

Rule 44. Trial in Contested Matters**44.01 Generally**

A trial is a hearing to determine whether an adoption petition should be granted.

44.02 Commencement

A trial on a contested adoption petition shall commence within ninety (90) days of the filing of the petition or notice of a contested hearing, whichever is later. The trial shall be completed within thirty (30) days of commencement. Either or both deadlines may be extended for up to an additional thirty (30) days upon a showing of good cause and a finding by the court that the extension is in the best interests of the child.

(Amended effective January 1, 2007.)

44.03 Trial Procedure

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

(a) verify the name, age, and current address of the child who is the subject of the proceeding, except as provided in Rule 20.03;

(b) determine whether the Indian child's tribe has been notified, if the child has been determined to be an Indian child;

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

(d) determine whether any necessary biological parent, guardian, or other person from whom consent to the adoption or whose parental rights will need to be terminated is present; and

(e) determine whether notice requirements have been met, and, if not, whether the affected person waives notice.

Subd. 2. Order of Evidence. That trial shall proceed as follows:

(a) The parties, in the order determined by the court at the pretrial conference, may make an opening statement or may make a statement immediately before offering evidence on their own petition and the statement shall be confined to the facts expected to be proved.

(b) The parties, in the order determined by the court at the pretrial conference, may offer evidence.

(c) The parties, in the order determined by the court at the pretrial conference, may offer evidence in rebuttal.

(d) When evidence is presented, the parties may, in the order determined by the court at the pretrial conference, cross-examine the witnesses.

(e) At the conclusion of the evidence, the parties may make closing statements in the reverse order in which they presented their evidence.

(f) If a written argument is to be submitted, it shall be submitted within fifteen (15) days of the conclusion of testimony, and the trial is not considered completed until the time for written arguments to be submitted has expired.

44.04 Standard of Proof

The petitioner shall prove by a preponderance of evidence the facts alleged in the adoption petition and that the adoption is in the best interests of the child.

2004 Advisory Committee Comment

The Indian Child Welfare Act, 25 U.S.C., section 1901, et seq., does not state a standard of proof for adoption matters as it does for foster care and termination of parental rights matters.

44.05 Motion for Judgment at Conclusion of Trial

A motion for a judgment may be made at the close of the evidence offered by an opponent or at the close of all evidence. A party who moves for judgment at the close of the evidence offered by an opponent shall, after denial of the motion, have the right to offer evidence as if the motion had not been made. A motion for a judgment shall state the specific grounds therefore.

44.06 Timing of Decision; Delay of Issuance of Order if Adoption Assistance Not Yet Acted Upon

Subdivision 1. Generally. Within fifteen (15) days of the conclusion of the trial in a contested matter, the court shall issue findings of fact, conclusions of law, an order for judgment, and an adoption decree pursuant to Rule 45. If written argument is to be submitted, such argument must be submitted within fifteen (15) days of the conclusion of testimony. For good cause, the court may extend this period for an additional fifteen (15) days. The trial is not considered completed until written arguments, if any, are submitted or the time for submission of written arguments has expired.

Subd. 2. Delay of Issuance of Order if Adoption Assistance Not Yet Acted Upon. For adoption matters involving a child who is a ward of the Commissioner of Human Services, if there has been no opportunity for the adopting parent to apply for adoption assistance, the court shall delay issuing its findings of fact, conclusions of law, order for judgment, and adoption decree pursuant to Rule 45 until such time as the responsible social services agency documents for the court that either the commissioner has acted upon an adoption assistance application made on behalf of the adopting parent and child or the adopting parent has declined in writing to apply for adoption assistance. "Acted upon" means the commissioner or commissioner's delegate has signed an adoption assistance agreement or denied adoption assistance eligibility pursuant to a completed application submitted to the Department of Human Services. Nothing in this rule grants jurisdiction over the commissioner in regard to procedures or substantive decisions regarding the award or denial of adoption assistance.

(Amended effective January 1, 2007; amended effective August 1, 2009.)

2008 Advisory Committee Comment

Rule 44.06, subdivision 2, requires the court to delay issuing its order after a final hearing or trial on an adoption matter relating to a child who is a state ward if the adopting parent has not had the opportunity to apply for adoption assistance or if the responsible agency has not documented in writing signed by the adopting parent that the adopting parent was advised of the opportunity to apply for adoption assistance and has declined adoption assistance. The reason for requiring the delay is because there may not have been an adoption assistance application by, or agency discussion of the opportunity to apply for adoption assistance with, the adopting parent when two or more competing adoption petitions regarding the same child are heard and the Commissioner of Human Services has given consent to the adoption, as required under Minnesota Statutes, section 259.24, subdivision 1, paragraph (d), by a different prospective adoptive petitioner than the adopting parent whose petition the court is granting. There may be an adoption assistance agreement for

the parent to whom the Commissioner gave consent, but no application may have been made in regard to the competing petitioner. The court is required to delay issuing the adoption decree to give the responsible social services agency time to discuss the opportunity to apply for adoption assistance on behalf of the child with family whose petition the court is granting and for the commissioner to act on any application that is made. This will mean more certain eligibility for adoption assistance and timely start of adoption assistance payments after the decree is issued, if the child and adoptive parent are determined eligible.