

RULE 46. ADMIT/DENY HEARING**Rule 46.01. Generally**

An admit/deny hearing is a hearing at which the statutory grounds set forth in the petition are admitted or denied pursuant to Rule 47.

Rule 46.02. Timing

Subdivision 1. Child in Placement. When the child is placed out of the child's home by court order, an admit/deny hearing shall be held within 10 days of the date of the emergency protective care hearing. Upon agreement of the parties, an admit/deny hearing may be combined with an emergency protective care hearing pursuant to Rule 42. In matters governed by the Indian Child Welfare Act, an admit/deny hearing shall not be held until the provisions of Rule 30.01, subd. 3, are met.

Subd. 2. Child Not in Placement.

(a) **Generally.** When the child is not placed outside the child's home by court order, an admit/deny hearing shall be held no sooner than three days and no later than 20 days after the filing of the petition. In matters governed by the Indian Child Welfare Act, an admit/deny hearing shall not be held until the provisions of Rule 30.01, subd. 3, are met.

(b) **Child's Behavior.** In matters where the sole allegation is that the child's behavior is the basis for the petition and the child is not in placement, an admit/deny hearing shall be commenced within a reasonable time after service of the summons and petition upon the child.

Rule 46.03. Hearing Procedure

Subdivision 1. Initial Procedure. At the commencement of the hearing the court shall on the record:

(a) verify the child's name, date of birth, race, gender, current address unless stating the address would endanger the child or seriously risk disruption of the current placement, and, if the child is believed to be an Indian child, the name of the child's tribe;

(b) pursuant to Rule 29, inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe, parent, and Indian custodian have been notified;

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

(d) advise any child and the child's parent or legal custodian who appears in court and is not represented by counsel of the right to representation pursuant to Rule 36;

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

(f) if a child who is a party or the child's parent or legal custodian appears without counsel, explain basic trial rights listed in Rule 49.02, subd. 2(a);

(g) determine whether the child and the child's parent or legal custodian understand the statutory grounds and the factual allegations set forth in the petition and, if not, provide an explanation;

(h) explain the purpose of the proceeding and the possible transfer of custody of the child from the parent or legal custodian to another, when such transfer is permitted by law and the permanency requirements of Minnesota Statutes, sections 260C.503 to 260C.521;

(i) if the admit/deny hearing is the first hearing in the juvenile protection matter, and if the court knows or has reason to know that the child is an Indian child, determine whether notice has been sent pursuant to Rule 30.01 and 25 U.S.C section 1912(a);

(j) if the admit/deny hearing is not the first hearing and the determination that the child is an Indian child has not been made as required in Rule 42.08, subd. 2, attempt to determine whether the child is an Indian child through review of the petition, other documents, and an on-the record inquiry as required by Rule 29.02. If the court is unable to determine whether the child is an Indian child, the court shall direct the petitioner to make further inquiry and provide to the court and parties additional information regarding whether the child is an Indian child;

(k) if the court finds from review of the petition or other information that an Indian child is a ward of tribal court, pursuant to Rule 31.02, subd. 1, adjourn the hearing to consult with the tribal court regarding the safe and expeditious return of the child to the jurisdiction of the tribe and dismiss the juvenile protection matter;

(l) attempt to determine the applicability of the Indian Child Welfare Act, 25 U.S.C. sections 1901-1963, based on the information received from the tribe or tribes required to receive notice pursuant to 25 U.S.C. section 1912(a). The court shall order the petitioner to make further inquiry of the tribe or tribes until the court can determine whether the Indian Child Welfare Act applies; and

(m) advise all persons present that if the petition is proven and the child is not returned home:

(1) a permanency progress review hearing shall be held within six months of the date of the child's placement in foster care or in the home of a noncustodial or nonresident parent; and

(2) a permanent placement determination hearing must be held within 12 months of the date of the child's placement in foster care or the home of a noncustodial or nonresident parent.

Subd. 2. Initial Determinations. In each child in need of protection or services matter, after completing the initial inquiries set forth in subdivision 1, the court shall determine whether the petition establishes a prima facie showing that a juvenile protection matter exists and that the child is the subject of the petition, unless the prima facie determination was made at the emergency protective care hearing pursuant to Rule 42.08. The court shall dismiss the petition if it finds that the petition fails to establish a prima facie showing that a juvenile protection matter exists and that the child is the subject of the matter. If the child is an Indian child, the court shall apply Rules 28-31 and the requirements of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act.

Subd. 3. Motions. The court shall hear any motion addressed to the sufficiency of the petition or jurisdiction of the court without requiring any person to admit or deny the statutory grounds set forth in the petition prior to making a finding on the motion.

Subd. 4. Scheduling order. The court shall issue a scheduling order pursuant to Rule 6.

2019 Advisory Committee Comment

Rule 46 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 34.