

RULE 38. ACCESS TO HEARINGS**Rule 38.01. Presumption of Public Access to Hearings**

Absent exceptional circumstances, hearings in juvenile protection matters are presumed to be accessible to the public. Hearings, or portions of hearings, may be closed to the public by the court only in exceptional circumstances. The closure of any hearing shall be noted on the record and the reasons for the closure given. Closure of all or part of a hearing shall not prevent the court from proceeding with the hearing or issuing a decision. An order closing a hearing or portion of a hearing to the public shall be accessible to the public.

Rule 38.02. Party and Participant Attendance at Hearings

Notwithstanding the closure of a hearing to the public pursuant to Rule 38.01, any party who is entitled to summons pursuant to Rule 44.02 or 53.02, or any participant who is entitled to notice pursuant to Rule 44.03 or 53.03, or any person who is summoned or given notice, shall have the right to attend the hearing to which the summons or notice relates unless excluded pursuant to Rule 38.04.

Rule 38.03. Absence Does Not Bar Hearing

The absence from a hearing of any party or participant shall not prevent the hearing from proceeding provided appropriate notice has been served.

Rule 38.04. Exclusion of Parties or Participants from Hearings

The court may exclude from any hearing any party or participant, other than a guardian ad litem or counsel for any party or participant, only if it is in the best interests of the child to do so or the person engages in conduct that disrupts the court. The exclusion of any party or participant from a hearing shall be noted on the record and the reason for the exclusion given. The exclusion of any party or participant shall not prevent the court from proceeding with the hearing or issuing a decision. An order excluding a party or participant from a hearing shall be accessible to the public.

2019 Advisory Committee Comment

Rule 38 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 27. The amendments are not intended to substantively change the rule's meaning.

Pursuant to Rule 32, a party has the right to be present in person at any hearing. For a child, the person with physical custody of the child should generally be responsible for ensuring the child's presence in court. When a child is in emergency protective care or protective care, the responsible social services agency is responsible for ensuring the child's presence in court. If the child is in the custody of the responsible social services agency in out-of-home placement, the agency should transport the child to the hearing. If the agency fails to make arrangements for the child to attend the hearing, the child's attorney or guardian ad litem may need to ask for a continuance and for an order requiring the child to be brought to the next hearing.