016

Rule 4, subd. 1(k), is amended in 2016 to provide a consistent level of privacy to proceedings to enforce or quash Attorney General or County Attorney subpoenas issued pursuant to Minnesota Statutes, section 8.16 or 388.23. The underlying statutes are nearly identical.

Rule 4, subd. 1(m), is amended in 2016 to add human trafficking under Minnesota Statutes, section 609.322, to the list of offenses for which minor victim identifiers are not publicly accessible. The legislature has already added Minnesota Statutes, section 609.322, in its corollary list of offenses in Minnesota Statutes, section 609.3471, for which such confidentiality is required.

Rule 4, subd. 1(n), is amended in 2016 to codify a more efficient means of making post-adjudication paternity proceedings accessible to the public. Rather than requiring court staff to open a new file, the amendment allows post-adjudication proceedings to be filed in the same paternity file and be publicly accessible to the same extent that a child support modification in a family law dissolution case is publicly accessible. The entire register of actions will be accessible to the public, but the identities of non-adjudicated putative parents will remain confidential. Documents that were not public before the post-adjudication proceedings commenced will remain nonpublic, but the now-public register of actions will reflect the existence of each such document, and will display the document's title but not its content. The purpose of the modification is to make case processing easier for court staff by keeping filings in the same case file.

Rule 4, subd. 1(o), is new in 2016 to make death certificates inaccessible to the public (except for death certificates admitted as exhibits in testimonial hearings or trials). Death certificates frequently contain Social Security numbers, which under Minn. Gen. R. Prac. 11 cannot be filed with the court on public documents. Death certificates are filed in several types of cases, including probate, custody, child protection, civil and conciliation court, and sometimes certified copies are required. Certified copies should not be altered in any way.

Rule 4, subd. 1(p), is new in 2016 and establishes confidentiality for Social Security numbers obtained by the Judicial Branch from the Department of Public Safety for the purpose of collecting court debts. The Judicial Council intends to ask the legislature for permission to obtain Social Security numbers from the Department of Public Safety to facilitate the effective collection of court debts. This will be more efficient and effective than the current skip trace means of obtaining such information and will enable the courts to utilize revenue recapture as a debt collection method.

Rule 4, subd. 1(q), is new in 2016 and creates confidentiality for records filed pursuant to Minnesota Statutes, section 260D.06. Unlike child protection proceedings that involve the government stepping in when children are not adequately cared for by their parents, Minnesota Statutes, section 260D.06, proceedings involve responsible parents seeking government assistance to secure necessary treatment for their children that they would otherwise not be able to afford. Parents with more financial resources are able to obtain similar care for their children while maintaining privacy. Providing confidentiality for records of Minnesota Statutes, section 260D.06, proceedings places all parents on equal footing. In contrast, making the records public may discourage parents from seeking treatment for their children.

Rule 4, subd. 1(r), is new in 2016 and is intended to increase public access to child protection case records. Previously, all child protection records in cases in which a child was formally a party (e.g. in truancy and runaway cases the child is always a party, but is generally only a "participant" in other child protection cases involving abuse and neglect) were not accessible to the public under Minn. R. Juv. Prot. P. 8.04, subd. 4(c). That approach reflected the limits of the technology in that there was no other means available to prevent name searches of children when they were formally a party. The technology has evolved, however, and the new approach is to open up these cases but prohibit name searches of children.

Advisory Committee Comment - 2020

Rule 4, subd. 1(a), is amended in 2020 to ensure a consistent level of privacy to orders for protection involving domestic abuse under Minnesota Statutes, section 518B.01, and harassment restraining orders under Minnesota Statutes, section 609.748, as proceedings under either statute can involve domestic abuse. The phrase "executed or served upon ... the respondent" has been shortened to "served upon ... the respondent" to obviate arguments that "executed" means signed by a judge as opposed to being carried out by those seeking to serve the order on the respondent. These provisions have been consistently interpreted and applied with service on the respondent as the triggering mechanism for public access to occur. The reference to a particular subdivision in Minnesota Statutes, section 609.748, has been removed as orders are addressed in multiple locations in the statute.

Rule 4, subd. 1(n), (s), and (t), are amended in 2020 to make paternity cases public upon initial filing like other family-law cases, confirm that images containing sexual content or nudity are non-public, and confirm that access to drivers' licenses and state/federal ID cards is restricted. A new section (u) is added precluding public access to certain records of in forma pauperis denials.

Advisory Committee Comment - 2021

Rule 4, subdivision 1 (v), is amended in 2021 to identify conflicting legislation that will not apply to court record access determinations. Laws 2020, chapter 86, article 1, would have expanded the categories of non-public documents or information in guardianship and conservatorship proceedings beyond those designated in these Rules, including by expanding confidentiality of medical/health and financial records beyond just "records" to include medical/health and financial "information." The 2020 legislation also would have required use of a new form called a bill of particulars for submitting confidential information. Following a detailed review and public hearing by the advisory committee, including a recognition that the concerns underlying the 2020 legislation were significant, the committee recommended against implementing changes to these Rules to conform to the legislation. The committee's rationale included that: (1) the legislation would increase complexity, create confusion, and potentially deprive interested parties to probate cases of necessary information to determine whether they had concerns or objections to the court's actions in the probate cases; (2) the committee had previously discussed these records and consistently determined that existing court rules and systems appropriately balance privacy of medical and financial records with providing transparency necessary to maintain public trust and confidence in the judiciary; (3) existing court rules and systems are consistent with how a majority of states handle these types of case records; and (4) the separation of powers under the state constitution vests authority over judicial branch records with the judicial branch. Finally, although rule changes that became effective January 1, 2021, will allow court staff to rely on filer designations of a "medical record," this should not be interpreted as permitting filers to achieve what the 2020 legislation sought, i.e. a sort of bill of particulars where not only medical records but medical information can be kept confidential. Access Rule 4, subdivision 1 (f), limits confidentiality to medical records, not medical information.