

**Rule 42. Consolidation; Bifurcation****42.01 Consolidation Generally**

When matters involving the adoption of the same child or children are pending before the court, the court may:

- (a) order a joint hearing or trial of any or all the adoption matters;
- (b) order consolidation of all such adoption matters;
- (c) order that the matters be heard sequentially; and
- (d) make any orders appropriate to avoid unnecessary delay or costs.

**42.02 Consolidation with Other Proceedings; Competing Petitions**

**Subdivision 1. Consolidation with Other Proceedings.** Upon notice of motion and motion and for good cause shown, the court may order the consolidation of the adoption matter with any related proceeding, including a custody proceeding, paternity proceeding, termination of parental rights proceeding, or other proceeding regarding the same child.

**Subd. 2. Competing Petition.** When multiple adoption petitions have been filed with respect to the same child who is under the guardianship of the Commissioner of Human Services, the court shall consolidate the matters for trial. In all other cases, when two or more parties have petitioned for the adoption of the same child, the court may, after consideration of the factors specified in subdivision 4, order the petitions to be tried together.

**Subd. 3. Cross-County Matters.** Upon motion for a change of venue and for good cause shown, the court may order the consolidation of the adoption matter with any related proceeding in another county regarding the same child.

**Subd. 4. Factors to Consider.** In making the determinations required under subdivisions 1 to 3, the court shall consider the best interests of the child, any potential breaches of confidentiality of the adoption matter, the additional complexity or judicial economies of a joint proceeding, and any other relevant factors.

***2004 Advisory Committee Comment***

*In determining whether to consolidate an adoption matter and termination of parental rights proceeding, the court shall consider the impact of the consolidation on the eligibility of the child for financial adoption assistance or other financial benefits available under Minnesota Statutes, section 259.67.*

**42.03 Bifurcation**

**Subdivision 1. Permissive Bifurcation.** The court may order a trial pursuant to Rule 44 to be bifurcated as to one or more claims or issues.

**Subd. 2. Mandatory Bifurcation.** In cases where the child is under the guardianship of the Commissioner of Human Services, the court shall bifurcate the trial on the contested adoption petitions as follows:

- (a) A trial shall first be held to determine whether the consent to the adoption by the Commissioner of Human Services was unreasonably withheld from the petitioner. The responsible social services agency shall proceed first with evidence about the reason for the withholding of

consent. The petitioner who has not obtained consent shall then have the burden of showing by a preponderance of the evidence that the consent was unreasonably withheld.

(b) If the court determines that the consent of the Commissioner of Human Services was not unreasonably withheld, the court shall dismiss the adoption petition of the petitioner who did not obtain consent, and proceed to trial on the remaining adoption petitions, if any.

(c) If the court determines that the consent of the Commissioner of Human Services was unreasonably withheld from any petitioner, the court shall not dismiss that petition for lack of consent. The court shall proceed to trial on all the contested adoption petitions, and shall determine whether adoption is in the best interests of the child, and, if so, adoption by whom.

(Amended effective January 1, 2007.)

#### **42.04 Rule Does Not Apply to Children under Guardianship of the Commissioner of Human Services**

The provisions of Rules 42.01 to 42.03 do not apply to children under the guardianship of the Commissioner of Human Services. Procedures for contested adoptive placement of children under the guardianship of the Commissioner of Human Services are governed by Minnesota Statutes, section 260C.607, subdivision 6.

(Added effective July 1, 2014; amended effective September 1, 2019.)

#### ***2014 Advisory Committee Comment***

*Rule 42.04 provides that contests over the adoptive placement of children under state guardianship are governed by Minnesota Statutes, section 260C.607, subdivision 6. A contested adoptive placement hearing for a child under the guardianship of the Commissioner of Human Services occurs when an individual not selected by the agency for adoptive placement and who has an adoptive home study makes a prima facie showing that the responsible social services agency was unreasonable in making the adoptive placement. The individual files a motion which is heard by the judge conducting the reviews required under Minnesota Statutes, section 260C.607, on the agency's reasonable efforts to finalize adoption of the child.*

*If the court finds there is a prima facie showing, it will conduct a further hearing on the motion and may order the agency to make an adoptive placement with the individual bringing the motion. A petition for adoption of a child under guardianship of the commissioner cannot be filed unless there is an adoptive placement by the responsible agency made by fully executed adoptive placement agreement. So the process is not for contested adoption, but rather for contested adoptive placement.*